

JUSTICE 1 COMMITTEE

Wednesday 26 April 2006

Session 2

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SCOTTISH CRIMINAL RECORD OFFICE.....2863

JUSTICE 1 COMMITTEE 12th Meeting 2006, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)

*Mr Bruce McFee (West of Scotland) (SNP)

*Margaret Mitchell (Central Scotland) (Con)

*Mrs Mary Mulligan (Linlithgow) (Lab)

*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

*Brian Adam (Aberdeen North) (SNP)

Bill Aitken (Glasgow) (Con)

Karen Gillon (Clydesdale) (Lab)

Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Alex Neil (Central Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Bruce Grant (Metropolitan Police)

Danny Greathouse (United States Department of Homeland Security)

Ewan Innes (Scottish Fingerprint Service)

Chief Constable Ian Latimer (Association of Chief Police Officers in Scotland)

John McLean (Scottish Criminal Record Office)

Deputy Chief Constable David Mulhern (Scottish Police Services Authority)

Joanne Tierney (Scottish Fingerprint Service)

Chief Constable Peter Wilson (Association of Chief Police Officers in Scotland)

Arie Zeelenberg (Dutch National Police Force)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Euan Donald

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 1

Scottish Parliament

Justice 1 Committee

Wednesday 26 April 2006

[THE CONVENER *opened the meeting at 10:34*]

Scottish Criminal Record Office

The Convener (Pauline McNeill): Good morning and welcome to the Justice 1 Committee's 12th meeting of 2006. I have apologies from the deputy convener, Stewart Stevenson. In his place is Brian Adam, whom I welcome. Will you confirm that you are substituting for Stewart Stevenson?

Brian Adam (Aberdeen North) (SNP): I am.

The Convener: I ask members to do the usual by checking that their mobile phones and other pieces of equipment are switched off.

Agenda item 1 is the opening of the inquiry that the committee has agreed to hold into the Scottish Criminal Record Office, for which the remit has been published. I advise members that the case of David Asbury v the Strathclyde joint police board and others falls under the sub judice rule—rule 7.5 of standing orders. Members should by now be familiar with that rule and what it requires of them. I draw their attention to the fact that that case is live and that they should be careful in referring to it.

I welcome our first panel, which comprises Deputy Chief Constable David Mulhern, who is the interim chief executive of the Scottish police services authority; John McLean, who is the director of the Scottish Criminal Record Office; Ewan Innes, who is the head of the Scottish fingerprint service; and Joanne Tierney, who is the Scottish fingerprint service's training manager.

It may be known, as it was advertised, that committee members visited the Scottish Criminal Record Office on Monday to familiarise ourselves a bit with the science of fingerprinting and to learn a wee bit more about how the service operates. That visit was useful.

I am also grateful that the committee was able to see the action plan in time to draw up our lines of questioning.

As the witnesses can imagine, we have a number of questions. What was your starting point for the recommendations in the action plan? Many of the recommendations relate to a kind of end process. The committee would like to know what assumptions you made and what documents you used in considering the recommendations. If the

plan marks the end process, or the beginning of making reforms, we need to understand where you started from.

Deputy Chief Constable David Mulhern (Scottish Police Services Authority): In effect, we had between four and five weeks to deliver the action plan. That was a very short timescale, but we tried to make ourselves as familiar as we could be with what you called the science of fingerprinting, with the Scottish fingerprint service and with the background to why we are where we are.

We started with the 25 recommendations and 20 suggestions that fell out of the report produced by HM inspectorate of constabulary for Scotland in 2000. We tried to consider them as the baseline from which we would move forward with the action plan—that is articulated in action points 1 and 2 of the plan.

We met the heads of the four fingerprint bureaux along with senior fingerprint staff, who included Joanne Tierney, to hear what they felt the issues were and to allow them to understand where we were coming from in developing the action plan. Separately, I met the SCRO's director to discuss the working of the Scottish fingerprint service.

From that, we tried to build an understanding of fingerprints. In that I was assisted by Chief Superintendent Bill Fitzpatrick of Strathclyde police. Back in 2002, he worked alongside John McLean on developing the non-numeric standard. That is part of the action plan, but to an extent I relied on his understanding of fingerprints to develop the action plan.

The principle was that we considered the Scottish fingerprint service as an organisation in the same way as we would any other organisation that has been going through a crisis. We considered how we would go about building or rebuilding an organisation to become a world-class service, whatever its service was. That is where we started from.

The Convener: You mentioned the HMIC report. Was that the main report that informed your recommendations? Did you use other reports?

Deputy Chief Constable Mulhern: As you know, the HMIC report was published in 2000. We also considered all three follow-up reports to it.

The Convener: What were those reports?

Deputy Chief Constable Mulhern: The reports were of reviews in 2002 and 2003 and of a reinspection of the SCRO, including the Scottish fingerprint service, in 2004.

The reports that were published in 2000, 2002 and 2003 all focused on the Scottish fingerprint service in particular, and the discharge of the

recommendations that were made in 2000. I do not want to suggest that the 2000 report became the template on which we built; however, it was the document that we relied on for the recommendations for change. That report was also built on in a report by the Association of Chief Police Officers in Scotland, which made 79 or 89 recommendations. We considered all those reports. I stress that we did not look at them and then construct a report around them; we considered what change was expected from those reports and how that manifested itself in practice in the SCRO and the Scottish fingerprint service.

The Convener: Were you given sight of any other reports—for example, the MacLeod and Mackay reports?

Deputy Chief Constable Mulhern: No, I was not. I have not read those reports.

The Convener: So you mainly used the HMIC reports. You have talked about an organisation in crisis, and there has been talk about the nature of the service. How did you identify what was wrong in the service? Did you mainly use the reports from 2000, 2002 and 2003?

Deputy Chief Constable Mulhern: Yes. We also had discussions with the heads of bureaux around how they saw the organisation. We built from that, and we got a strong impression that there was an organisation in crisis. Since our report was drafted, we have met all the staff of the Scottish fingerprint service, and our conclusions have been reinforced by that.

The Convener: We have a number of detailed questions for you, which we will move on to, but I want to clarify one thing. In arriving at your conclusions and before you made your recommendations, did you identify what you would regard as failings or flaws in the organisation?

Deputy Chief Constable Mulhern: No—quite the contrary. We found an organisation that, since 2000, had moved on incredibly. It had introduced standards, processes and systems that had vastly changed the organisation since 1997. We saw an organisation that was improving, developing and learning. We hope that the action plan will build on that learning and improvement.

The Convener: We can understand that. However, before we move on to your recommendations, we need to explore what failings you identified in the first place, in order to understand how the organisation has improved. Did you identify any issues in 1997, when this all started?

Deputy Chief Constable Mulhern: No. As a consequence of what happened in 1997, the public, the press and the fingerprint world had an uncomplimentary opinion of the Scottish fingerprint

service. That was the state in which the organisation was functioning, and we saw the action plan as trying to improve the situation. Notwithstanding the organisation's name change and the creation of the Scottish fingerprint service as an entity in 2002, the four fingerprint bureaux were effectively still operating in isolation from one another. I have articulated that in our report. We did not see an organisation with a sense of corporate responsibility or a corporate culture; we saw an organisation in which, it would seem, one bureau felt that it was legitimate to criticise another bureau publicly without feeling any responsibility for the effect that that might have on the other bureau. It was, effectively, criticising the Scottish fingerprint service; however, it did not see that, as it did not regard the Scottish fingerprint service as an entity—the fingerprint bureaux still saw themselves as part of the Scottish Criminal Record Office, which was perceived as the organisation.

Brian Adam: Good morning. In terms of science and Scots law, it is always a good idea to corroborate what one is doing. In the light of the fact that you are bringing together the forensic science service and the fingerprint service, has any consideration been given to carrying out DNA testing on the original specimens, which might help to clarify the position?

Deputy Chief Constable Mulhern: You might want to ask some of the other panel members to comment on that, but from my position, the answer is no. I have not looked at the mark. What benefit would looking at the mark have for the action plan? I am trying to address the action plan and take the organisation forward. Revisiting the mark, whether through DNA testing or some other means, would do nothing to take the organisation forward. It has to move forward, and the action plan seeks to make sure that it does.

10:45

Brian Adam: Surely the purpose of the organisation is not to satisfy its own needs but to satisfy the needs of justice. One of the arguments that you have used for bringing together the fingerprint service, the forensic science service and possibly the scene-of-crime service is that, by doing so, an integrated approach will be created. Surely you should rely not just on one technique but on all the techniques that are available to you. I ask you to consider bringing back to us, at some future point, your consideration of whether the case should be looked at again, given that your approach is to take an integrated approach to investigations rather than to look at things in isolation.

You said, rightly, that practices have changed significantly since 1997. Can you tell us whether there were any standard operating practices in

1997, whether they differed between the various bureaux and what changes have taken place since then? At one time, the senior scientist would approach the analysis in a certain way and train up people at the bench to do things in the same way, rather than use standard procedures. Can you tell us what the SCRO's culture was in relation to that in 1997, what the culture is now and how the culture differed among the bureaux in Scotland?

Deputy Chief Constable Mulhern: Personally, I cannot. I ask Mr McLean whether he has a comment on that.

John McLean (Scottish Criminal Record Office): The Scottish fingerprint service did not exist as a single body in 1997. At that time, there were seven separate bureaux that operated their own procedures. There was no common organisation.

Brian Adam: Were those procedures written down?

John McLean: I am unable to answer that question at the moment, but I am sure that there are people who can.

Brian Adam: Will you find out for us?

John McLean: We will get back to you with the answer.

With the creation of the Scottish fingerprint service, the number of bureaux was reduced from six to four, in Glasgow, Aberdeen, Dundee and Edinburgh, and standard operating procedures were introduced. ISO accreditation has been achieved throughout the organisations, and the standards that are applied are higher than those of any other fingerprint service in the United Kingdom.

Brian Adam: I am glad to hear that, but we need to know what happened in 1997. I suspect that, unless procedures were written down, the differences between bureaux—or the differences between the service in Scotland and services elsewhere—can be explained by the fact that the culture or approach in each bureau relied on its experience rather than on standards. We need to understand why we had those differences. People adhere to one view or another, but the public deserves to know why the differences existed. I am offering you an opportunity to explain that. If you are unable to do so today, you can investigate and come back to us.

John McLean: It may be that Mr Innes can add something, although he was engaged in 2001 as a change manager to bring the Scottish fingerprint service into being. To say that that was not an easy job is perhaps an understatement. There was resistance to change in the organisation, including resistance to the introduction of standards and

common practices throughout the services. Some bureaux perhaps do not accept that certain things require to be done in a certain way, but the introduction of common standards and the achievement of ISO accreditation have required changes to be made.

Brian Adam: Do you agree that there could be some danger in going beyond simply introducing standard operating procedures and imposing a central direction? There are two parts to the process. One is the actual analysis, which is much better done according to a standard operating procedure. However, there is a danger in overlaying a culture that says, "You will all reach the same conclusion, irrespective of what you see before you." To put it in black-and-white terms, I suspect that that might have happened in this case.

Returning to the point that David Mulhern made about one bureau criticising another, how do you deal with honest differences of opinion—"honest" being a word that is used a lot around this case—if there is a culture that suppresses opinion and uses disciplinary procedures to intimidate people? How will that help?

Deputy Chief Constable Mulhern: Looking forward, the action plan builds in a series of valves that allow the very issues that you are raising to be aired. How does an organisation's culture allow that organisation to criticise itself? What is the right approach? It will partly involve the series of safeguards that we are discussing putting in place through the action plan, which will address that question in the future. For example, safecall is a confidential helpline of which I have had experience in previous roles. Individuals can use it to contact, anonymously if they choose, an outside organisation and raise issues with it. Those issues are fed back into the organisation, but the outside organisation demands answers.

That is at the end of the spectrum. We would like a whole series of internal opportunities to be introduced, so that the very issues that you raise can be articulated in the future and so that, if there is internal disagreement over identification, for example, that disagreement is aired and addressed within the organisation, which then learns from that. The disagreement should not be aired initially in public, as there is corporate responsibility to air it in another way, and the person with the concern should feel confident that the organisation will listen to them and that the matter will be addressed. More important, the public and the Parliament should have the confidence that that is happening internally in the organisation, with the safety net of external referral if matters are not addressed.

The Convener: We are jumping a wee bit ahead of ourselves here. Before we get to the

question whether we have confidence in the service, we are trying to establish where we started off.

In answer to Brian Adam's question, John McLean said that he might not be in a position to answer fully the questions about the system that was operating in 1997. I should make it clear that we need to know about that. We need to have an understanding of how prints and marks were identified, verified and quality assured before we can have some understanding of why the changes are for the better. I am happy for you to give the committee that information at a later date, but we need to have it. There is no way that the committee can assess whether you have made the right recommendations until we have some understanding of what you think the flaws at the beginning of the process were. That information is vital to us. Is it possible for us to have it?

John McLean: There are various documents. Some of the review documents to which David Mulhern has referred document those processes. We are happy to take that request away and bring a document to the committee, setting out the exact situation at that time.

The Convener: We would be grateful if you could tailormake that for us. We have limited time for this inquiry. We have a wee bit more understanding of the matter, having been down at the SCRO on Monday, but we would find such a document very helpful.

We would like to explore the issue of culture a wee bit further. I will come to Bruce McFee on this subject, but first I welcome Alex Neil, who joins us this morning. He has a question on the issues that were raised previously on this matter.

Alex Neil (Central Scotland) (SNP): My question goes back to the issue of where we start from. Mr Mulhern states in his report that the Shirley McKie print was a misidentification, but that is not accepted by a number of experts within the SCRO. They have publicly disputed that there was a misidentification. How can those people continue to work in the SCRO? I have received confirmation from the Minister for Justice that they no longer provide expert evidence in court, but are they providing fingerprint evidence for others to use in court? Why are they still employed by the SCRO as fingerprint experts if their services cannot be used?

Deputy Chief Constable Mulhern: I will start and will hand over to Mr McLean, who I know will have a view. I stress that there has been a criminal investigation and a disciplinary investigation into the experts in the SCRO. The outcome of both investigations was that there had been no wrongdoing.

Alex Neil: But the Mackay report did not say that. It recommended criminal action.

John McLean: Can I comment?

The Convener: Before you answer, I make it clear that the questions are to be on the theme that the committee wants to address, which is to try to follow chronologically what happened in 1997.

Alex Neil: That is what I am trying to do.

The Convener: Can we please stick to that?

Alex Neil: What happened in 1997, according to the Mackay report, was cover up and criminality. The people who were accused in the report of cover up and criminality still work at the SCRO. As long as they are still working at the SCRO, how can any of us have any confidence in it, no matter how many action plans are put in place?

John McLean: Mr Neil's point is at the centre of the culture issue that was raised by the convener at the start of the discussion. The Shirley McKie case is at the centre of the debate. Some people in the SCRO hold the opinion that it was a correct identification and other people in the SCRO say that it was a misidentification. Externally, some people say that it was a correct identification and others say that it was a misidentification. The Scottish Executive settled the civil case in February. The criminal case against Shirley McKie found her not guilty, but on the other side a disciplinary investigation, chaired by Doris Littlejohn, the former president of the Central Office of Industrial Tribunals (Scotland), found that there was no disciplinary case to answer.

Alex Neil: My point remains in respect of the people who were responsible for the misidentification. Mr Mulhern accepts in his report that it was a misidentification, the Minister for Justice has accepted that it was a misidentification, the Lord Advocate has accepted that it was a misidentification, and by far the majority of experts who have examined the fingerprint accept that it was a misidentification, yet the experts in the SCRO are still publicly saying that those people are all wrong. They say that Mr Mulhern must be wrong, that the Lord Advocate must be wrong and that the Minister for Justice must be wrong—the whole world, except for them, must be wrong. Those people, who maintain—contrary to all that opinion—that there was not a misidentification, still work in the SCRO. Are they still providing—directly or indirectly—evidence on fingerprinting for the SCRO to use in court or in preparation for court proceedings?

John McLean: Those people are not eligible to attend court as witnesses.

Alex Neil: I know that. That is not my question. Are they still involved in preparing fingerprint evidence within the SCRO?

John McLean: They are involved in working within the SCRO office. I cannot discuss the exact role, but perhaps Mr Innes can.

Ewan Innes (Scottish Fingerprint Service): The answer to the question is no, they are not.

Alex Neil: Why are they still employed within the SCRO?

The Convener: Alex, you cannot go on like this.

Alex Neil: I have not had a go yet, convener.

The Convener: You have had an answer. Your question was—

Alex Neil: If this inquiry—

The Convener: Please do not speak over the convener. You should know that.

