

JUSTICE 1 COMMITTEE

Tuesday 20 June 2006

Session 2

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JUSTICE 1 COMMITTEE

24th 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:

Mr Kenneth Macintosh (Eastwood) (Lab)
Des McNulty (Clydebank and Milngavie) (Lab)

THE FOLLOWING GAVE EVIDENCE:

James Black
Doris Littlejohn
James Mackay (Formerly Tayside Police)
Sir William Rae (Association of Chief Police Officers in Scotland)
Scott Robertson (Formerly Tayside Police)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Euan Donald
Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Justice 1 Committee

Tuesday 20 June 2006

[THE CONVENER *opened the meeting at 14:23*]

Item in Private

The Convener (Pauline McNeill): Welcome to the 24th meeting of the Justice 1 Committee in 2006.

I welcome Des McNulty and Ken Macintosh to the committee.

I ask members of the committee to agree to take item 3 of the agenda in private. It concerns consideration of matters relating to our inquiry, including whether to accept written evidence that is received after the deadline for submissions. Following our discussion in private, we will return to public session to record in public any important decisions that we make. Do members agree to the proposal?

Members *indicated agreement.*

Scottish Criminal Record Office

14:24

The Convener: As I have done in all the other meetings at which we have discussed this matter, I will make an opening statement.

This is the fifth meeting at which we will take oral evidence on our Scottish Criminal Record Office inquiry. At each meeting, I have made a statement to emphasise that this is a parliamentary inquiry, not a judicial one. No witnesses who appear before the committee are on trial, but the committee expects all witnesses to co-operate fully, to focus on the lines of questioning, to answer questions in good faith and to the best of their knowledge, and to answer truthfully.

Although I have the power to require witnesses to take an oath, I do not intend to use that power. However, if the committee considers that witnesses have not given us their full co-operation in answering our questions truthfully, the committee can recall them. In such circumstances, I will use the power that I have under the standing orders and section 26 of the Scotland Act 1998 to require witnesses to give evidence under oath.

The overriding aim of the inquiry is to help to restore public confidence in the standards of fingerprint evidence in Scotland. I expect that the report that the committee will produce at the end of the inquiry will contribute to that process.

I will take this opportunity to update the committee regarding correspondence received from the Lord Advocate regarding the Mackay report.

This morning, I met the Lord Advocate to discuss our resolution that he should release the Mackay report into the public domain. The Lord Advocate restated his position that he is not persuaded that it would be proper to do so. His reasons, which were previously set out in a letter to the committee, relate to fundamental principles of our democracy, including the presumption of innocence. He made it clear that this could be undermined if confidential reports to prosecution authorities that might contain allegations of criminal conduct were to be published. Following this afternoon's session, the committee will give further consideration to the Lord Advocate's decision.

I welcome our first set of witnesses to the committee. With us, we have: James Mackay, the former deputy chief constable of Tayside police, who is assisted today by Natasha Durkin, a solicitor with Shepperd and Wedderburn; Scott Robertson, the former detective chief superintendent of Tayside police; and Sir William

Rae, the honorary secretary of the Association of Chief Police Officers in Scotland. I thank them for agreeing to give evidence as part of the committee's important inquiry.

Mr Mackay will give an opening statement to make clear to the committee what questions he is prepared to answer today. I invite him to do so now.

James Mackay (Formerly Tayside Police): I am grateful to you for allowing me to make an opening statement on behalf of Scott Robertson and myself.

We are anxious to assist the committee as far as possible. However, we are operating under particular legal constraints, given our role in the investigation and the production of what is commonly referred to as the Mackay report. The Mackay report is confidential and has not been published. We are, as a result, constrained in discussing the contents of the report, on the basis that disclosing any of the contents would constitute a breach of confidentiality. We are, of course, willing to answer questions on general matters of interest to the committee. However, we cannot discuss matters that might breach the confidentiality of the report. In that regard, we stress to members of the committee that, if we are unable to answer any of your questions, it is not because we wish in any way to be obstructive, but because we are constrained by the requirement to respect the confidentiality of the report.

Marlyn Glen (North East Scotland) (Lab): My questions are for Sir William Rae.

At what point did ACPOS decide to establish the presidential review of the SCRO group? Could you outline the chain of events that led to the inception of the review?

14:30

Sir William Rae (Association of Chief Police Officers in Scotland): Certainly. It is important to say, first, that I was chief constable of Dumfries and Galloway constabulary at the time when all this started. I am conscious that ACPOS has made a written submission with a timetable of events.

I suppose that my personal involvement in all this came about as a consequence of learning through the media that Shirley McKie had been at court and that she had been found not guilty. As a consequence of that, a chain of events began, which led to the setting up of the presidential review group.

First, all the chief constables in Scotland received a letter from the SCRO director, in which he indicated that he had reviewed the position after the trial, met the prosecuting advocate and

the deputy Crown Agent and discussed the case. He went on to say that it was felt that lessons could be learned from the presentation of evidence in the case, but that there was nothing greatly untoward in the way in which the case had been handled.

That was the start of our involvement. The next big issue was when BBC Scotland broadcast the "Frontline Scotland" programme, "The Finger of Suspicion", on 18 January 2000. The programme contained information about the way in which the fingerprint was identified. It started a media scrum, as a consequence of which the chief constable of Strathclyde police at the time asked ACPOS to put the matter on the agenda for our meeting of 7 February 2000.

At that meeting, the chief constables discussed the furore on the fingerprint identification. From our perspective, the conclusion was that the best interests of the criminal justice system would be served by the fingerprint identification being independently assessed by Her Majesty's chief inspector of constabulary. At that stage, it was not within the chief constables' power to initiate that. However, on that same afternoon, a meeting of the SCRO controlling committee was also held at which the chief constables heard a presentation from some of the SCRO staff on the fingerprint identification. Following the presentation and in the context of the committee meeting, they decided to ask HMCIC to commission that piece of independent work. And so the chain was started.

Mr Bill Taylor, who was working for HMCIC at the time, received correspondence from Bill Robertson, who was then the ACPOS president. Mr Taylor agreed to undertake the independent review. When he had concluded his review, he intimated that he was going to make a public announcement and he invited some ACPOS representatives to a meeting on 21 June 2000, at which he gave a verbal update of his emerging findings. He said that he had had the fingerprint examined by two European experts and that both of them had come to the conclusion that the fingerprint was definitely not that of Shirley McKie.

Mr Taylor also intimated to us that, as a consequence of his initial findings, he would be unable to certify that the SCRO was efficient and effective. At that stage, he had not concluded his work and it would be some weeks before his report would be completed. However, as the committee can well imagine, what he said was a bit of a bombshell for ACPOS.

We decided immediately to start up a presidential review group and that I would chair it. I was about to inherit the chair of ACPOS on becoming its president at the beginning of July, so I took on the chairmanship a little bit early. The group involved Bill Robertson, the past president;

the honorary secretary, Sir Roy Cameron; and Mr John Hamilton, the chair of the ACPOS crime committee.

We had a notion about how we would take forward the issue and, over the next day or so, we drew up the remit. Eventually, we tasked Mr Mackay to carry out work on the misidentification of the fingerprint and Kenny McInnes, a deputy chief constable at the time, to undertake a review of the SCRO processes. Before we got to that point, however, Bill Taylor made public his initial findings on 22 June, the day after he had met us. I issued a press release to say that we had set up the ACPOS presidential review group and that we would make public our findings.

The next significant development was that the then Deputy First Minister and Minister for Justice made a statement to Parliament, which was followed by an instruction from the Lord Advocate that all the fingerprint identifications in the SCRO submitted by procurators fiscal should be independently validated. In trying to arrange that validation, of course, a series of events was set off.

I formally began my presidential year on 1 July. The first thing I did was to call an early meeting of the ACPOS council and the SCRO executive on 3 July to get the terms of reference of the review agreed by the committee. I negotiated some staff to work with Mr Mackay and Mr McInnes.