You asked whether the officers were still involved in providing evidence and you got the answer to that. Bruce McFee will now ask a question.

Alex Neil: Can I raise a point of order? The inquiry will have no credibility if we are not entitled to ask—

The Convener: Mr Neil—

Alex Neil: Do not interrupt me.

The Convener: Do not speak over the convener.

Alex Neil: You are speaking over me.

The Convener: I will suspend the meeting if you continue. I am afraid that speaking over members is the prerogative of the convener. I will let you ask any questions that you like, but all other members are being orderly and will be called in order. If you do not mind, I would be grateful if you would be orderly, too. You have had a fair go.

Alex Neil: I am trying to be orderly.

The Convener: The committee is well aware of the differences of opinion. Please give us some credit. We have not even started the inquiry yet.

11:00

Mr Bruce McFee (West of Scotland) (SNP): Is there a general acceptance in the SCRO and the fingerprint service that the culture and practices that existed in the late 1990s had to change?

Ewan Innes: Yes, I believe that there is. When I look back at where we have moved from 2001 to where we are today, I see the many changes that we have made to procedures, processes, training, our accreditation system and annual testing. The staff within the SFS have accepted the lessons from 1997 and have put into place the changes—they accomplished that. Those same people, as everyone knows, have a divergence of opinion

over an identification that was made in 1997. However, that has not stopped them making progress with the change programme that was put in place to create the service that exists today, which is at least equal to the other services in the United Kingdom and better than most of them.

Mr McFee: You alluded to this question, but is there a genuine and general acceptance in the SCRO and the fingerprint service that the identification of Shirley McKie's print in 1997 was incorrect?

Ewan Innes: No. What I have found among the experts in the Scottish fingerprint service is a wide spectrum of views—which probably reflects the wide spectrum of views among outside experts—from, "It is," to "It isn't," to "I don't know," to "From what I have seen, I'm not sure." That wide spectrum of views exists among the experts in the service.

Mr McFee: Let us explore how wide that spectrum of views is. You will agree that leadership and culture are incredibly important. Mr Mulhern has said that he saw an organisation that, since 2000, has moved on incredibly from where it was, but that, before that, there was no sense of corporate organisation or structure. I am sure that you will be aware of a joint letter by Kenneth Macintosh MSP and Des McNulty MSP that cited a letter that employees of the SCRO had sent to Lord Cullen, the Lord President and Lord Justice General, on 14 November 2005.

In that letter, some 50 members of your staff dispute the outcome of the Shirley McKie fingerprint misidentification case. Four of them disagree that a mistake was made at all and another five experts, who state that they carried out comparisons, insist that the fingerprints were Shirley McKie's. Another 41 SCRO employees state that any settlement with the McKies would have

"a detrimental effect on the future presentation of fingerprint evidence ... in Courts of Summary and Solemn Jurisdiction",

despite the fact that they admit that they have not

"had any access to the original productions in the McKie case".

I put it to you straightforwardly that there is no acceptance of the need to change among, it seems, the majority of your staff and that you have an organised campaign in your jurisdiction with which you are impotent to deal.

Ewan Innes: You have just exemplified the divergence of views and opinions that I told you exist among the experts in the service over the identification in 1997. It must be said that we are considering a service that has established the Scottish fingerprint service; combined seven

fingerprint bureaux into four; put resources in place for quality and training; recruited resources to manage the training programme nationally; and put in place an operational planning system under which work is transferred between the bureaux. In the past five years—

Mr McFee: I hear that, Mr Innes, but I do not hear that you have changed the culture or tried to bring about in some way an acceptance among key members of your staff that they made a misidentification in the Shirley McKie case. I put it to you that your organisation will not progress until there is an acceptance that an error was made. If people do not accept that an error was made, they do not appreciate the need to change. What did you do when you found out about the existence of the letter from the SCRO staff?

Ewan Innes: I read and recorded the letter. I ensured that the staff were expressing their own views and not those of the Scottish fingerprint service.

Mr McFee: If you ensured that they were expressing their own views and not those of members of the Scottish fingerprint service, did you have sight of the letter before it was sent?

Ewan Innes: No, sir. I got sight of the letter after it was sent.

Mr McFee: The letter states that it does not express the views of the Scottish Criminal Record Office, so I wondered why you laboured that point.

Ewan Innes: I meant that I checked it again.

John McLean: Outbursts of very strong feeling have come from different parties over a long period—they have come from both the Aberdeen and Glasgow bureaux—because there is difficulty in managing the culture of the organisation. There is great diversity of opinion about this single issue. As Mr Innes said, however, that has not prevented our moving the organisation forward in many ways.

Mr McFee: It appears that in one part of the country you face disciplinary action for doing that and in another you continue in your position.

John McLean: That is totally incorrect.

Mr McFee: We will investigate that further.

John McLean: I shall be pleased if you do that, because you are factually incorrect.

Mr McFee: It will be interesting to see what happens.

No action was taken on the contents of the letter and you do not regard that as an indication that your employees failed. Do you accept that the McKie misidentification was indeed a misidentification?

Ewan Innes: I am not qualified to say, because I was not there in 1997 and I am not a fingerprint expert. I cannot give you a view on whether there was a misidentification.

Mr McFee: You do not accept the deliberations of the court.

Ewan Innes: Of course I accept the deliberations of the court.

Mr McFee: Do you therefore accept that there was a misidentification?

Ewan Innes: I accept that the court found Shirley McKie not guilty of perjury.

Mr McFee: We are finding a situation in which the culture of the organisation will not change significantly despite the good efforts of Mr Mulhern and the processes that others have tried to implement. As long as the leadership of the SCRO sits here today and cannot express confidence in the decision of a court—and of many fingerprint experts the length and width of the globe—that there was a misidentification, there is a serious problem in your organisation.

John McLean: The SCRO accepts the decision of the court and we accept the Scottish Executive's decision to settle the case. Individuals in the organisation, as well as individuals outwith the organisation, still disagree strongly about the decisions. I agree that some sort of closure requires to be found.

Mr McFee: Is it the case that there is disagreement among the majority—

John McLean: The majority?

Mr McFee: Of your employees.

John McLean: There is a fair division. Many people in the Glasgow bureau take the side of their colleagues there and many people take a different view in the other three bureaux. It is as simple as that.

Mr McFee: We have a great deal of interest in the staff of the Glasgow bureau, some of whom have many years' experience of working in Glasgow. Is it the case that the majority of your experts who work in Glasgow still believe that the court was wrong?

Ewan Innes: A majority of experts who work for me in Glasgow believe that the identification was correct.

Mr McFee: And therefore that the court was wrong. That says it all, convener.

Deputy Chief Constable Mulhern: At the risk of moving forward in the action plan, I wish to reassure Mr McFee about what I have found about the Scottish fingerprint service. I had a collective meeting with the Glasgow bureau—we could not

bring together everybody at that point for logistical reasons—and I had a separate and subsequent meeting with staff of all four bureaux. To a person, there was extreme and extraordinary enthusiasm about the action plan and to move forward as a single organisation. I understand Mr McFee's concerns and misgivings, but the staff are a collective of people who are very keen to act corporately to take the service forward. They have pride and confidence in the service for which they work.

The Convener: Mr McLean, you seemed anxious to answer Bruce McFee's question in relation to the question that was put to you about officers who have been disciplined for speaking out in public. Can you clarify your position?

John McLean: The suggestion is that, if an individual with a particular perspective speaks out, disciplinary action will be taken against them, but that it will not be taken against someone with a different perspective. That is incorrect. Two disciplinary investigations are on-going at present. It would be inappropriate for me to go into those in detail, other than to say that they concern a breach of the SCRO's communications policy.

Mr McFee: Does the investigation relate to the 50 people who signed the letter?

John McLean: I took legal advice on the issue and was advised that there was no prospect of proper disciplinary action being taken in that regard.

The Convener: So there are two live disciplinary actions in the SCRO in relation to the issue that Bruce McFee first raised—that of officers who have said something publicly.

John McLean: Yes.

Mr McFee: However, the 50 people who signed the letter are not subject to any investigation.

John McLean: No. As I said, legal advice was sought and obtained, and I was advised that there was no likelihood that disciplinary action would be taken in that regard.

Brian Adam: It is extraordinary that, as my colleague has highlighted, you appear to be taking action against some folk, but not others.

John McLean: I did not say that that was the case.

Brian Adam: You have made public the fact that you are investigating some people. How does that help to move forward the culture of the organisation? I understand the great difficulties that the existence of such disparate views and strongly held positions causes, but how does instituting disciplinary action on this sensitive matter, on what appears to some of us, at least, to be a partial basis, help the development of a positive culture for the future?

John McLean: I refer to what David Mulhern said earlier. We are about moving forward. The organisation has a corporate communications policy that covers speaking to the media and it appears that that has been breached on some occasions. If that has happened, I need to have the matter investigated to find out what has gone wrong. If I do not do that, we will end up with anarchy, with everyone speaking to the media and doing exactly what they please. I suggest that that would be inappropriate.

Brian Adam: Surely releasing a letter with 50 names on it is a prima facie instance of the same kind of circumstance. Are you suggesting that if the others had acted on a collective rather than an individual basis you would have adopted the same approach?

John McLean: I understand that the letter was not given directly to the media. The investigations that are on-going concern people who have communicated directly with the media.

Mr McFee: The letter contains allegations of perjury and suggests that Lord Wheatley was misled.

John McLean: Yes.

Mr McFee: Is that not a subject that you consider would merit even an investigation?

The Convener: Bruce, I did not call you to speak. You have heard the answer to your question and can take a view on that. A process is under way against two officers and no disciplinary action is being taken against the 50 people who signed the letter. That is the position.

Mike Pringle (Edinburgh South) (LD): I would like to pursue the issue that Bruce McFee raised, before I turn to the question of staff and motivation. You said that two disciplinary actions are under way. Are both of those in Glasgow?

John McLean: One is in Glasgow and one is in Aberdeen.

Mike Pringle: I am not aware of the Glasgow case in detail, but I am a bit more aware of the case in Aberdeen. Mr Mulhern, too, may want to comment. Do you agree that any person who works for an organisation has a responsibility both to that organisation and to himself or herself? If they decide that, regardless of the organisation, they would like to express their personal opinion, in their own time, at their own expense, how can disciplinary action be taken against them? In the case of the Aberdeen member of staff, my understanding is that there is some difficulty in finding somebody who is prepared to carry out the disciplinary action.

11:15

John McLean: I am unable to comment on the specifics of the Aberdeen case. For the benefit of the committee, perhaps I should explain that the reason that inquiries have been conducted in Glasgow and Aberdeen goes back to the fact that next year the Scottish fingerprint service will become part of the Scottish forensic science service. At present, rather than being employed by the SCRO or the Scottish fingerprint service, the staff in each of the bureaux are employed by the local police board. Disciplinary action is a matter for that board. Such action is a bit presumptive anyway, because on two occasions there appears to have been a breach of the SCRO corporate communications policy. In both those cases, the local force has been asked to investigate whether a disciplinary offence has been committed.

Mike Pringle: My understanding is that the decision to discipline the person in Aberdeen was taken not by anybody in Aberdeen but by you. Is that correct?

John McLean: The decision was not to take disciplinary action, but to carry out a disciplinary investigation.

Mike Pringle: That decision was taken by you.

John McLean: Yes. As was the decision to have the Glasgow situation investigated.

Mike Pringle: I want to be absolutely clear on this. If you had not intervened, nobody in the Aberdeen office would have instigated an investigation. Is that correct?

John McLean: No. Because of the nature of the employment relationship between me and the senior management of Aberdeen at the time, I wrote to the chief constable in Aberdeen and asked him about an investigation. He could easily have said no. Discussions take place at different levels with the various police boards that employ staff regarding concerns that we have over people's actions. Those discussions may be on disciplinary matters or personnel issues, but dialogue goes on all the time.

Mike Pringle: Does Mr Mulhern want to comment?

Deputy Chief Constable Mulhern: As part of the action plan, I have at my disposal two high-level organisational change human resource individuals who will inform me and help me to develop the Scottish fingerprint service for the future, based on a healthy culture that encourages criticism of its own organisation. Only by encouraging criticism does one encourage change. That is what I would like to come out in the future of the action plan. Many of the actions around culture and leadership focus on that.

Mike Pringle: So you would not mind somebody criticising an organisation, even from within? In this case, the person did it in his own time and said that the opinion was his own.

Deputy Chief Constable Mulhern: With respect, I would be reluctant to answer that question in a hypothetical context. The Scottish fingerprint service and the SCRO are not my organisation, so it would be inappropriate for me to comment.

Mike Pringle: But would you confirm that in the future, you would be happy for an individual who had a criticism to be able to express that criticism?

Deputy Chief Constable Mulhern: We would like to create a climate that encourages such an approach.

Mike Pringle: So that climate has not existed up to now.

John McLean: There is a climate in which people are encouraged to bring things to my attention or to the attention of the Scottish fingerprint service. Cultural issues that we are exploring this morning sometimes prevent that from happening. My deputy Mr Innes and I make regular visits to all the bureaux and speak to the staff on an open forum basis. Equally, Mr Mulhern will formalise a facility whereby staff can call and report things anonymously. Staff in each of the four forces have that facility at present, but I welcome the fact that that will be built on and moved ahead. There are real challenges in this. There is no point in me sitting here and saying that everything is absolutely wonderful. It is not. There are cultural difficulties and there are differences of opinion that are deep-rooted and need to be addressed. We are addressing them.

The Convener: From what you have said, may I take it that when the committee considers which other witnesses it might call on—that decision is still to be made—as far as the SCRO is concerned there is no issue if we intend to call any of the fingerprint experts who are employed by the SCRO?

John McLean: Absolutely not. When the committee visited us on Monday, you were free to walk round and speak to all our staff and all our staff were free to come and speak to the committee. The disciplinary investigations concern breach of policy, and I am pleased to say that there is no policy to prevent our staff from speaking to a committee of the Scottish Parliament.

The Convener: They can say what they want to us.

John McLean: Absolutely.

Alex Neil: I have a supplementary question.

The Convener: Is it on that point, Alex? I trust you to be honest this time.

Alex Neil: I believe that, as part of Mr Mulhern's exercise, an outside employee support services company—Independent Counselling and Advisory Services—undertook some survey work among staff. Is that correct?

Deputy Chief Constable Mulhern: No. That was facilitated by the current director.

Alex Neil: Could we get a copy of the report?

John McLean: I will have to check that. The media attention and the political scrutiny around the SCRO and the Scottish fingerprint service have had an effect on staff, and sickness levels rose sharply in February. There was a lot of stress-related illness. At that point, I decided to call in an external firm to support staff throughout the Scottish fingerprint service, not just those in Glasgow. The general conclusions of the report could be made available to you, but for reasons of confidentiality we could not make information about individuals available to you.

Alex Neil: No. I would not have imagined that individual responses could be made available, but I presume that the report reached some general conclusions.

John McLean: I have not yet seen the report.

Alex Neil: When it becomes available, can we get copies of it?

John McLean: Absolutely.

Mike Pringle: That was going to be one of my questions. The ICAS survey was done in all four bureaux. If we could get copies of the report, that would be fantastic.

Let us move on to the question of staff levels. Mr Mulhern, you said that you had visited all four bureaux and discussed your report with them. When did that happen and when did you finally make your report available to the committee? I am delighted that you saw the four bureaux first. When did you visit the last one, and when did the report come out?

Deputy Chief Constable Mulhern: I did not visit the bureaux; I facilitated bringing together the heads of all the bureaux in Glasgow and I met them in Glasgow. Thereafter, I met all the experts and staff of the Scottish fingerprint service in Glasgow, separately. On the day when the report was presented to the committee, I had the Glasgow and Edinburgh fingerprint bureaux brought together in Glasgow. For logistical reasons, Aberdeen and Dundee were present at that meeting via videoconferencing. At the same time that Mr McLean was putting the action plan for the Scottish fingerprint service on the intranet, I was meeting the staff to tell them what the action

plan said and what it was intended to achieve. I have made a commitment to convene another such meeting in the next few weeks, when the bureaux have had a chance to reflect on the report. I reiterate the fact that all the views that we have received back about the report have been extremely positive.

Mike Pringle: So, you did not consult all the bureaux about your report; you told them what the report was going to say.

Deputy Chief Constable Mulhern: Yes.

Mike Pringle: I have one or two other wee queries. Somebody referred to the fact that most of the staff in the four bureaux are not employed by the Scottish fingerprint service.

John McLean: None of the staff is employed by the Scottish fingerprint service.