The process was fairly straightforward at that time. The review would simply be carried out by ACPOS and fed back into the presidential review group. However, as a consequence of a letter written by Mr Iain McKie to Mr Jim Wallace in which it was alleged that the misidentification was more than just that and that there was a criminal element to it, the nature of the inquiry was changed.

I was involved in some dialogue with the Crown Office at that stage about the correspondence and the outcome of that was that the Lord Advocate intimated that Bill Gilchrist, the regional fiscal at North Strathclyde, was going to investigate the allegations that had been made and that Mr Mackay and his investigation would report to Mr Gilchrist. That started to redesignate the work that Mr Mackay had done and led to the statement before us.

I am conscious that I am running on, but if you are content, I will continue. The next significant stage was the production of an interim report by the ACPOS presidential review group. It was intended to coincide with Mr Taylor's report on the review of the fingerprint branch. That was the point at which I made an apology to the McKie family. I am happy to explain that in a little detail if members wish to know about it.

Marlyn Glen: Thank you, you have gone into quite a lot of detail. Although we had questions to ask, it is possible that you have covered them all.

What was the distinction between the work undertaken by Mr McInnes and that by Mr Mackay? Was Mr McInnes looking at processes?

Sir William Rae: That is absolutely correct.

Marlyn Glen: And Mr Mackay did the review.

Sir William Rae: He started off trying to find out why two sets of experts should come to a different conclusion. It was a fairly naive view that that would be easily explained. However, the nature of that review changed during the course of events.

Marlyn Glen: You explained how the Crown Office intervened and took ownership of the report. Will you detail when that happened?

Sir William Rae: On 6 July 2000. We agreed the remit of the ACPOS review group on 3 July and by 6 July, before Mr Mackay could get off the ground, the review was taken over by the Crown. Mr Mackay and his team had set up base at Auchterarder police office on 3 July so they were there and ready to roll.

Marlyn Glen: Did that end ACPOS's involvement in the process?

Sir William Rae: No, not at all. I continued to be in touch with Mr Mackay and Mr McInnes. A tremendous amount of work was involved at that stage.

To focus on Mr McInnes's work, we had to find a method of maintaining the SCRO's business continuity. I will not go into the details, but that involved a lot of correspondence. I was the target of a lot of correspondence about the case, which had to be dealt with, and I kept in touch with Mr Mackay as his investigation progressed. However, the nature of the investigation changed when the Crown took ownership of it. That placed constraints on how the information could be handled.

The Convener: The committee would be interested to hear what the basis of your apology to the McKies was, so that we are clear about that. Will you also address the point that, from what you seem to be saying, the process kicked in when Iain McKie complained? I therefore assume that Iain McKie was the complainer whose complaint led the inquiry to become a criminal one.

Sir William Rae: I will answer the second question first. The matter was straightforward. Mr McKie wrote to Mr Wallace, who was then the Deputy First Minister and Minister for Justice. As I said, Mr Wallace had made a statement in the Parliament about the misidentification. In his letter, Mr McKie made several points about the statement, one of which was that he believed that

there was corrupt practice and criminality in the identification by the SCRO fingerprint experts. When a criminal allegation of that type is made, the natural course is to refer the matter to the Crown Office. That is what started that process. I hope that that answer is sufficient, convener. I suspect that you may have a copy of that letter somewhere in your system.

The Convener: I do not think that we do. That is the first time that I have heard how the criminal proceedings kicked off. We have heard what we need to hear on that point.

Sir William Rae: To be helpful, Mr Wallace's people in the Executive will have a copy of the letter, which was circulated at that time. If I can assist in that matter, I am happy to do so.

The Convener: That is helpful.

Sir William Rae: In relation to the apology, I will set out the sequence of events. First, there was the criminal trial involving Shirley McKie, in which the court preferred the evidence of the two American experts to the evidence that the SCRO fingerprint experts presented. As I said, the chief constables believed that that was because of the presentation of the evidence, rather than a flaw in the way in which the identification was made. We then commissioned Mr Taylor to carry out his work, which came back with a definite view from the European experts that the fingerprint was not Shirley McKie's, although it was a complex fingerprint to identify. I suspect that you have heard a lot about that in the evidence that has been given to you. You will be aware that the report that came to the chief constables stated that the latent mark was identifiable, but that it was not Shirley McKie's.