Mike Pringle: How many of the staff in Glasgow are employed by the SCRO?

John McLean: The SCRO is not an employer in that sense. All the staff who are based in Glasgow are employed by the Strathclyde police joint branch board; all the staff who are based in Edinburgh are employed by the Lothian and Borders police joint branch board.

Mike Pringle: So who employs Mr Innes and Mr McLean?

John McLean: The Strathclyde police joint branch board.

Mike Pringle: Fine. I just wanted that to be made clear.

My next question is for Mr Innes. I understand that you started in 2001 and that you are on a five-year contract. Is that correct?

Ewan Innes: I was.

Mike Pringle: When did that contract come to an end and has it been renewed?

John McLean: I will comment on that, as I am Mr Innes's line manager. There has been a change in employment law with regard to fixed-term contracts. If someone has been on a fixed-term contract for more than four years, they become a permanent employee. Mr Innes has just become a permanent employee and does not have a fixed-term contract.

Mike Pringle: Perhaps you could comment on my next point, too. Mr Innes has already said that he does not have any expertise in fingerprint bureaux or in the Scottish fingerprint service as such. He is, in effect, a manager who came from Ford. However, the 2001 HMIC report recommended that someone in that position should have some expertise in the field. Why then did you not employ someone with expertise?

John McLean: Unfortunately, I was not there in 2001 so I cannot tell you that. However, I know that Mr Innes was selected as a man who had considerable experience as a change manager. Similarly, the other three bureaux outwith Glasgow have people who are not fingerprint experts managing the organisation and working with processes and people, while the fingerprint experts do what fingerprint experts do.

Mike Pringle: We have heard about and discussed what is commonly referred to as the Cullen report. I understand that, at some point, a letter dated 28 April 2005 was sent to the Lord Advocate by David Russell. That letter was given to Mr Innes and then widely circulated among the staff.

Was that intended to motivate the staff? Reading the letter, it seems to me that it would do exactly the opposite.

Ewan Innes: The letter was widely distributed to all and sundry and made available on the internet. I gave it to the staff in each of the four bureaux because it contained the fact that other independent experts had been employed who agreed with the identification of the mark. I felt that the staff needed to have that information although they could have gathered it from the press and everywhere else. It was a public document and it was made available. During that time, we tried to make all the information available to all the staff. We have not tried to keep anything from them.

Mike Pringle: I have a couple of very brief points to make and one question for Joanne Tierney.

Mr McLean, have you ever had sight of the MacLeod report?

John McLean: No.

Mike Pringle: Did you and the staff in Glasgow receive prior warning about the Shirley McKie settlement? Did you know in advance about the publication of the court case?

John McLean: I was aware—as was everyone else—that in the previous July, the Scottish Executive had accepted that the mark was not Shirley McKie's, and I was aware that negotiations were going on to settle the case. I am trying to remember what happened in February of this year. I might have had a phone call from the Executive saying that the case was going to be settled, or that it was due to go to court but that it was still under discussion. On the morning of the day when the case was due to go to court, I heard about the settlement in the media in the same way as everyone else.

Mike Pringle: So you did not know before that.

John McLean: I knew that negotiations were going on to settle the case.

Mike Pringle: Convener, I would like to ask Joanne Tierney a question.

The Convener: We are half an hour behind schedule and we still want to hear from the fingerprint experts.

Brian Adam: Will Mr Innes give us a copy of all the material that he circulated to the staff?

Ewan Innes: Yes.

Alex Neil: Convener, may I ask for one piece of information?

The Convener: Very quickly.

Alex Neil: The HMIC report recommendations have been implemented and we now have the action plan from Mr Mulhern. The Minister for Justice has confirmed that despite the reforms that have been made during the past couple of years, there have been two further misidentifications—one in the Mark Sinclair case and one in another anonymous case. Are there any others? Is there a third or a fourth case of a mistake or misidentification?

John McLean: It would be inappropriate to comment on the Sinclair case.

Alex Neil: I am not asking you to comment on the case. Two further cases of misidentification have been confirmed by the Minister for Justice. Is there a third or a fourth?

John McLean: Not to my knowledge.

Ewan Innes: I know of one of those cases but have no knowledge of the second, and I know of no others.

The Convener: Does Mike Pringle have another question?

Mike Pringle: I can come back to Joanne Tierney later.

11:30

Mrs Mary Mulligan (Linlithgow) (Lab): I want to ask Mr Mulhern about his action plan for the Scottish fingerprint service in light of the mergers that are about to take place. What challenges will arise from the merging of the Scottish forensic science service with the Scottish fingerprint service? When will it be appropriate to integrate the scene-of-crime examiners into the new organisation?

Deputy Chief Constable Mulhern: As I see it, the first priority must be to get the Scottish fingerprint service to recognise itself as an organisation. Until that happens, it will not be able to merge with anything else because it does not yet exist as an organisation other than in name. Thereafter, we will need to achieve the integration of the Scottish fingerprint service into the Scottish forensic science service.

As members will know, the Scottish forensic science service will not come into being until April 2007, but much work has been on-going on that over the past two years. Coincidentally, the forensic science service will comprise four laboratories in the same four locations that are used by the current fingerprint service—Aberdeen, Dundee, Edinburgh and Glasgow. Logistically, integration will make sense and the geographical locations of the two services will not present us with a problem.

On the recovery and use of evidence, it makes eminent sense to have the continuity that I have tried to articulate within the action plan. Because the eight forces currently run their own scene-of-crime departments, the scene-of-crime examiners—the people who go to crime locations to recover evidence—work to their own standards within each force. Just as we have done much work over the past two years to put in place standardised processes and procedures in forensic science—Mr Adam mentioned that point—so that the forensic science service is ready for the move, we also need standardised systems and processes across the eight scene-of-crime departments. Personally, I believe that it is incumbent on us to ensure that we have such standardisation so that we can be confident that, whether it involves fingerprints or forensic science, the continuity and recovery of any evidence that we put into the forensic environment are as good as they possibly can be.

To pick up on the earlier point, I believe that any decision on whether the service should go in the direction of DNA rather than fingerprints should be made within a single structure rather than remain in the hands of various people, as is currently the case to some extent. It makes sense to bring the scene-of-crime officers under the forensic science umbrella.

Such a decision will not affect the location of those officers. They will continue to work in their existing locations because that is where their work is. Their work will remain local rather than be centralised in a particular location. When evidence is recovered from a crime scene, we want to be able to exploit that evidence as much as we can. Whether the evidence identifies an individual or excludes someone from having been involved in the crime, the recovery should be done in a co-ordinated and concerted way. That is what the joined-up service will achieve.

On preparedness, we are currently working on the framework for the forensic science service. I know that people in the Scottish fingerprint service are concerned that their service will simply be subsumed by a larger organisation and that any identity that they attain will be diluted within the bigger organisation. However, our aim is to have a

forensic science service with three distinct arms for biology, chemistry and fingerprints. The biology arm will deal with stains, marks and glass. The chemistry element, to put it simply, will deal with science, drugs and other similar things. The third element will be fingerprints. None of those elements will be inferior or superior to the other, as they will all sit within a single organisation and they will all have their own status and work streams within the organisation. It makes eminent sense to bring those different elements together.

I have impressed on the Scottish fingerprint service that it is the only existing national organisation with standard practices, processes and procedures. Those practices, processes and procedures were introduced with great pain, but they were nevertheless introduced. When standards, practices and procedures are validated as best-possible practice in the science by the fingerprint experts whom we have brought on board and from whom the committee will hear later, they may well migrate over into forensic science. As a consequence, the integration makes sense because forensic science will learn from the Scottish fingerprint service and scene-of-crime officers will be brought in. It makes eminent sense to bring that work together for reasons of continuity and work discipline and because there is such synergy in the work in question.

Mrs Mulligan: Thank you for that response. I have other questions on the mergers, but I want to take you back to what you said at the beginning of your reply about relationships in the Scottish fingerprint service. In response to my colleague Brian Adam, you said that you saw a division among the four bureaux at the moment and that you wanted to establish unity among them, which will be important if they are to become part of a bigger body.

Under action point 10 of your action plan, you state:

“A Scientific Advisory Group will be established to consider how fingerprint examination and DNA analysis can be more formally linked”.

Given this morning's responses, would one way of resolving the underlying disagreement among the bureaux be to test the mark that was taken in 1997 using DNA? Would that resolve what seems to be an outstanding dispute among the bureaux about whether the mark was a true or false likeness?

Deputy Chief Constable Mulhern: I am sorry, but I am not sufficiently informed technically or practically about what currently exists to answer that question. I do not know whether that is possible. Perhaps John McLean would like to say something.

John McLean: Several issues are involved. People have considered and discussed the issue

before. The decision is not for me but for the Crown Office or the Scottish Executive to take. I have a rudimentary knowledge of DNA and understand that Shirley McKie has been in proximity to the mark in preparing her defence case. I do not know whether that is of any value. I understand that other techniques can be used, such as multiple hits of DNA, which may possibly reveal something, but the question is for others, not for me, to consider.

Mike Pringle: Perhaps the only fingerprint expert here could answer the question.

Joanne Tierney (Scottish Fingerprint Service): I cannot comment on whether it would be possible to DNA the mark because I am not qualified in DNA matters; I am an expert in comparing fingerprints, I am afraid.

Mrs Mulligan: I understood that to be the case, Joanne.

Brian Adam: Mr Mulhern will head up the combined service. Will he go back to his colleagues and ask that question and then report back to us?

Deputy Chief Constable Mulhern: I am the interim chief executive of the Scottish police services authority, which will have various facets, one of which will be the Scottish forensic science service. I am not sure that I can answer the question or that I am in a position to do what you have asked me to do.

Brian Adam: Perhaps you might let us—

The Convener: I let you have one go, Brian, but Mary Mulligan has the floor, if you do not mind.

Mrs Mulligan: Given the witnesses' responses, it would be more appropriate for the committee to call people who could answer my question. I thank the witnesses for saying that they are not the appropriate people to answer it. It is now up to us to call the appropriate people to give us the responses that we seek.

I want to return to the mergers of organisations. It was suggested in an ACPOS report that bringing together crime scene investigators and the fingerprint service was perhaps a step too far and could be the wrong direction of travel. Why is the approach that you described in your earlier full answer the right one?

Deputy Chief Constable Mulhern: I am unaware of the comment that you mention.

Mrs Mulligan: I am sorry, but I cannot find it in our papers. I will try to find it.

Deputy Chief Constable Mulhern: I am not aware of the context in which the comment was made, but I stress that the Scottish fingerprint service has worked extremely hard to ensure that

there is separation between the scene-of-crime examiner and the fingerprint expert. Historically, the same person could carry out both functions, which was not good, for obvious reasons. It meant that the person who recovered a mark would try to identify it and the Scottish fingerprint service recognised that that conjunction of roles might lead people to be more motivated towards identification than they would otherwise be. There has been a complete separation of the two functions and nowhere in Scotland will a scene-of-crime examiner examine a fingerprint mark. I am guessing that that is the context in which ACPOS made the comment.

Mrs Mulligan: The comment is in the evidence that ACPOS submitted to the committee's inquiry. We will hear from witnesses from ACPOS later in the meeting, so I will pursue the matter with them.

You expect the proposed merger to make the organisations more effective. Are there international examples of that?

Deputy Chief Constable Mulhern: I intend to explore the matter during the next 12 months, so I cannot answer your question at this stage.

Mrs Mulligan: If there are no other examples, where did the idea originate?

Deputy Chief Constable Mulhern: I am saying that I have no examples, but the approach does exist. I cannot tell you right now that we can go to X to find examples, but the approach exists elsewhere.

Mrs Mulligan: Okay.

Margaret Mitchell (Central Scotland) (Con): For the avoidance of doubt, is it the case that none of the four fingerprint experts in SCRO had the dual role of being a scene-of-crime examiner as well as a fingerprint expert?

John McLean: Yes.

Margaret Mitchell: That is helpful.

The action plan focuses on practices, processes and procedures. I want to home in on the elimination process. When a crime is committed, a number of people must be eliminated from the inquiry and I understand that such people's fingerprints are sought immediately so that they can be taken out of the equation—that might include individuals who had access to the scene of the crime as part of the inquiry team. Do all members of an inquiry team have legitimate access to a crime scene?

John McLean: The question might more properly be directed to ACPOS, but I will put on my hat from a previous role. It is the duty of the senior investigating officer who is in charge of a crime to manage the crime scene and to ensure that only people who have the proper authority and a proper purpose may enter the crime scene.

Margaret Mitchell: Is it correct to say that someone who is part of the inquiry team would not necessarily have the authority to enter the crime scene? I imagine that it would be detrimental to the inquiry if people who were not entitled to be at the crime scene had access to and walked around the scene.

John McLean: That is absolutely correct. Certainly when a serious crime has been committed, the police protect the crime scene by putting people at the doors, putting tape around the scene and keeping logs that record who enters the scene, to ensure that people have a proper reason to be there.

Margaret Mitchell: As a matter of interest, if Shirley McKie had been at the scene of the crime in question, would she have been there legitimately?

John McLean: I do not know the answer to that question.

Margaret Mitchell: Perhaps DCC Mulhern can answer the question.

Deputy Chief Constable Mulhern: I am sorry, I do not know either.

Margaret Mitchell: Perhaps someone will answer my question during the committee's inquiry.

Is it correct to say that police officers' fingerprints are kept on a separate database?

John McLean: When officers join the police service, their fingerprints are taken and held on a manual database. As part of the on-going IDENT1 project, which is referred to in the action plan, those prints will be held in a separate section of an automatic—or, if you like, computerised—database.

11:45

Margaret Mitchell: Were Shirley McKie's fingerprints in the database?

John McLean: I do not know the answer to that.

Ewan Innes: I was not there at the time but, from what I understand, Shirley McKie's tenprints came in with all the other eliminations in the case; they were checked against the mark; and we ended up where we ended up. The prints were not on the database. As Mr McLean has pointed out, police eliminations are not a standing part of the electronic database that can be searched. They are kept on a manual database to be eliminated in any case that comes along. The fingerprint service receives a photograph of the mark, and then tries to identify any tenprints that the investigating officer sends in either as eliminations or suspects.

Margaret Mitchell: So, as long as they are on the database, the fingerprints of any police officer who is legitimately at the scene of a crime are eliminated. I imagine that if those prints are not or cannot be eliminated early on, they simply hang around and assume greater importance.

Ewan Innes: The fingerprint service will have a scene-of-crime mark, the identity of which is unknown. First, it will try to find out whether it belongs to someone—the deceased, the doctor, a family member or whoever—who was at the scene of the crime legitimately. If the mark can be eliminated straight away, we will not have to carry out any further work on it. The same is true of suspects.

Margaret Mitchell: Given that the elimination process presumably forms part of the training for the service, I wonder whether Joanne Tierney is able to shed some light on the matter.

Joanne Tierney: The elimination process is fundamentally the same as the identification process. As for whether certain prints assume greater significance, I point out that the key part of the training focuses on the purpose of the service, which is to account for fingerprints that are found at the scene. We are sent information on which we use our skills and expertise to make comparisons and provide results. Any question about the significance of marks and whether they are elimination prints, suspect prints or identification prints rests firmly with the investigating officer or procurator fiscal. We receive a fingerprint, look at the information on it, compare it against a tenprint the identity of which is known and send out our conclusion. The only difference between identifying an elimination print and identifying a print that we are requested to present in court is the fact that court identification requires the use of the old numeric standard of the number of points of comparison. That is not necessary for the elimination process.

In summary, we are asked to account for the identity of an unknown fingerprint that is retrieved from a crime scene or an item and to send that information back out.

Margaret Mitchell: My understanding is that there might be a lesser standard of identification for an elimination fingerprint. For example, because the print at the crime scene or some other locus is found on the database and can be eliminated, no one need dwell too long on the matter. Did you have Shirley McKie's fingerprint on record to compare it with the mark found at the scene of the crime? If so, how many experts looked at the print? Did someone try to corroborate it with someone else? When such corroboration proved impossible, were more people then brought in? It appears that four experts looked at the fingerprint.

Joanne Tierney: I was not employed at SCRO at the time but, as I understand it, as with the comparison process, elimination prints that were found at a serious crime scene would have been second-checked by another expert. The four experts to whom you referred are required if the evidence is to be presented in court. Identification is subject to the verification process, which involves three experts, including the initial examiner.

Margaret Mitchell: But you are unable to say whether Shirley McKie's print was on the database.

Joanne Tierney: One of the people who made the comparison at the time would be better placed to answer that question.