That was halfway through Bill Taylor's review of the SCRO. When he made the announcement public, ACPOS was still responding by setting up the presidential review group.

14:45

By the time that Mr Taylor presented his document on SCRO fingerprint identification, on 14 September 2000, we had already received a draft copy in advance. I chaired the SCRO executive meeting on 18 August 2000 at which members discussed the position. At that time, it was felt appropriate that when Mr Taylor finally published his report and when ACPOS published its interim report on the circumstances, I should apologise on behalf of the SCRO executive committee to Shirley McKie and her family about the misidentification. As a result of the independent assessment by HM inspectorate of constabulary for Scotland, we believed that the identification was discredited. That followed the court decision.

Before the press conference on 14 September, I met Iain McKie and Shirley McKie privately and tendered our apologies. I also gave them a copy of a press statement that I was to make available at St Andrew's House when the press conference was held. At that press conference, Bill Taylor produced his inspection report of the SCRO, of which I am sure the committee has a copy. I followed him with our interim report, which was on setting up our structures to examine processes and Mr Mackay's work. I was followed by Mr Wallace, who said in his statement to the media that a review of common police services would take place—Mr Taylor referred to that in his report.

Those were the circumstances of the apology and that was the sequence of events.

The Convener: So the apology was based on the findings of the Taylor report.

Sir William Rae: Indeed it was.

Mr Bruce McFee (West of Scotland) (SNP): I am interested in a comment that you have made twice. Your view was that the Crown had lost the perjury case because of the presentation of evidence and you said that the chief constables believed that that was because of the process. Was it the view of the chief constables that the process that was followed to supply fingerprint evidence at any time to a court was 100 per cent foolproof? More important, I am trying to get to the culture that exists if not only people in the SCRO but chief constables still believe that they were right even after somebody has been found not guilty.

Sir William Rae: As I said, after the result from the court, the director of the SCRO and the Crown Office met to discuss how the case was handled. It was believed that some circumstances in relation to how the evidence was presented could have been better. All the chief constables received correspondence from the director of the SCRO to that effect.

I mentioned that before we asked for the independent investigation, we had a presentation at a meeting of the SCRO executive committee that was led by Harry Bell and members of SCRO staff. They went through the process for presenting evidence in court and their presentation was compelling. No one doubted the veracity and sincerity of those who gave us that presentation.

Mr McFee: So your view is that at that point the chief constables were more persuaded by the SCRO's presentation on how it presented evidence of what it found than by the court's verdict.

Sir William Rae: No. Obviously, the chief constables took account of the court's verdict, but

the professionalism of the way in which the evidence was presented was an issue.

Despite all the discussion, the chief constables' decision at the end of the day was to call for an independent assessment. It was felt that that was the only way in which we could clear the air. However, at that stage, the chief constables had no reason to suspect that there was anything untoward about the way in which the evidence had been presented.

Mr McFee: What was the concern about the way in which the evidence was presented? Can you recall that?

Sir William Rae: I suspect that you will know more about this than I do, but one of the issues was about a piece of equipment that was used to illustrate the identification points in court. I was not there, but that was the information that I had. The piece of equipment did not align the print to where the marks were and there was a suspicion that the fingerprint had been cropped to illustrate a particular point.

Also, I think that the advocate could have dealt with the defence evidence and managed the cross-examination and so on differently. There were a number of issues about the way in which the evidence was presented to the court. However, no one doubted that the court reached a judgment and the chief constables were not challenging that in any way. Clearly, we wanted to see what lessons could be learned from the incident because it was unprecedented and we needed to get to the bottom of it.

Mrs Mary Mulligan (Linlithgow) (Lab): You said that the decision to issue the apology was taken at a meeting of the SCRO executive committee. Was that a unanimous decision?

Sir William Rae: It was indeed.