Margaret Mitchell: I turn to the presentation of evidence in court, for which the 16-point standard is used. In retrospect, it was felt that in the McKie case the experts from abroad might have presented the evidence more effectively and in a way that made it come alive more or made it more easily understood. Will you elaborate on that? We are considering best practice and what procedures it would be best to adopt. I am interested to find out whether the action plan picks up on that.

Joanne Tierney: Very much so. The numeric standard was introduced as the standard for the presentation of evidence in court in 1953. One element of that standard was that 16 points of comparison should be displayed in a single print. Over time, the courts came to accept that if 16 points of comparison were visible, experts would not be called on to explain fully how they arrived at their conclusions. Although experts would have been aware of the reasons for their identifications, they were not given an opportunity to provide great explanations. Experts in countries that did not operate the 16-point standard would have had more practical experience of explaining how identifications were made, whereas in the United Kingdom as a whole, not just in Scotland, it was taken for granted that if one went to court and the 16-point standard had been met, that would be sufficient.

Since the 1990s, the fingerprint community has addressed that issue by seeking to move towards a non-numeric standard. Under a non-numeric standard, the comparison process is exactly the same—the fingerprint expert uses the same practical methodology—but there is greater awareness of the unique principles that support fingerprint identification and more informed and robust explanations are provided. That has been a fundamental aspect of all training in the Scottish fingerprint service since 2000 and it is part and parcel of training at UK level. Students must successfully demonstrate their ability to provide explanations that can be fully and readily

understood before they can qualify as a fingerprint expert.

Margaret Mitchell: Am I right that it is probably fair to say that rather than the meeting of the 16-point standard being regarded as sufficient verification, there is now an awareness that more detail is needed and that explanation of how the 16 points of comparison have been arrived at is necessary?

Joanne Tierney: Absolutely.

Margaret Mitchell: Is it fair to say that such explanation was not provided in the McKie case?

John McLean: In Scotland, we still adhere to a numeric standard. The non-numeric standard will not be introduced until we get the go-ahead for its use. For the past five years, we have been preparing for the introduction of the non-numeric standard, which represents a qualitative rather than a quantitative approach. The improvement that it would bring is probably encapsulated in a quotation from a couple of fingerprint experts, which states:

"Fingerprint bureaux could achieve a zero rate of incorrect identification and a high rate of quality identifications if a system of quality management was introduced which would ensure training, testing and quality assurance. If such a system were in place there would be no requirement for the numerical standard as a protection for the identification process."

Margaret Mitchell: You will understand that much of what we are trying to achieve is assessment of whether we have moved on from what went wrong in the past. One of the problems in the McKie case that has been highlighted is the presentation of evidence and the use of the 16-point standard. Is it fair to say that the evidence that was presented in that case could have been elaborated on and that, if that had been done, there might have been greater understanding of where diversions of opinion were possible?

John McLean: Joanne Tierney might be able to comment on that in more detail, but the proposed move to the non-numeric standard represents the adoption of a quality approach, which we have been working on for some time.

Margaret Mitchell: I understand that.

John McLean: We were not ready to make that move until we had in place the ISO accreditation, competency testing for staff and the training regime that we have established. Those measures all demonstrate that our organisation has moved on.

Margaret Mitchell: That is reasonable. People move on and learn from experience. Perhaps Joanne Tierney will respond to my point.

Joanne Tierney: Do you mean on the presentation of evidence under the 16-point standard?

Margaret Mitchell: On its presentation in the McKie case, specifically, because we are examining what went wrong then and how improvements can be made.

Joanne Tierney: I cannot comment on the presentation of the evidence in the McKie case, not having been privy to that. I can say that following the move to the non-numeric standard, the training process and continuous professional development produce people with expert qualifications who can offer robust and informed explanations. We use external consultants from across the United Kingdom in the training.

Mr McFee: On the presentation of evidence to courts, in your view, as somebody who trains, in what circumstances would it be acceptable for officers to present to a court photographs of a mark that have been cropped to take out parts of the mark? What would be the dangers in doing that?

Joanne Tierney: It would depend on what you mean by cropped.

Mr McFee: Instead of presenting the full mark in evidence, only the parts where comparisons were made were presented; parts where comparisons were not made were not presented.

Joanne Tierney: I think that you are referring to the court enlargements that are used as a visual representation of the identification process. On best practice in making up such enlargements, it is not possible to make an enlargement to encapsulate the entire photograph. That is what I mean when I say that it depends what you mean by cropped. However, we would take the majority area of the fingerprint and enlarge that to display the characteristics that we find.

Mr McFee: If one of your officers presented to a court an enlargement of a mark that showed areas of comparison but did not show areas where the officer knew there was no comparison that would prove an identification, would that be acceptable practice?

Joanne Tierney: With respect, if we had something that was an identification, there would not be areas of no comparison, so the circumstance that you describe would not arise.

Mr McFee: We will come back to the question of whether such a circumstance arose.

Margaret Mitchell: A glaringly obvious aspect of reports from the Taylor report onwards is the resource issue, in terms of funding and staffing levels. Can you comment on the impact of that? Studies of any organisation would probably show corners being cut and people under pressure because of absenteeism, a lack of funding and increased workload. Can you comment generally on that and on whether you think that the resource

issue has been resolved? I do not see anything specific in the action plan that gives me confidence that things have changed greatly in that respect.

John McLean: I cannot comment on the position in 1997, but Ewan Innes will always ask me for extra resources. The SCRO and the Scottish fingerprint service are now well resourced. There are high numbers of staff, both professional experts and support staff. Currently, while the Scottish fingerprint service is within the SCRO, it is provided with administrative and personnel support and the like.

Margaret Mitchell: Has it got its full complement of staff?

Ewan Innes: Yes. We have conducted several studies of what the resourcing should be and are currently in the middle of one. The latest round of trainees whom we have put into the system should get us to what we estimate is the required level of staff. All we have to watch for now is any attrition of that level.

I, too, cannot speak about the 1997 situation, but the HMIC report for 2000 showed that there was a severe shortage of staff in all the bureaux of the Scottish fingerprint service. Over the past five years, we have put up to 30 trainee fingerprint experts into the system. As I said earlier, we have put in extra resources for quality in training and managing and we have put in place heads of bureaux. Do we have enough staff? With my boss present, I would always say no—I need more.

Margaret Mitchell: Are you advertising for staff? What is being done to recruit and retain staff?

Ewan Innes: We continually do surveys of the peer group of fingerprint experts in the UK to ensure that our wage levels are comparable. Our most recent such exercise said that they were. We still find it difficult to attract experts to Scotland from other parts of the country. The few successes that we have had moved here for personal reasons rather than anything else. Over the past five years, our retention of staff has been fairly good. The only staff losses have been due to retirement.

12:00

John McLean: The strategic plan for the Scottish Criminal Record Office and the forensic science service is continually looking two or three years ahead to determine whether we are matching staff to demand and whether there are staff who are due to retire or expected to leave for some reason. It is important to look ahead because it can take up to five years to train up a fingerprint expert.

Changes in the world affect the number of fingerprint experts that we require, so that can change over time. For example, a lot of our business was to do with cheque fraud, but few people use cheques any more so that area of business is in decline. Our business is also affected by general crime rates.

Margaret Mitchell: It seems to me that a lot of things in the action plan have evolved over time and are in place at present. How many of the things in the action plan are being carried out now? In a sense, it is not a plan to be acted on because the things that it contains are already in place. I am thinking of the points on absenteeism, accreditation and so on.

Deputy Chief Constable Mulhern: I return to your question about the apparent absence of information on establishment in the plan. We relied on the 2004 review of the establishment of the Scottish fingerprint service as a baseline for current resources. We found that the outcome of the 2004 review matched the current staffing levels, so we saw no great imperative to examine staffing now.

The action plan covers a range of areas. We are keen to reiterate that significant work has been done, but more work needs to be done if the organisation and the service are to be world class. I do not think that any organisation can sit back and say, "We have arrived. We can now relax." That is not healthy for any organisation.

As you say, many of the things in the action plan seem to be in place. We want to evidence that they are in place but, more important, we want to use our fingerprint experts to assess our practice against international practice. Do we have best practice, or is there something better out there? I do not have an answer to that, but I think that we will get the answer in the next 12 months. I would like to think that we will demonstrate that we have a hugely improved service and one to be proud of, but we have to work on public and parliamentary confidence. I think that that is what the international endorsement—or the change that will be delivered—will bring.

Margaret Mitchell: I hope that that confidence is not found at the expense of a 22-point action plan that is, in fact, only a 1, 2, 3, 4 or 5-point action plan because everything else has been done. That would be misleading.

Marlyn Glen (North East Scotland) (Lab): I will continue that line of questioning but in a bit more detail. Will you furnish the committee with figures on how many staff you have and how many of them are still trainees?

Deputy Chief Constable Mulhern: Yes. The annex to the action plan includes information on staffing levels, but we found that it did not identify

trainees. An amended version that qualifies the information is being worked on for presentation to the committee.

Marlyn Glen: It will be helpful to have that information. Obviously, the other consideration is that the officers' workload is changing. I presume that if the workload increases, the staff complement will increase too.

John McLean: A lot of changes are taking place in the fingerprint world at the moment. I mentioned the introduction of IDENT1 and the changes to the way in which people work. A lot of good load-sharing work goes on between the various bureaux and a professional approach is taken. There is also an effective office management system. I have never come across an organisation like the SCRO for creating management information—it is very good at that. The management of workloads in the fingerprint service is very effective. We need to look ahead to ensure that our staffing complement continues to match the workload requirement.

Marlyn Glen: The action plan talks about a marked difference between routine absence levels in the Glasgow bureau and those in the other three bureaux. How significant has that difference been historically, and what is the situation like now?

John McLean: The McKie case and the media and political interest in it have taken their toll on staff. Staff sickness levels have gone up and down with the cycles of media interest. At one point, in February, just after the settlement was announced, the sickness absence level was up at about 20 per cent. That was unusual, and quite a lot of those absences were stress related; the figure has now gone down significantly. We have a fairly robust absence management policy in place, which was succeeding in bringing the absence figures down, year on year. That blip at the end of the year cost us the gain that we had made. I will let Mr Innes comment in more detail about those figures.

Ewan Innes: In Glasgow, we have an automatic clocking system that we introduced in 2003-04, so we have ready access to the absence figures. The Glasgow bureau, as a whole, had a high absence level of 11 per cent last year. Within that, the absence level among fingerprint experts was running at about 5 to 6 per cent. The different police forces all have different information technology systems and clocking systems, so we have to work it out manually to get the same sort of measurement. Within the other, smaller bureaux, however, the average absence level is 3 to 4 per cent.

In the Glasgow bureau, from April 2005 to April 2006, sickness absence among the fingerprint

experts was running at about 5 per cent. That figure started to climb in November and December, and in January and February we were recording a level of 20 per cent among the experts. It was watching that figure rise that led us to approach the Advisory, Conciliation and Arbitration Service to support the experts in the service and to get them to talk about the stressful situation that they were in.

Marlyn Glen: That is an important issue, as absence levels are a good indicator of the ethos and culture of a workplace. I appreciate the fact that you have recorded those figures.

You have talked about annexes to the action plan. Is there another annex, giving a detailed timetable with completion dates for each of the action points? Could that be provided to the committee?

Deputy Chief Constable Mulhern: A detailed breakdown of delivery has been presented to the Minister for Justice, and I understand that she intends to keep Parliament and the committee fully informed of delivery of the various action points.

Marlyn Glen: As they are delivered? I am asking whether, to accompany the action plan, there is a more detailed timetable that gives the anticipated completion dates and says who is responsible for monitoring completion.

Deputy Chief Constable Mulhern: Yes, there is. That is in the hands of the minister just now.

Marlyn Glen: Okay. Thank you.

The Convener: At the moment, who has ownership of seeing through the action plan? Is that still to be determined?

Deputy Chief Constable Mulhern: I do.

The Convener: So you will see all the recommendations through to the end.

Deputy Chief Constable Mulhern: That is the intention.

The Convener: When we get to that stage, how will you judge whether you are satisfied that the recommendations are bringing about increased confidence in the service?

Deputy Chief Constable Mulhern: I was just asked whether there are definite dates for delivery of each of the action points. Yes, there are. That is the first test that can be applied. How will we know whether what is delivered is making any difference? I am looking to the fingerprint experts, the organisational development and change experts, and the HR experts to act as my conscience and say whether I am delivering anything and whether what I am delivering has any effect. I would like to think that I will have the opportunity first and foremost to show the

committee—how I do it is a matter for the committee; I could come back as the committee thinks appropriate—that the progress that I suggest that we will make and are making is to the committee's satisfaction and is making a difference.

The Convener: I will have to draw questions to the panel to a close. I will take brief pressing questions, but members should bear it in mind that I want to move on to the second panel, so I would appreciate brief questions.

Mike Pringle: I have questions for Joanne Tierney. I assume that a pillar with the fingerprint that is alleged to be Shirley McKie's on it still exists somewhere. Is that the case—yes or no?

Joanne Tierney: I am led to believe so, but I have no idea.

Mike Pringle: Is the doorpost that is alleged to have had Shirley McKie's fingerprint on it still in existence with the fingerprint still on it?

John McLean: I understand that the answer is yes, but that is a matter for the Crown Office and the Scottish Executive.

Mike Pringle: I thank Mr McLean for that confirmation. That leads to a question for Joanne Tierney. If the doorpost is in existence, could you still obtain evidence from it, because fingerprints do not deteriorate?

Joanne Tierney: That depends on the circumstances in which the item has been retained. It is not possible with any degree of accuracy to calculate the length of time for which a fingerprint will last or to age prints to determine how long they have been on an item. If the item has been stored in ideal circumstances, there is a chance that a fingerprint might still be on it. That depends on the circumstances in which the item has been retained and on whether it has sustained damage or been inadvertently removed.

Mike Pringle: I understand that the bureaux in Edinburgh, Aberdeen and Dundee each have a quality assurance officer who is the senior expert in examining fingerprints and that you are the senior expert in Glasgow. Is that correct?

Joanne Tierney: I am the training manager and I am responsible for the co-ordination and management of training. Each bureau has a different structure for the seniority of experts.

Mike Pringle: I am really asking whether those four people are experts in examining fingerprints. Am I right or wrong to think that they are?

Joanne Tierney: You are correct.

Mike Pringle: So one way of reaching resolution is to ask the three quality assurance officers and you to re-examine the fingerprint, with the Crown's co-operation. Do you agree?

Joanne Tierney: Given the profile that the case has, I believe that fingerprint experts would be satisfied about identification only if they could conduct an independent analysis and comparison evaluation of the mark themselves. I am not sure whether that is logistically possible or even appropriate; the Executive would have to make that decision.

Mike Pringle: But that could happen.

Joanne Tierney: Any fingerprint expert could look at the mark and reach a conclusion, but in the light of the numerous comparisons and examinations that have been made of the material, I am not sure what purpose that would serve.

Mike Pringle: Let us reach our own conclusion on that.

Have you ever asked to see the print?

Joanne Tierney: No.

Mike Pringle: You have never seen it.

Joanne Tierney: I have not.

Mike Pringle: Have the other three quality assurance officers seen it or asked to see it?

Joanne Tierney: Not as far as I am aware.

Mike Pringle: Fine. Thank you.

The Convener: The committee will have many questions along the line of the questions from Brian Adam and others. We need to keep the dialogue with you open, because we need to be sure that we understand the process from beginning to end. Mr McLean offered to provide a report on that to the committee.

John McLean: I have a note to send you in early course the ICAS report, the report on the processes that were followed in 1997 and information on the current processes.

Alex Neil: I will be quick. I referred to two recent misidentifications and mistakes, which the Minister for Justice has confirmed took place in the past two years. One involved the Mark Sinclair case and the minister did not identify the other case. In producing the new action plan, did Mr Mulhern consider whether implementation of the action plan would have prevented those two recent mistakes?

Deputy Chief Constable Mulhern: I did not.

Alex Neil: Will you now do that?

12:15

Deputy Chief Constable Mulhern: Obviously, in the context of moving forward, I am interested in what we can learn from any misidentification.

Alex Neil: The key issue is that, as the Minister for Justice has confirmed, those mistakes

happened after the reforms that resulted from the HMIC report were implemented. You have confirmed that there have been no others, but we are talking about two recent mistakes that occurred after the reforms were implemented. Clearly, all is still not well in the SCRO.

John McLean: I am not in a position to fully answer your point on the misidentifications, Mr Neil, but I am happy to come back to you on it. I do not have the information with me, but I am happy to give it to the committee.

Alex Neil: I based it on the written reply that I received from the Minister for Justice. She said that two cases were involved.

John McLean: Yes, I saw it.

The Convener: It would be helpful to have that.

John McLean: I am not sure of the exact wording that the minister used or whether what was said about the marks is completely resolved. I would like to check on that before I come back to you.

Alex Neil: My point is that—

The Convener: We have noted the point; it is a valid one. Given the history, it is important that we know whether there have been other cases of misidentification and if someone has examined them. We cannot otherwise have confidence in agreeing the action plan. On behalf of the committee, I ask you to get back to us on that, Mr McLean. We would be grateful for the information.

John McLean: The matter may not be as straightforward as Mr Neil thinks it is. Certainly, I will come back to you on the matter.

The Convener: I bring in Bruce McFee, whom I ask to be extremely brief.

Mr McFee: I hoped to get back in earlier during Mike Pringle's questioning. I seek clarification on the Swann letter. You said that you circulated it to your staff in the fingerprint service, Mr Innes. Did it not cross your mind for one minute that, in distributing the letter—which, as you said, was freely available elsewhere—you were simply reinforcing the belief within your department that your staff were right in their initial identification?

Ewan Innes: No. It was part of the method of operation that I use all the time. When I visit the bureaux and sit down with staff, we discuss anything and everything that is current, both inside and outside the service. The letter contained information on the service. I left a copy of it in each bureau. In doing that, I was saying, "Anyone who wants to read it can read it." I do that with all information. Now we post the stuff that comes up on the news on our intranet. We also send out copies to all the bureaux, just to keep them aware of what is going on.

Mr McFee: So—

The Convener: We will have to close it at that, Bruce.

Mr McFee: So, with hindsight, you do not think that it was a bad idea. If another letter came in tomorrow, would you do the same thing again?

Ewan Innes: Yes, if I felt that the information was pertinent and if it involved the experts.

Mr McFee: And you do not think that it reinforced the belief that was held.

John McLean: We have posted all the information that has appeared in the media over the past few weeks, although it was very critical of SCRO. We are as open and transparent as we can be.

Mr McFee: With respect, I asked whether it reinforced—

The Convener: That is the end of your questioning, Bruce.

As I am sure the panel can see, we have a problem: we still have a number of questions to put to you, but we are almost three quarters of an hour over time. We would welcome the information that you promised to give us and want to keep open the dialogue between us. In addition, we will hear from other witnesses next month; we may want to get back to you on some of the points that they raise.

In 30 seconds, is there anything that you want to highlight by way of conclusion?

Deputy Chief Constable Mulhern: Yes. First and foremost, I thank the committee for giving us the opportunity to come to the committee today. We have presented an action plan that we think takes the Scottish fingerprint service forward. It will deliver a series of actions in which the public can have confidence and which will give pride back to the staff in the service. Most important, it will deliver to the criminal justice system a service on which it can rely and in which it has confidence—a service that is recognised as world class.

The Convener: Thank you. I thank all the witnesses who appeared before the committee this morning. We will discuss the issues further as the months go on.

12:19

Meeting suspended.

12:27

On resuming—

The Convener: Our second panel of witnesses is made up of Bruce Grant, the head of the

counter-terrorism forensic services of the Metropolitan police; Arie Zeelenberg, the senior adviser on fingerprints to the Dutch national police force; and Danny Greathouse from the Department of Homeland Security of the United States. We are pleased to have them here. I apologise for the wait that they have had, but they will see that we are trying to cram in as many questions and get as much information as we can to inform us. We are extremely grateful to them for giving evidence.

We will go straight to questions.

Mrs Mulligan: Gentlemen, I am aware of the remit that you have been given in contributing to the action plan, but I am interested in hearing from each of you what you think you can contribute to the implementation of the plan.

Bruce Grant (Metropolitan Police): I have read the action plan and support it as a good way forward. I would like to benchmark the action plan against the processes that are already in place, not only in the SCRO, but possibly the other fingerprint bureaux in the UK and in the Metropolitan police, to see whether we can learn from that and bring possible further improvements to the Scottish fingerprint service.

Danny Greathouse (United States Department of Homeland Security): I agree with Mr Grant. I have read the action plan, which touches the necessary bases. However, we need to see the plan in action rather than on paper—that is important. I share Mr Grant's view that the process offers an opportunity for the US Department of Homeland Security and fingerprint agencies throughout the world to look at the attempt to make the SFS a world-class fingerprint operation. We can obviously learn from mistakes, but we can also learn from an attempt to make things better, while recognising that mistakes have been made in the past.

12:30

Arie Zeelenberg (Dutch National Police Force): If you will allow me, I would like to make a general statement first. I am from the Netherlands and English is not my mother tongue. Furthermore, I am in dactyloscopy—the generic term for fingerprinting outside the English-speaking countries—and not in diplomacy, so I hope you will be tolerant of my language. I will try to express myself as well as possible.

What can I do to assist in this plan? Well, paper is patient and the devil is in the detail. I have read the plan and I think that it is very good. I have also looked back at everything that has been implemented since 2000 and it is impressive. I would love to be able to say that my organisation had done such a thing.

The plan provides a good base from which to move on. However, there is a hard side and a soft side to it. The hard side is everything that is written on paper and put in procedures. The soft side is the culture, or how people really do the job. That is a much more difficult problem to address, and we are more able to consider and give advice on the hard issues.

Mrs Mulligan: I am pleased that you support the action plan. Are there any issues that could have been included in it that have not been?

Arie Zeelenberg: By the nature of the issue, coming from the outside and having to resolve problems, the plan has to be imposed from the top down. The things that have to happen, in my view, have to happen from the bottom up. A culture cannot be changed from the outside. The plan does not necessarily concentrate on that issue but we should pay particular attention to it.

Bruce Grant: We need to be cognisant of future demands and of the technology that will emerge in the fingerprint service during the next five to 10 years. We need to ask what the customer or the stakeholder will require of a future fingerprint service, and whether there are any other external factors that might influence the growth or otherwise and the direction of the Scottish fingerprint service. Those factors need to be taken into consideration because the advances in technology will drive change.

Most other factors are covered in the plan, although it might need to be refined and a bit more detailed. That is particularly true of quality management and training. We might need to do more with that.

Danny Greathouse: Of particular interest to me is how the new trainees who are on board now and will come on board in the future will be brought into the plan. What information will be given to them and in what setting will they be placed to help them to assume the culture of excellence? People will retire from the service, so how will the plan be incorporated into people coming into the organisation? Part of that relates to Mr Grant's concern about changing technologies. Technology will change the fingerprint examiner's job considerably over the years; it has done so recently and it will continue to do so.

Mrs Mulligan: Although you are happy with the plan as it is set out, and that a top-down approach will be needed to develop the new culture, you seem to be saying that there needs to be something else. Can any of you say what that is? The issue is about the people who will be delivering the service changing their working practices and developing them for the future. Is there something in particular that will change the

culture, rather than the structures of the organisation?

Arie Zeelenberg: Changing a culture is something different. As I said earlier, it is easier to discuss the hard side of the plan today.

Many of the things that we might say about culture and change might in the end be counterproductive. It does not help to tell someone that they have to change. We want to reach the point of being able to implement awareness of fallibility, which is the basis for quality. It should be possible to have an open discussion and professional debate about fingerprints, of the sort that Mr Mulhern described, and we must ensure that none of the numerous types of hierarchy, either formal or informal, creep in. The November letter is a discouraging sign as regards culture.

Mrs Mulligan: I have a brief last question. I asked Mr Mulhern about the amalgamation of the various agencies that is taking place at the moment and whether he could provide an example of the same thing happening internationally. In your experience, are there examples of the handling of crime scenes, fingerprints and so on being brought together in one organisation?

Bruce Grant: Yes. I refer to the history of the directorate of forensic services in the Metropolitan police. At one stage, the crime scene examiners were also fingerprint experts. However, they did not take the work back to the fingerprint bureau. It was separated, so that the expert who was working from the police station did the forensic trace recovery and sent the material, including the fingerprints, to the bureau. The Metropolitan police had its own forensic science laboratory, which was then moved to a forensic provider, but the system continues. Within our directorate, the crime scene examiner and fingerprint examiners come under a line command.

I see big advantages in that approach, because people can make one another aware of what they are doing, which is a big plus. It is a good way forward, as it makes it possible to control the direction of an investigation. We have found that the costs of using external providers for the forensic science service have been huge. The forensic budget for the Metropolitan police is £32 million per annum, but we are not getting value for money. The turnaround times are not satisfactory, so we are slowly taking some of the work back in. However, crime scene examination and fingerprint examination have been under one roof for as long as I can remember. They have never been separate.

Danny Greathouse: In my career at the Federal Bureau of Investigation, originally all the fingerprint work—the tenprint work and the latent fingerprint work—was in a separate division, rather than in

the laboratory division. In 1993, the latent fingerprint group was incorporated, which has been a definitive plus. In a more formal laboratory environment, the examiners have felt more involved in the established processes of scientific examination.

Bruce Grant: I will not go into huge detail, but there has been a counter-terrorist team for 36 years. The members of that team work cradle to grave. They go out to the scenes, bring the evidence back to the bureau and work their own cases. They also do their own physical and chemical extraction in the laboratory. They have an overview of the case, understand it and get to know the forensic traces. That approach has been hugely successful. We have found no disadvantages to it and it has been subject to serious scrutiny by independent experts and top QCs for as long as I can remember. It works.

Arie Zeelenberg: There is a project in the Netherlands to create clusters of DNA from DNA detected at crime scenes—from cigarette ends, chewing gum, blood and so. We then try to elaborate on fingerprints by comparing the DNA with prints found at the crime scenes, because penetration of fingerprint collections is much easier than penetration of DNA collections. Fingerprint collections are also larger. If there was one piece of fingerprint in a collection of 100 DNA samples, I could search in our collection and do a wider search—of palm prints, for example—or I could send the mark over the border. That approach brings great results and makes sense. Facilities do not necessarily have to be in the same location; it is possible to exchange data.

I want to address a point that I inferred from questions that have been asked. I hope that this is not the case, but there seems to be an insinuation that print Y7 must be revisited to establish whether the DNA belonged to Shirley McKie. I reject that suggestion. There are many good things in the action plan, but the best thing is the first line of the introduction: there was a misidentification. We cannot continually plough back into whether or not there was a misidentification. That brings us back to square 1.

Brian Adam: I welcome the witnesses to Scotland—or rather, back to Scotland.

Our starting point is that there was a problem in 1997. What was the practice in your jurisdictions in 1997 and how did it differ from practice in Scotland? Were standard operating procedures in place for fingerprint examinations? Was there a training culture in which two people would work at the same bench and the more experienced person would say, “I am the experienced chap and I will tell you how to do things”? Would such a culture explain the differences of opinion between experts? Are we talking about the almost

incestuous relationship that is created when training is all done in one place, which means that one place will have a particular style of interpretation, whereas in a different place, where people have different experiences, people might reach different conclusions? Is that a reasonable view?

Bruce Grant: In 1997 in England and Wales we started to move towards implementation of the non-numeric set standard. There were standard operating procedures, but they were very thin. We certainly had verification processes—they have always been documented—but case handling and matters such as tenprint handling were still being developed. Not all the standard operating procedures were in place, but we certainly had a verification process, which has not really changed. It is important to say that anyone has the right to challenge another person’s opinion—that is written into our verification procedures south of the border, but I do not know what the situation is in Scotland.

I am a bit sketchy on practice in Scotland in 1997. When a problem was diagnosed I sent experts from Scotland Yard to assist in Scotland, as I believe did other bureaux. I think that that worked very well. However, I do not have full sight of the SCRO’s operating procedures in 1997.

Danny Greathouse: In 1997 what is now the Department of Homeland Security IDENT fingerprint operation was not in existence, because it did not start until early 1998, so I cannot comment in that regard.

Verification procedures are critical, but throughout the fingerprint world we sometimes lose the healthy dose of scepticism that should be part of every verification procedure. As people work closely together there is a tendency to say, “I depend on my fellow examiner and I know he or she has done well in the past, so maybe I don’t have to conduct my examination as closely as I should.” We must maintain in our verification procedures a culture of scepticism—we can call it that, because that is exactly what it is. Everything has to be proven, with nothing accepted simply on the basis of a long-term relationship with someone who is perceived to be a very good examiner. Without verification and a sense of scepticism, we are inviting danger.

12:45

Arie Zeelenberg: I will make one distinction between me and my colleagues. I suffer from too much knowledge—I have been involved in the case. The question about the nature of the mistake also relates to the quality of the print. I am one of the lucky fellows who was invited by HMIC—I did not solicit for it—and I have seen all

the material. I have seen the original doorframe and the original prints. I do not know exactly what the procedures were in the SCRO then, but I honestly believe that, whatever procedures are followed, it should be possible to establish pretty quickly where there is not an identification. I stress that that is irrespective of the procedure followed.

Brian Adam: Would any of you like to suggest why we have two different sets of views and how they were arrived at? If we are to change the culture, we must have an understanding of why there is a different and rigidly held opinion on each side of the argument. If we cannot get to that, it will be almost impossible to effect a change in the culture.

Bruce Grant: I wish I could answer that. In my 37 years' experience, I have never known a case involving two such polarised opinions. It is disturbing. The black-and-white nature of it is bizarre. That is all that I can say. I do not understand why there are such polarised opinions in this case.

Brian Adam: As I understand it, it was not just the one print that was involved. Notwithstanding the circumstances of sub judice rules, I would mention that, even in the same case, there was another print over which there was a difference of view. There must be an undermining of public confidence in fingerprinting in general. Should we insist on having some independent corroboration by an alternative technique, such as DNA or whatever else might be available?

The Convener: Before you answer that question, I suggest that Brian Adam's previous question is fundamental at this stage. Anything that you are prepared to say now is critical for our understanding of whether or not these issues are a matter of debate between experts. Mr Zeelenberg, you have been particularly vocal on the issue. I wish to reiterate what Mr Adam asked you. As you say, there was a misidentification. What factors, in your opinion, most contributed to that misidentification?

Arie Zeelenberg: I have a problem here. I was invited to give evidence because I am a member of the panel advising the Minister for Justice and David Mulhern on the future. However, I was also expecting to be involved in looking back, looking at the print and delivering a presentation specifically on that, but that would require some extra equipment.

The Convener: I know that you have made that offer. That can be done, if that offer is on the table. For the information of those present, Mr Zeelenberg is keen to present his view of why the identification of the print is a misidentification. We cannot do that today, because we have not prepared for it. However, we can consider your

offer, Mr Zeelenberg, for which we are very grateful.

You obviously have a view about why the process led to a misidentification. We have heard from the other two witnesses about the issue of culture and about there not being a healthy enough dose of scepticism. Is there anything that you want to say to us about the major factors that contributed, in your opinion, to the misidentification? The committee would find it very helpful to hear from you on that.

Arie Zeelenberg: I will try to address the matter as far as I know the facts—and I have seen many facts of the case. It is typical for any court case to have facts and to try to fit the best story to them. I will deliver you the story as I see it now, from everything that I know.

If I look at the print, I see that there are about five points of comparison in there. Those are the best points that we can see: a cluster of about five points. That cluster can be taken in by the brain, the fingerprints can be compared and we can attempt to eliminate them as quickly as possible. One has a pile of latents and a pile of prints from people who had legitimate access and one wants to get rid of all the stuff that is not of value as quickly as possible. I think that somebody focused on the cluster of five points. When one examines fingerprints, elimination can be a quick process. If I see a circular pattern and I am working on an arch, the exclusion is immediate. One does not need good fingerprints for that. A truck is not a car. The print can be eliminated quickly. With the integrated automated fingerprint identification system—or IAFIS—millions are excluded on the spot.

But let us me return to the manual process. Next, one goes over the tenprints sheet. The cluster in Shirley McKie's fingerprint is similar—about five points are at about the same location. I think that somebody hooked onto that and said, "Gee—I've got it." At that point, things happen in the brain. If we look at the third-level detail of those five points, we can see that nothing fits exactly, but there is a leap of conviction. The person who is examining the prints is convinced that they match, then they start walking backwards. It is like walking backwards in the snow—one jumps to a location and walks backwards to prove that one got there in the right order.

My understanding from the court transcripts is that the guy picked up the phone and informed the guy who was in charge of the investigation. Typically, if one is working on elimination, what one does is not that important because one is looking at people who had legitimate access and one would expect to find latents from those people. They have no meaning. It is therefore

unexpected that the guy picked up the phone and told the investigating officer that Shirley McKie had been on the premises. That brings us back to the question of culture. There are analogies with the medical profession, where we can see the same culture: "We do not make mistakes. If we do, we do not admit to it." That culture is not particular to fingerprints but is found in other areas of science and, at a certain moment, it kicks in.

If somebody asks, "Are you sure?", one has a choice: one can be defensive or one can say, "Let me look again." The transcripts suggest that the officer asked somebody else after he made the phone call and the other person said, "I'm not sure." Since then, in my view, there have been many opportunities to reconsider the matter but the organisation as a whole and all the people involved chose not to do the proper thing—that is, to be critical of themselves and revisit the case. That is a shame.

The Convener: Can I break that down a wee bit? We are talking about the elimination print. In your view, the person who made the initial comparison simply made a mistake. The methods were not at fault.

Arie Zeelenberg *indicated agreement.*

The Convener: Your view is that, when other experts looked at the print, they simply backed that up. It was easier for them to do that.

Arie Zeelenberg: There must have been a psychological process in which one person confirmed what the other said without looking properly. Other things might be involved, such as pre-charted fingerprints and people not looking properly for themselves. Then, of course, procedures can kick in. If one follows the analysis, certification, evaluation and verification—or ACEV—method of analysis, one looks at the latent and marks what one sees. One puts away the comparison print, perhaps in another room, and looks only at the latent. Then one goes back to the comparison print and tries to find the same thing there. It is absolutely impossible to make an identification on the latents.

The Convener: You say that, even though anyone who did that would be putting their professional integrity on the line. We know that the training to become a fingerprint expert is onerous. Do you think that the successive experts who verified the print would put their professional integrity on the line just so that they could back up the first analysis?

Arie Zeelenberg: I am not sure that I understand your question.

The Convener: You said that the first match was a mistake but that, because of the culture, it was easier for the other experts who looked at the

print to back up the decision than for them to say, "In my view, that is not a match." I put it to you that you are making quite a strong suggestion about professional experts who would simply back up such an opinion. Would they not be putting their professional integrity on the line if they did not really believe that the print in front of them was a match?

Arie Zeelenberg: We know that it happened, and we all know that it was a mistake. That is the fact that we have now arrived at. It happened and we are trying to find explanations. I was not a fly on the wall. I was not there, but I can try to understand what happened, and it definitely relates to culture.

The Convener: Is the culture of the organisation the biggest factor that has contributed to the mistake.

Arie Zeelenberg: I am afraid that that is my view.

The Convener: Is that the view of the other panel members?

Bruce Grant: Not necessarily. I am not commenting on whether it was a mistake or not. I have seen a lot of opinions flying around, but I work on continuity of evidence and on the chain of evidence and integrity, so I will not give an opinion on anything until I see the original material. Such considerations may have clouded the case, because few people, as I understand it, have seen the original material. I do not understand how others can make comments without seeing the original material. In my line of work, it is paramount that we understand the integrity and the provenance of what we are looking at.

The Convener: I would just like us to be clear about technical levels. What do you mean by original material?

Bruce Grant: I think that, north of the border, you call them productions, but I will not comment on that. Scotland Yard has been criticised for not commenting on the case but, to my knowledge, we have never been approached officially to make a comment on it.

The Convener: I just wanted to clarify what you meant when you mentioned the original material. Did you mean the original mark?

Bruce Grant: I meant the original mark and the photographs of the mark. I would like to see the chain of evidence so that I could satisfy myself that I had the original material in front of me before I made a comment. What disturbs me about the case is that a lot of comments have been made by people who, I believe, have not seen the original material. As a professional, I find that disturbing.

The Convener: What were they looking at? Were they looking at photographs of the mark?

Bruce Grant: I do not know what they have been looking at. I know that there are images on the internet, but I do not know the provenance of those images. I do not know whether they are original images, but I presume that many opinions have been expressed based on those images. That is why we have what we call a wall of silence, and that is why there has not been much comment south of the border.

Going back to your original question, it is not necessarily the culture that is responsible for an opinion. With fingerprint comparison you try to make it as objective as you can, but where human beings are making decisions a certain amount of subjectivity will come into it. The training and quality assurance processes try to make things as objective as possible, but that cannot always be done. Sometimes errors are made because the processes have not been properly adhered to, so it is not necessarily culture that is at fault.

Mr McFee: I would like to concentrate on Mr Zeelenberg, because I am aware of his involvement in the case.

I understand that William Taylor, who was carrying out the investigation into the SCRO's fingerprint service, specifically engaged you to look at the fingerprint that had been claimed to be that of Shirley McKie. Is that the case?

Arie Zeelenberg: Yes.

Mr McFee: You have explained how the identification could have come about. Could you give the committee an indication of how clear it should have been and what evidence you had to enable a fingerprint expert to identify that the print was not that of Shirley McKie?

Arie Zeelenberg: First of all, let me say that I think that the SCRO and I agree about a few things, and one of them is that it was either from McKie or from another person, but not from both. We agree on that, so one of us is wrong. There cannot be an in between.

Mr McFee: In your view, how easy should it have been for one fingerprint expert, far less half a dozen—or rather, four—to identify that the print was not that of Shirley McKie?

Arie Zeelenberg: Pretty easy.

Mr McFee: Very easy?

13:00

Arie Zeelenberg: Pretty easy. It depends where one starts. There are five similar points and if one has a leap of conviction, one may work backwards. However, there are three incoming lines at the tip of the print, which come from the left. Those lines are very clear to see and they are not in the fingerprint of Shirley McKie. Even the SCRO has admitted that.

Mr McFee: In your opinion, how could it be that so many officers continued to confirm that the print was Shirley McKie's, even in court—which meant committing perjury—and as recently as the past few weeks? How could we arrive at a situation in which so many officers in one organisation continued to back up one another's story? I will be blunt. Are we talking about a series of crucial mistakes or a degree of collusion among officers in backing up one another's story?

The Convener: Mr Zeelenberg, you have already answered that question, but feel free to answer it again.

Arie Zeelenberg: Part of the answer is outside my domain because it relates to psychology, but that is what happened. The good part is that, according to the letter from SCRO staff, most people have not seen the original material. That may be the explanation. It is up to them why they signed the letter. A few of the people who signed it obtained their certification after 2000, which is worrying.

Brian Adam: That was a helpful elaboration on the question that I asked originally. I will return to the supplementary question that I tried to ask. Does the experience of the Shirley McKie case undermine confidence in fingerprinting per se? Does it mean that we should be cautious about using only fingerprint evidence and that we should perhaps obtain corroboration of an individual's involvement through the use of a different technique, such as DNA?

Danny Greathouse: Whenever we deal with humans, we are dealing with fallibility. Unfortunately—or fortunately—in fingerprint work, the human part of the chain is both its weakest and its strongest part. Throughout the history of fingerprint work, mistakes have been made. The question is whether they have been well known, and there are not many well-known mistakes at the level that we are talking about.

Those of us who are engaged in the practice of fingerprint work understand that it is a good science. The challenge that I, Bruce Grant, Arie Zeelenberg and the committee face is to show that we have examined and come to understand how mistakes were made and that we have developed an action plan or taken other measures to prevent those mistakes from happening again or to limit their negative impact on the scientific community.

My response is that as long as we are dealing with humans, there will be some problems with errors. However, the forum of the committee's inquiry and the approach that is being taken to understand the issue from a scientific standpoint and to identify what the Government of Scotland and other Governments can do are key to maintaining the confidence that our public and our

legislators must have in the use of fingerprints. The incident occurred and now we are in the process of proving that measures can be taken, if not to prevent similar events from happening then to reduce their number.

Brian Adam: I take it that you are not advising us that we should no longer rely on fingerprint evidence.

Danny Greathouse: Just the opposite. I believe that the science of fingerprints is a valid science of individual identification. That has been proved in court through scientific hearings on individuality. If anything, the use of fingerprints will become more important.

Brian Adam: Do you agree that it would be better if we had independent corroboration of an individual's presence at a scene through the use of an alternative technique?

Danny Greathouse: If that were possible. However, I do not think that we should make the assumption that DNA will always be available as a back-up.

I have always been interested in the connection between DNA and fingerprints. I do not consider myself a DNA scientist, but I think that it is a valid avenue to pursue to ask whether we can recover some type of DNA evidence. In touching, there can be a transfer of skin cells or other items from which DNA can be recovered. It is a valid principle to follow, but I caution against thinking that that is going to occur in the majority of circumstances.

The Convener: We will come back to the question of the process.

Bruce Grant: I can answer the question. I do not accept what is being said. Fingerprints have been under challenge for more than 100 years. To keep it in context, very few mistakes have been made. There have been countless hearings in the United States at which the science and the validity of fingerprints have been challenged, and every one has failed. The American courts have gone through that countless times. Fingerprints are and will remain the primary biometric for the foreseeable future.

If we can get DNA, that is really good, as Danny Greathouse said. DNA and fingerprints complement one another; it is not a competition. We have mature databases of fingerprints, which are quick to take and hugely reliable. There has been quite a high-profile case in the press in the past few weeks in which mistakes were made in handling DNA. Mistakes will occur, but we try to keep them to an absolute minimum.

Brian Adam: I was trying—

The Convener: Brian, I need to shut this discussion down.

Margaret Mitchell: From what has been said, I think it would be true to say that the identification of fingerprints is an opinion-based exercise, as opposed to a completely exact science in which there are definitive rights and wrongs. Is that correct?

Bruce Grant: The words qualitative and quantitative have been used, and it is a qualitative-quantitative process. You are absolutely right to say that it depends on the quality and quantity of the material that we have. Some comparisons are extremely challenging.

Margaret Mitchell: Given the qualitative and quantitative nature of the process, there will, from time to time, be a difference of opinion within areas of one fingerprint. As I understand it, when the verification process is gone through, those areas of disagreement are looked at through a resolution process in which people talk to one another and look at the print after the expert has come to their initial conclusion. Perhaps in the light of that, certain things may be pointed out that the expert had not seen—or that the other person had not seen—and, as a result, they might say, "You are quite right," or, "Oh, yes. I did not see that." From that, an agreement can be reached. Is that often the case in the hard cases, in which we are looking at sufficiency of information for identification, as we were in the Shirley McKie case?

Bruce Grant: Not necessarily; it is a bit more complicated than that. It depends on the experience of the individual. There is often discussion with trainees because they are not experienced, but certainly between experts. If there is a disagreement in a comparison—not between individuals, but between the images—that cannot be logically explained, that is it. We have to say that that comparison is negative.

Margaret Mitchell: Can I stop you there? You say that it cannot be logically explained. Would not a discussion help that? Are you saying that the expert is so expert that he can learn nothing from a trainee, even though the trainee may turn out to be the proverbial Sherlock Holmes?

Bruce Grant: No, I never said that at all.

Margaret Mitchell: That is the impression that you gave.

Bruce Grant: No. I said that discussion is generally with trainees and experts. You are quite right—that also happens.

Margaret Mitchell: I was talking about the hard cases. If you do not mind, convener, I would like to expand on this a bit.

Mr Zeelenberg, did you have the opportunity to discuss with the four experts the material that you looked at? Did you look at exactly the same

material as they did when they made the identification?

Arie Zeelenberg: My suggestion to William Taylor, there and then, was to talk with the experts. I still believe that the only and best way forward is to admit to the mistake and learn from it. That could have happened then. I take the Mayfield case from the FBI as an example. A mistake was made and it was admitted by the FBI, and it is now seen as a blessing in disguise. There has been a gigantic overhaul, an impressive research programme has been put in place and all the procedures have been revisited. What people learned from that mistake is that they were fallible. That is one piece of the equation.

Margaret Mitchell: So you have never had the opportunity to have that discussion.

Arie Zeelenberg: I saw the original material at the time of the investigation. A meeting was set up in Tulliallan. In my view, it should have been a feet-on-the-table discussion with the experts, but it was something completely different. There was an investigative team and the procurator fiscal was there. It was quite official. There was a kind of stand-off between the two parties, who had made up their minds, and there was no free discussion.

Few things came out of that meeting. The SCRO, there and then, admitted—it is recorded in the minutes—that the tip of the print was not from Shirley McKie and that, if it was all one print, the whole thing was not from Shirley McKie. That is recorded in the minutes and was the conclusion of Mr Bramley. I saw the original material—the door frame—at that time. The SCRO also used in its presentation the images from the internet—that is also in writing, so there is no dispute about what we were looking at.

Margaret Mitchell: Was your conclusive opinion on the internet print the same as that of the four experts?

Arie Zeelenberg: It is. They are all images from one and the same latent fingerprint.

Margaret Mitchell: And your conclusion was based on that.

Arie Zeelenberg: Yes.

Alex Neil: I want to pursue this point on the basis of some of the public statements that Arie Zeelenberg has made following the Tulliallan meeting. You have said that you believe that this started off as a mistake that was made in the original identification by the SCRO. By the time that you got to Tulliallan, was it still a mistake—honest or otherwise—or had things become a bit more sinister? You are on record as saying that one of the presentations by the SCRO on the alleged Shirley McKie print—which was definitely not hers—had an element of criminality about it.

Arie Zeelenberg: I did not use the word criminality. I am running out of material to demonstrate what I am trying to say. You ask whether it started as an honest mistake. Yes, definitely. Somebody made an error; otherwise, the prints would not have been hooked up. There is some similarity between them. The SCRO had two years in which to reconsider before the matter went to court. The print was heavily disputed, and the SCRO should have revisited it. There are signs that that happened and that people's conflicting opinions were suppressed. That is all in the transcripts of the meetings. I do not know where and when the investigation became malicious, but I would say that, at a certain moment in time, the SCRO knew that it was not Shirley McKie's print.

Alex Neil: And are the prints—

The Convener: No, no, no. Other members—

Alex Neil: I think that it is fair to pursue this, convener. It is a very important point.

Mr McFee: Mr Zeelenberg is talking about the tip of the fingerprint—

Alex Neil: Exactly.

The Convener: Okay. Could you just hold on a minute? I will call you, but remember that there are other members who have not spoken yet. You can pursue the matter, but please make it brief because Mike Pringle has been waiting to speak.

Alex Neil: Absolutely. I thank you for your indulgence, convener, as I am not a member of the committee.

In your previous remarks, Mr Zeelenberg, you referred to a presentation by the SCRO at Tulliallan. You said that the tip of the fingerprint was not the same as Shirley McKie's. Are you suggesting that two prints were put together artificially? How do you think that the SCRO came to present that as Shirley McKie's print if it was, in your opinion, obviously not?

Arie Zeelenberg: I think that the opinion still is that it is a print laid out on a single occasion. I am sorry that I am not able to show you, but I have a beautiful PowerPoint presentation on it. The tip of the print was made with pressure and the bottom part was made with less pressure. That explains a lot of things. By the time of the meeting in Tulliallan, I said that I could not be 100 per cent certain that the print was made by a single finger—we can never be certain of that, as no one was a fly on the wall. Nevertheless, the SCRO and I think that the print was made by the single placement of one finger.

The Convener: You made an offer to the committee earlier that you would be prepared to go into depth on this issue if the committee was

interested. We cannot do justice to the issue today, so I suggest to members that if they want to pursue the same line, we take up Mr Zeelenberg's offer. I call Mike Pringle to speak next because he has been waiting for a long time.

13:15

Mike Pringle: My questions are mainly for Arie Zeelenberg. My understanding is that you were at Tulliallan to present the Mackay report. Is that correct?

Arie Zeelenberg: To present the Mackay report?

Mike Pringle: Yes. You were involved in the Mackay report.

Arie Zeelenberg: Yes.

Mike Pringle: And you were at Tulliallan when that report was presented.

Arie Zeelenberg: No. I was interviewed by staff involved in the Mackay report. What was presented was the SCRO presentation, which was also delivered to ACPOS.

Mike Pringle: Right. Can you tell me who else was present at Tulliallan then?

Arie Zeelenberg: Oh, a lot of people. I can give you a list.

Mike Pringle: Well, let us save time—you give us the list.

You talked about the culture in the organisation and about changing it. In your opinion, should such change start from the bottom or from the top?

Arie Zeelenberg: Both. It must happen at both ends at the same time.

Mike Pringle: Fine. In September 2002, four world experts, of whom you were one, lodged a petition with the Scottish Parliament. Do you think that the action plan answers the questions that you posed in the petition? My understanding is that no action has been taken on the substance of your petition.

Arie Zeelenberg: My problem is that I do not want to disagree with the other experts on the panel, but I said previously that I have a different position.

Mike Pringle: To be fair, the petition was from you, Pat Wertheim, Allan Bayle and David Grieve, so the other two experts on the panel were not involved. Only you can answer the question.

Arie Zeelenberg: Underlying the petition is the fact that 171 experts from 18 countries asked for the case to be resolved—that is basically their message. The problem is that I was called in from

outside. I was not involved in the creation of the petition. However, we wanted the case to be resolved and it seemed that Scotland was unable to do that itself, so people from outside were needed. I did not choose to submit the petition, but there was no other way. We had to keep the pressure on to get things done. It is a pity that the case was not resolved in 2000 or 2001—I regret that.

Mike Pringle: My understanding is that the committee has been told that we will not get copies of the Mackay report or the two MacLeod reports. I believe that the committee must pursue that issue. In your view, is there anything in those three reports that would mean that we should not see them? We have all heard about the misidentification, and the reports say that there was a misidentification. Everybody has talked about that and about the organisation's culture. There must be something in those three reports that somebody is trying to hide. In your opinion, what is it?

Arie Zeelenberg: I do not know. I can give only my presentation of the facts and my observations. I was prepared to do that in the McKie court case. You can draw your own conclusions. Drawing conclusions about what is wrong or right is not my ball game.

Mr McFee: Leading up to that case, were any issues raised about the quality of the evidence that the SCRO presented during the perjury trial? In particular, you have alluded to the tip of a print that was clearly not that of Shirley McKie. Was there any comment about evidence that was produced in court in which photographs of fingerprints were cropped so that the tip was not visible?

Arie Zeelenberg: Do you mean at the meeting in Tulliallan?

Mr McFee: No, I mean in relation to your knowledge of the case in which you were invited to provide evidence. Was there any evidence or suggestion that the photographs that SCRO officers had presented had been cropped?

Arie Zeelenberg: What I have seen from the original productions is that they were cropped and the tip was left out.

Mr McFee: So the tip of the fingerprint that proved conclusively that the print was not Shirley McKie's was cropped from the production that appeared in court.

Arie Zeelenberg: Yes.

The Convener: This has been an extremely useful session. I am sure that we have not been able to cover everything that we would like to have covered. To sweep things up, there are a few things that I want to clarify. You have tried to give us your insight and view as to why the

misidentification took place. That is very important evidence for us and for our examination of where we started and the impact of the action plan. I want to check that Mr Greathouse agrees with what the other two experts have said about that, as his view was not too clear.

Danny Greathouse: I am sorry—on what specifically?

The Convener: On what we have been hearing about the reason for the misidentification, the whole issue of the quality of the print, the organisational culture aspect and how analysis is done in terms of objectivity. I wanted to check that those were also your own views.

Danny Greathouse: I do not have nearly as much knowledge as either of the other two witnesses, so I really do not want to speculate in that way. That would be unfair to the committee. The factors that they have raised would be factors that should be considered at any time—not just in this case, but in others that might be similar. It would not be fair of me to speculate to the committee.

The Convener: That is fine.

We heard from David Mulhern this morning that, effectively, he will oversee the implementation of the action plan and its recommendations. Where does your involvement end? Will you continue to work with David Mulhern on the action plan?

Danny Greathouse: I think that we will be working with him for some time. We want to see the plan in action. I think that there will come a time when, perhaps based on our recommendations and the findings of this and other committees, it will become an internal charge to maintain whatever recommendations and reviews are necessary. However, I do not foresee that the three of us will be involved for a long period of time. I think that when the committee and Mr Mulhern are satisfied that we have given as much information and guidance as we can give, it will be time for the people of Scotland to move on.

Mr McFee: On 15 August 2000, the Crown Office announced that the mark, which was identified by SCRO officers as being that of Marion Ross, on the Marks and Spencer tin found in David Asbury's home had been misidentified. Paragraph 1.1 of the action plan for excellence states that there was a misidentification of Shirley McKie's print, but it makes no reference to the Marion Ross misidentification. Do the witnesses believe that, unless that issue is also resolved, it will be difficult for the fingerprint service to move on and merge with the forensic service?

The Convener: I think that that question is okay, but before the witnesses answer it, I should

mention the sub judice rule in relation to the case, of which Bruce McFee is well aware. I need to put that on the record before anyone answers that question.

Mr McFee: I mentioned the matter of the tin only because the Crown Office made that particular announcement on 15 August 2000. I do not want to go into the other aspects of the case, which are still before the court.

Bruce Grant: I wonder if I could respond to a general point. As a matter of curiosity, it would be good for me to see that print, but I am not sure that our giving an opinion would move the culture forward or change people's opinions. I have a difficulty as regards the two polarised groups, and I cannot see a huge change, even after all these years. I would like to take the Scottish fingerprint service forward and stop looking back. Personally, I do not think that we are going to change opinions.

I have an ulterior motive: I am worried about the fingerprint profession. I do not want this case to affect my terrorist cases, which are going through the courts. I am worried about the impact on reliability of fingerprint identification. Luckily, there has not been too much of an impact down south, but there might be. I want us to move the Scottish fingerprint service forward. The action plan is good. In fact, the things that have been implemented in Scotland come to far more than what we have done at New Scotland Yard, so we have to learn. That is what I want to see. I have a difficulty with looking back at the case—I wonder what that will solve at the end of the day.

The Convener: That is a helpful comment.

Mr McFee: It is helpful, but the difficulty for us is that, if we do not understand what happened, we cannot move on.

Bruce Grant: The question was asked earlier about how we change the culture. The first issue is that the management and leadership of the SCRO must take the Scottish fingerprint service forward, put these events behind them and deliver a professional service.

The Convener: We are with you on that. However, as you will realise, the committee wants to examine how we got to the present situation. Ultimately, we feel that part of our job is to contribute in some way to restoring confidence in the service. We will have to go through a process to get there, which is why your evidence as experts has been invaluable. You have been frank and honest with us, which we appreciate. The committee will consider Mr Zeelenberg's offer to take up the misidentification in more detail. We will discuss that at next week's meeting. I thank all three witnesses for their time and apologise again for keeping them waiting.

Our final panel of witnesses is from the Association of Chief Police Officers in Scotland. The witnesses have had a long wait, for which I apologise—I thank them for their patience. I welcome Chief Constable Peter Wilson, who is the president of ACPOS, and Ian Latimer, who is the vice-president. Emma Vernal is here to assist them in answering our questions. I am afraid that we have only a short time, although we have until nearly half past two. We absolutely must stop by then, because there is a stage 3 debate in the Parliament and, in any case, we are not allowed to meet when the Parliament is meeting.

Mike Pringle: I, too, apologise for keeping the witnesses waiting. Perhaps we all talk too much and ask too many questions.

I want to go back to the HMIC inspection of the SCRO in 2000, which is a starting point for the ACPOS evidence. Have all the issues that were raised in that report been addressed or are there outstanding issues to be addressed?

Chief Constable Peter Wilson (Association of Chief Police Officers in Scotland): I preface my remarks by saying that, for some of the time when the deliberations were taking place, I was not in a place to offer a view on how the judgment was made. However, I happily sit here as president of ACPOS and I will do my best to give the detailed knowledge that we have.

As you are aware from our written submission, the HMIC inspection was carried out in the light of the developments from the McKie case and the work that ACPOS has led since the mid-1990s on the provision of fingerprint services in Scotland. The great majority of the issues that were raised have been dealt with. To summarise, the gaps that are there exist because of the proposed change in the governance arrangements for fingerprint services. As you heard earlier and will have read about in the paperwork, the Scottish fingerprint service was formed in 2002, but to this day it lies in four separate areas, in which employment responsibilities are held by four separate police authorities. The fingerprint service does not yet have, and will not have until a year from now, the legal status that will allow the finalisation of the work on some leadership and change management issues. A lot of work has started, but there are issues to be addressed in finalising the work. There are no holes in our coverage of the work, but there are some matters to be finished, which can be done only after the legal formalisation of the fingerprint service. Many of those points are in David Mulhern's action plan.

13:30

Mike Pringle: If you do not know the answer to the following question, I am happy for you to say

so. My understanding is that, at the time to which you refer, the suggestion was made that it should be expected that any person who was recruited for senior management within the SCRO would have knowledge of the fingerprint service—they might not be a fingerprint expert, but they would at least have knowledge of the service. Was that a recommendation in the report?

Chief Constable Wilson: I do not know. If it was, it will be in the report, but I am not sure that it is. I cannot answer the question.

Mike Pringle: That is a fair comment. Perhaps we can follow it up later.

We are aware that John McLean is about to leave the service. What are the interim arrangements? Are we recruiting already?

Chief Constable Wilson: Perhaps I should clarify that there is representation from ACPOS as well as from police board conveners and the Executive on the organisation that has come together as the Police, Public Order and Criminal Justice (Scotland) Bill has gone through the Parliament. That organisation is sometimes called the common police services shadow board and it is sometimes referred to as the Scottish police services authority as we move towards that new entity. I am one of the ACPOS representatives on that body and, later this afternoon, I will discuss in that forum the replacement of John McLean as director. There are proposals on the table to ensure that, in the interim, before we get to clarity of position—which has partly been dependent on completion of the action plan, acceptance of it and approval for its implementation—leadership is sustained. It is proposed that the current deputy director should act up, but we will need to support him because he has been doing a job already and a lot of work is going on. We need to ensure that the correct provisions are in place.

At the previous meeting of the common police services shadow board, planning for John McLean's departure was raised and a proposal concerning that is on the agenda for this afternoon. ACPOS and, I am sure, the other members of that board will be anxious to ensure that leadership and management are sustained as the action plan is implemented and other changes take place.

Mrs Mulligan: My questions have concerned the proposed merger of the various arms of the service. I have your submission in front of me, but I would like you to say a little about how you feel that that will progress. I know that you are aware of, and were supportive of, what the previous experts said.

Chief Constable Wilson: Yes. If you go back into the history that is documented in ACPOS's submission, you will find that we have been taking

that work forward from the mid-1990s. In 2002, chief constables, as part of the executive committee that was then the governance body for the SCRO, agreed as part of the change management review that had been constituted that we should create a Scottish fingerprint service. Chief constables ceded the authority for the fingerprint services in the different forces into the one nominal body and we have had a sort of Scottish fingerprint service ever since that time. You have touched a bit on the difficulties in the management and leadership of that. However, we are happy that that service should become a formal authority, as in David Mulhern's plan.

At the same time, as David Mulhern commented, there is a proposal that was not on the table in the 1990s: a single Scottish forensic science service. Again, chief constables, the Executive and police board conveners have agreed that that is a sensible thing to create, so it is now coming together under an interim director.

The only concern with the plan that you will find in our submission is whether there is sufficient resourcing to ensure that those two significant changes of people and structure come together effectively. At the meeting of the common police services shadow board that I will attend this afternoon, ACPOS will speak about ensuring that the change is resourced properly so that it is delivered satisfactorily. It is not in the interest of the police as investigators to have a service that is not properly formed, so we must ensure that the transition, which will bring with it change in leadership, is properly resourced.

Mrs Mulligan: What resources in particular do you doubt are in place to achieve that?

Chief Constable Wilson: In the forensic science service, we have four separate laboratories. They provide a good service year in, year out to Scotland's police, courts and public, but merging them into one will involve a bit of change. That comes with the wider SPSA agenda to change terms and conditions and involves the softer issues, such as taking people with us, getting people on board and securing their ownership of the organisation.

Inevitably, as with any period of change, some resource is required to keep the business running so that it can meet the needs of the service that it delivers and some resource is also needed to provide for the transition. The resource that is necessary to ensure an effective transition is not yet evident in detail, so we need to be sure that that will be put in place.

Mrs Mulligan: Given the comments that have been made this morning about disunity within the SFS, will that be an added problem? How will that problem be overcome?

Chief Constable Wilson: That is clearly an issue that needs to be addressed, as the committee heard in evidence from its first panel. John McLean and Ewan Innes described work that they have undertaken and the support that they have introduced to resolve the issue. It is clear that responsibility lies not just with the fingerprint service or the SCRO, but with chief constables as well, because the people in the service started off as employees of police forces and they are known as people who work within the building. We all have a responsibility in ensuring that the service comes together. I am sure that ACPOS will have no hesitation about playing its part in that.

Mrs Mulligan: Paragraph 92 of the ACPOS submission mentions

"a perception that the historical development of SCRO had resulted in a 'special relationship' with Strathclyde Police".

Is there a risk that that relationship, which I think was seen as unhelpful, will be re-established when the units are merged?

Chief Constable Wilson: I think—this is probably more opinion than fact—that it is inevitable that, where people have an historical association with another large organisation, there is bound to be some affection of identity. That can, and does, happen in any merger of organisations. People wonder whether the Strathclyde force should be called "Strath Glasgow" and whether West Lothian will ever be part of Lothian and Borders police. Such problems arise in mergers because of people and myth, but leadership can resolve the problem. Among ACPOS's leadership, there is no desire or intention, and there never has been, to do anything other than move away from the current set-up to a single fingerprint service of which we can be proud. That is why we talk about a Scottish fingerprint service.

The practical difficulty for the current leadership and management in delivering that is that the legal employment relations exist in four separate places. That creates day-to-day difficulty about whether people identify more with Grampian police than with the SFS. However, we talk about a Scottish fingerprint service and that is what we need to ensure we achieve.

Mrs Mulligan: Therefore, there are no concerns about the danger of the fingerprint service slipping back into that relationship. Will the new structure ensure that there is a more resolute service in the future?

Chief Constable Wilson: The agenda that the common police services shadow board has for the police service at large is, like that of all who have an interest in policing, to ensure that the new authority is a terrific success. For some time now, we have said that the current legal arrangements make it difficult to deliver common services. That

is why we argued for change. ACPOS and others will try to ensure that the college maintains its proud history and that both the SCRO, which does a lot of work beyond fingerprints, and the Scottish Drug Enforcement Agency also maintain that. We need to see this through. We second people to those services and they come back to our forces, so we want the services to work well and we support them.

Brian Adam: It is useful to have the extensive submission from ACPOS. I want to ask about three of its paragraphs in particular.

Paragraph 53, which lays out the remit of the Mackay report, gets to the nub of the question in which most of us are interested and to which we need answers if we are to move forward. It states that the Mackay report aimed to sort out

"In particular, the differences in opinions of SCRO fingerprint experts and the experts recently consulted by Mr Taylor, HMCIC for Scotland".

Paragraph 57 explains that the Mackay report will remain confidential and will not be released. That is unhelpful. As far as I am aware, the report was commissioned by ACPOS rather than by the Lord Advocate, so it belongs to ACPOS. I believe that ACPOS should consider releasing the report to the committee. If ACPOS is not in a position to do that, it will highlight the weakness of this process in obtaining all the information that would be available to a full judicial inquiry.

Notwithstanding that, the questions that the Mackay report answered need to come into the public domain. Whether or not that happens through a report that was written for a particular purpose, we need the information. I hope that you can help us by telling us to whom ACPOS gave copies of the report. In particular, did you give copies to all the members of the SCRO executive? If you are not in a position to answer my question today, will you answer it in writing?

Chief Constable Wilson: I probably can answer your question. If I check later and find that I was wrong, I will be the first person to come back and tell you that.

You are correct in saying that DCC Jim Mackay was originally asked by ACPOS to do some work because of the emerging findings of the review by Her Majesty's chief inspector of constabulary. However, very quickly after the work was started a criminal complaint was received. As always, primacy moved across to the Crown, for whom the report was completed, as we said in our submission. Therefore, although it might be right to assume that, as the commissioners of the report ACPOS might have a say in who gets a copy, primacy goes to the Crown in such matters. That is where I believe matters still lie. The report was submitted to the Crown and it is not for us to say who can or cannot get it.

On your second point, the SCRO executive committee was the governing structure within the complex service arrangements that existed at the time, which comprised chief constables, the Scottish Executive and, latterly, representatives of the Convention of Scottish Local Authorities, who would feature as police conveners of police boards. I would have been a member of the SCRO executive committee, but the committee no longer exists because of the emergence of the common police services shadow board. I have not seen a copy of the Mackay report and I believe that it was not circulated to members of the SCRO executive committee. Our submission says that it went to the ACPOS secretariat and the Crown; it has not been circulated beyond that. I have no knowledge of who has seen it—I certainly have not seen it—but the primacy lies with the Crown.

Brian Adam: In that case, do you accept that paragraph 101 of your submission is rather unsatisfactory for the committee? The paragraph responds to our question 4, which was:

"Do you have information relevant to the misidentification, or otherwise, of fingerprints in what has become known as the Shirley McKie case?"

In essence, your response is that ACPOS has nothing further to say.

In general, the committee has sought access to all reports, notwithstanding the reasons that were given by the Minister for Justice and, I think, the Lord Advocate. Can you suggest how we might get at the information in the Mackay report? It would be wonderful to have the report, of course, but failing that, ought we to commission our own report? It is clear that the information that we seek exists and that at least some of it is in the public domain. The information that is in the public domain might be partial, but it is difficult for us to make a judgment on that. Do you understand why some committee members find paragraph 101 unsatisfactory?

Chief Constable Wilson: Yes. However, as I said, primacy is with the Crown so ACPOS cannot do other than to give the replies that we have given.

The Convener: I want to be clear about this. Was the report originally commissioned by ACPOS, but handed to the Crown Office and Procurator Fiscal Service after the complaint was made?

Chief Constable Wilson: I was not part of the team at the time, but our submission sets out that ACPOS personnel at the time recognised that a number of pieces of further work needed to be done in the light of the emerging findings of the then HMCIC, Bill Taylor. Rather than wait, they got on with that work, one element of which was to try to resolve the conflict about the identification.

However, that situation was very quickly superseded because a criminal complaint was made and the Crown was brought into the matter, so ACPOS could no longer make a judgment on the matter.

The Convener: By what mechanism did a report that ACPOS commissioned end up at the Crown Office?

Chief Constable Wilson: I understand that a complaint of a criminal nature was made and the Crown Office became involved, I think through Mr Gilchrist. I have no doubt that there was a conversation between ACPOS and the Crown about how the matter should be dealt with. Paragraph 55 of our submission summarises what happened.

Mr McFee: I understand that Mr Mackay was instructed on 23 June 2000 to carry out the investigation and that he did not receive verbal instruction of Mr Gilchrist's interest until 7 September 2000, some two and a half months later. Is that also your understanding?

Brian Adam referred to paragraph 57, which says of the Mackay report:

"This report remains classed as 'Strictly Confidential and not to be released without the permission of the Regional Procurator Fiscal'. The report has since been retained under the requested terms of confidentiality."

Who classed the report as strictly confidential and when did they do that?

Chief Constable Wilson: I cannot answer that, but I believe that the on-going inquiry would have been discussed between Mr Mackay and Mr Gilchrist. That is the way in which such crimes are usually managed.

13:45

Mr McFee: Are you suggesting that the report would have been classed as confidential shortly after it was completed, or would it have been more recent than that?

Chief Constable Wilson: I believe that the report would have been classed as confidential prior to it being submitted. However, I do not know. It is probably best not to surmise about the understanding between Mr Gilchrist and Mr Mackay over the marking of that report as confidential. I do not know.

Mr McFee: If you found that out, it would be useful if you were to come back to the committee with the information. Was it a request or a demand? The word "requested" is used in paragraph 57. Is that just a euphemism?

Chief Constable Wilson: It is probably a choice of words, but I do not know whether it was a judgment by Mr Mackay, who was obviously

responsible for the report's completion and submission, or whether it was a judgment by Mr Gilchrist about the nature of the inquiry when there was no clarity about how the situation would develop. I just do not know; I am offering an opinion.

Mr McFee: So you do not know whether the report's confidential classification was requested or demanded.

Chief Constable Wilson: No, I do not. I am also not sure that I can provide an answer to the question that you asked me earlier.

Mr McFee: It would be very useful if you could point us in the direction of who classified the report as strictly confidential and when.

Chief Constable Wilson: That information would have to be obtained through the Crown.

The Convener: The witness has made it clear that he is not in a position to answer. The committee will have to decide whom it wants to answer that question.

Mr McFee: The committee will have to call Mr Mackay to resolve that point if we can get no further answers today.

Can you understand the difficulty that some of us have? There is a two and a half month old inquiry into a specific series of events. The Crown then decides to instruct Mr Gilchrist, who at that time was the regional procurator fiscal in Paisley. He asked Mr Mackay to look into the case two and a half months later. As a result of that, the Crown can in effect instruct ACPOS not to provide information to the committee because it regards it as being strictly confidential.

Chief Constable Wilson: I do not feel as if I have been instructed by anyone. If any criminal inquiry is the hands of the Crown, it would be wrong for any police officer to seek to do anything else with it. That is the normal arrangement. I have not been instructed.

Mr McFee: One of the recipients of the report was Mr William Rae, who was the president of ACPOS at the time.

Chief Constable Wilson: As I understand it, that is right. He is the honorary secretary of ACPOS.

Mr McFee: He received the Mackay report.

Chief Constable Wilson: Our report says that the report was submitted to the ACPOS secretariat and to the Crown.

Mr McFee: And to Mr Gilchrist, and to John Duncan, who was the deputy chief constable of Strathclyde police at the time.

Chief Constable Wilson: It might have been, but I have no knowledge of that.

Mr McFee: That information would be useful. My information is that John Duncan received a copy of the Mackay report.

Chief Constable Wilson: I do not know. Although he is a member of ACPOS, his role as deputy chief constable of Strathclyde is different.

The Convener: I realise that you cannot answer some of the questions, but it would be helpful to be clear about which ACPOS members had a copy of the report and in what capacity. The committee will need to decide whom we want to ask about the rest of it.

Chief Constable Wilson: I would be happy to clarify that. Our response is that the ACPOS secretariat got a copy of the report, but our difficulty comes about because of the primacy of the Crown.

Margaret Mitchell: I want to explore some of the issues around chief constables' legal liability for seconded officers. I understand that the chief constable is legally liable for a seconded officer's conduct, actions and discipline. Can you explain a bit more about that?

Chief Constable Wilson: Resolving the legal basis of the common police services is important to that issue. We second officers, but other people are employed as support staff—as opposed to police officers—in the name of a legal entity. ACPOS is not, at the moment, a legal entity, so we cannot employ people. There is difficulty determining where liability lies, and it tends to go back to the chief constable. If there have to be disciplinary proceedings, they will have to take place within the legal entity.

Margaret Mitchell: To be quite clear, seconded officers in the SCRO are employed by Strathclyde joint police board.

Chief Constable Wilson: Yes.

Margaret Mitchell: At the time of the Taylor report, for example, the 18 police officers' actions would have been the responsibility of the chief constable.

Chief Constable Wilson: Yes.

Margaret Mitchell: What kind of things would they be involved in? I asked the question earlier but I did not get an answer. Who goes to the scene of a crime, for example? What does it mean if someone is part of an investigation team? What does that entitle them to do? Do they automatically go to the scene of a crime or is access restricted to certain personnel?

Chief Constable Wilson: Maybe Mr Latimer could respond.

Chief Constable Ian Latimer (Association of Chief Police Officers in Scotland): As was pointed out earlier, when a serious crime occurs

we want to maximise the evidential opportunities afforded by the scene. There will be an expectation—certainly on the part of the senior investigating officer—that controlled access to the scene will be maintained and that a log will be kept of all those who have been to the scene. We want to ensure that the forensic examination can continue without interruption, so we expect only minimal visits by those who need to be there.

Margaret Mitchell: If someone—a police officer, for example—was at that locus but they were not a member of the inquiry team and they did not have a legitimate reason to be there, would that be a disciplinary matter?

Chief Constable Latimer: Not necessarily. It depends on the circumstances. It might be sufficient to have words of advice with the individual concerned.

Margaret Mitchell: But it could possibly be a disciplinary matter.

Chief Constable Latimer: It could be, but it depends on the circumstances. We could go through a range of hypothetical scenarios. At one end of the continuum, a judgment could be made that the matter is serious and merits further, formal investigation.

Margaret Mitchell: For the sake of ensuring that the scene is not contaminated, is it not important that you know exactly who should be there and that strict rules are laid down about that? We want to move forward and make sure that we have the best possible procedures, including scene-of-crime procedures.

Chief Constable Latimer: I expect—both as a chief constable and as chair of the crime business area in ACPOS—there to be close control over access to the scenes of serious crimes.

Margaret Mitchell: I understand that William Rae, who was chief constable at the time, received sight of the Taylor report before it was published and that he apologised to the McKie family. That is in the Taylor report and, I think, in your report. With hindsight, was that premature?

Chief Constable Wilson: Do you mean the apology?

Margaret Mitchell: Yes.

Chief Constable Wilson: I know that the report mentions that Mr Rae, who was then the president of ACPOS, saw the McKie family at that time. I would not like to say that it was premature. I do not know what judgment he made in deciding to go, so it would be wrong of me to speculate.

Margaret Mitchell: I am thinking specifically about legal liability. The report has not been published and aired properly. Mr Rae, in his position as chief constable, made an apology.

Was it premature of him to do that, before we had a chance properly to dissect the report?

Chief Constable Latimer: I do not believe that either of us has seen the report, so we cannot offer an opinion on Mr Rae's reasoning. Clearly, he had the opportunity to consider issues that neither the president nor I have had the opportunity to consider. He would have made a judgment—

The Convener: Mr Latimer, I think that Margaret Mitchell is referring to the HMIC report, which we would like to think you have seen.

Margaret Mitchell: It is the report of June 2000.

Chief Constable Latimer: Sorry.

Chief Constable Wilson: You mean the primary inspection report. I cannot make an assumption about Mr Rae's knowledge at that stage. I am confident that he must have believed that as president of ACPOS, which was the role he was fulfilling—

Margaret Mitchell: I will put it another way. If you were giving a lecture on the matter to your fellow members in ACPOS, would you advise them to take that course of action?

Chief Constable Wilson: I will move away from that issue, because I cannot make a judgment on it. If one recognises that an error has been made—if that is what Mr Rae did—it is often better to say, "We have not got it right," than wait until a legal judgment is made many years later. However, I cannot comment on the particular case.

Margaret Mitchell: Why was a settlement not reached at that point?

Chief Constable Wilson: I cannot answer that. The governance of the SCRO lies not with ACPOS but with the Executive. At that stage, there was an SCRO executive committee, but legal responsibility lay with the Executive. The matter was not one for William Rae, although I would be surprised if he had not spoken to the Executive about his intended action and what he felt to be appropriate. However, we are involved in speculation, and I would not like to say that I have clear knowledge of the matter.

Alex Neil: I want to clarify an issue to do with the James Mackay report. In the two and a half months after ACPOS commissioned the report, before it was referred to the Crown Office, did you receive an interim report from Mr Mackay, either verbal or written?

Chief Constable Wilson: I do not know, although in that short period I doubt it. There is an interim report, which was published on 14 September 2000 and should be among the papers to which you have access.

Alex Neil: I have not seen that. Can it be circulated to the committee?

Chief Constable Wilson: It might be embedded within the change management review team report, to which you should have access.

Alex Neil: Just to be sure, can it be circulated to the committee?

Chief Constable Wilson: Absolutely. It is dated 14 September 2000.

Alex Neil: I also want to clarify an issue about the further reports that were done by Mr MacLeod. Did ACPOS have any involvement in the investigations that Mr MacLeod undertook on behalf of the Crown Office?

Chief Constable Wilson: Not to my knowledge.

The Convener: Before we move on, I want to be clear about one issue. Chief Constable Wilson, did you say that there is an interim Mackay report?

Chief Constable Wilson: No. I was referring to an interim report of the ACPOS presidential review. I was trying to be helpful. One report was prepared by Mr Mackay. Mr McInnes was part of the presidential review. The interim report might not have the answer.

Alex Neil: To ask my question again, in the two and a half months or so after ACPOS commissioned the Mackay report, but before the Crown Office asked Mr Mackay to investigate a criminal complaint, did he submit a verbal or written report?

Chief Constable Wilson: The report that I have in front of me, which has a reference to the work of Mr Mackay and which is dated 14 September 2000, might lead me to answer the question in the affirmative. If the committee does not already have that report, it can have it. The report also refers to other work on the fingerprint service that was being done by Mr McInnes.

Alex Neil: We would like to have that report, to ensure that we have all the available information.

Chief Constable Wilson: As I quickly scan through it, I see that it seems to be about the remit for both groups. To give members a flavour of the conclusion, the interim report states:

"The Change Management Review Team believe they have already obtained a firm grasp of the main issues which feature as recommendations and suggestions in HMIC's report. Views have been solicited from key members of all Scottish Fingerprint Bureaux ... The team have had the opportunity to visit the Greater Manchester Police Fingerprint Bureau and the National Police Training Centre, Durham ... A meeting with Crown Office has paved the way for progress to be made on evidential issues raised by HMIC."

The report does not seem to come to any investigative or evidential conclusions—it is a

position statement. The report is not a secret, so you can have it.

Alex Neil: Mr Latimer was, for a time, the chair of the SCRO executive committee. When did you hold the chairmanship?

Chief Constable Latimer: Immediately prior to the establishment of the shadow CPS board that has been mentioned. My recollection is that it was in 2003-04.

Alex Neil: During that period, you were active in *The Herald*, claiming that the McKie family had made what you described as ill-informed and unsubstantiated allegations against the SCRO. Are you still of that view?

Chief Constable Latimer: To clarify the context, I wrote one letter to *The Herald*, but I do not regularly correspond with any of the national newspapers. Please remind me of the comment that was attributed to me and I will be very willing to help you.

14:00

Alex Neil: You referred to ill-informed and unsubstantiated allegations. As the chair of the SCRO executive committee, what action did you take to get to the truth of the McKie case?

Chief Constable Latimer: As chair of the SCRO executive committee I had a responsibility to ensure that all the recommendations and suggestions that emerged from, for example, the HMIC report on its primary inspection of the SCRO in 2004 were properly implemented. The executive committee and I, as chair of the committee, had a role in overseeing that that was done. During the preparation for the primary inspection, I was involved in discussions with HMIC about ACPOS's view on the progress that had been made since 2000. I would characterise my role as one of providing strategic oversight; leadership and direction when appropriate; and support to the director of SCRO. The HMIC primary inspection of 2004 made positive comments on the direction and support that ACPOS was able to give.

Alex Neil: Did you at any time commission an internal or external investigation into the specifics of the McKie case? We still do not know why a misidentification was made. It now appears that two misidentifications were made in one case. Did you take specific action to find out why the problem had arisen?

Chief Constable Latimer: No. My role was to provide leadership and direction in seeking continuous improvement and starting to drive forward change.

Alex Neil: Given the impact of the McKie case on the SCRO's reputation and credibility, would it

have been appropriate to provide leadership by making an effort to get to the bottom of why the problem had arisen?

Chief Constable Latimer: I was aware that a range of inquiries and investigations had been undertaken over the years. I arrived north of Hadrian's wall in September 2001, so perhaps I was not as familiar with the detail of what had happened as were some of my colleagues.

Alex Neil: With hindsight, do you think that you made a mistake in not carrying out a specific investigation to find out what had happened in the McKie case?

Chief Constable Latimer: My view was that such investigations had already been led. The investigations and the involvement of the Crown have been discussed during this meeting. I did not regard it as my role to take the matter further at the time.

The Convener: It is two minutes past 2 pm and the meeting must finish by 2.15 pm.

Can ACPOS tell the committee that it has confidence in SCRO? What is the association's official position in that regard?

Chief Constable Wilson: SCRO has a wide range of responsibilities. For example, it manages databases such as the intelligence database, it manages the records office and it does work on number plate recognition. As president of ACPOS, I have gone on record in the past few weeks saying that in relation to fingerprints we have confidence in SCRO. If the police service had no confidence in the work of the fingerprint service, we would have done what we did in the late 1990s and commissioned further work to deal with the matter.

A huge amount of examination has been undertaken—part of it required by the Crown—to determine that other identifications were made properly. Our submission details the significant number of identifications that were subject to external review by professionals beyond Scotland. Day in, day out, week in, week out, in the courts throughout Scotland fingerprint evidence is relied upon. As chief police officers and chief constables in our own right, we must ensure that the work that the police do in Scotland in supporting criminal investigations is right.

The short answer to your question is yes.

We welcome the action plan and the work that will take it forward and we will look to ensure that that work is properly resourced. We know that there is an outstanding issue around scenes of crime and tying matters together, and we have said that we will consider the issue further to ascertain how best to take it forward. The evidence is that our fingerprint officers in bureaux

across Scotland do a good job day in, day out in getting things right to the satisfaction of the Scottish Court Service.

The Convener: I am sure that the committee will have follow-up questions. As you know, many reports have been written on the subject and the committee must ensure that it is clear about what reports exist and who commissioned them. Thank you for your patience in waiting to give evidence and thank you for your evidence.

The next meeting of the Justice 1 Committee will take place on Wednesday 3 May, at which we will take evidence on the Criminal Proceedings etc (Reform) (Scotland) Bill. There will be a further committee meeting on Thursday 4 May, at which we will consider our approach to taking further oral evidence and a list of potential witnesses in our SCRO inquiry. I thank members for their patience during a long meeting.

Meeting closed at 14:06.

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