Mike Pringle (Edinburgh South) (LD): You said that the ACPOS presidential review group agreed that a misidentification had taken place. Are you still sure that a misidentification took place? Clearly, a lot of water has gone under the bridge in the past few years. I had not even been elected in 2000, to be fair. Are you still absolutely sure that there was a misidentification?

Sir William Rae: Perhaps I should be absolutely clear. The committee accepted the report from Her Majesty's inspectorate of constabulary for Scotland that the fingerprint was not that of Shirley McKie. That was the situation that prevailed. We accepted that that was the case. It was not for the committee to decide whether it was a misidentification. We accepted the HMIC report in the same way as we accepted the outcome of the criminal case—the not guilty verdict.

Mike Pringle: So in 2000 you accepted that it was a misidentification.

Sir William Rae: Indeed, yes.

Stewart Stevenson (Banff and Buchan) (SNP): Just to nail down what you were doing when you were looking at the process of presentation, can we be clear that that was quite independent of your taking any view as to the facts that related to the fingerprint?

Sir William Rae: Absolutely. We were just trying to get our heads around what happened and we were searching for a logical explanation. I know that you have the same challenge that we had.

Stewart Stevenson: If the result of the court case had been different, it would still have been plausible and proper for you to consider whether there were lessons to be learned from the process.

Sir William Rae: Very much so, yes.

Margaret Mitchell (Central Scotland) (Con): You said that you were satisfied with the procedures and that there was nothing untoward so the evidence could have been presented in court. However, there seems to have been quite a reaction to the "Frontline Scotland" programme. Is that normal? We heard in evidence that, when there was a problem, it was the culture in the police force to batten down the hatches and to do nothing. Why was it different in this case?

Sir William Rae: I did not see the programme, but it generated a great deal of interest. Perhaps it was already in the air before then, but there was a lot of media coverage at that time. Following the programme, I think that there were lots of comments about the identification of a fingerprint or a mark that appeared on an internet site somewhere. There were lots of people expressing views about whose fingerprint it was or was not. As a consequence of that, as I said earlier, there was a request for the matter to be placed on the agenda of the ACPOS council, which is where the chief constables meet. When the chief constables met, they considered the climate—the situation that we were in and the circumstances of all this—and felt that the only way forward to restore public confidence in the SCRO was to have an independent assessment carried out.

Margaret Mitchell: Was there due to be an independent assessment anyway, or was something different planned for December? I think that I read that something had been brought forward. Was that the same process or something different?

Sir William Rae: Bill Taylor, an inspector from the inspectorate, had planned to carry out an inspection of the SCRO at the end of 2000. When we wrote to him, he agreed to bring that inspection forward. His review was to be of all of the SCRO

but, in the first instance, he would concentrate on the issues surrounding the fingerprint bureau. That is what happened.

Margaret Mitchell: Would it be fair to say that there was a knee-jerk reaction to the “Frontline Scotland” programme, which was shown in the fact that we did not wait for the full Taylor report to be published in September and the fact that, before the interim report was published, people were already talking to the media and leaking the content of the report?

Sir William Rae: I am sorry—a knee-jerk reaction by whom?

Margaret Mitchell: “Frontline Scotland” had brought something up. Normally, the culture within the police was to batten down the hatches, or so we were told in evidence. That did not happen this time. This time, a review that was scheduled for December was brought forward, and before that review was completed—halfway through it—Mr Taylor said that he was unable to find the SCRO “effective and efficient”. Not only that but, before he officially published his interim report, he announced it.

The Convener: Your question is?

Margaret Mitchell: Was there a knee-jerk reaction initially to “Frontline Scotland” that was compounded when Taylor took over?

Sir William Rae: There was certainly a reaction to the “Frontline Scotland” programme, whether or not you would call it a knee-jerk reaction. We had already received reassurance in correspondence from the director of the SCRO. We were as concerned as anyone about the SCRO, as it is central to the work that we do in criminal investigation. Any doubt that is cast on the integrity of the SCRO is a significant challenge to the service.

The “Frontline Scotland” programme was but one of a number of events that occurred at that time and was certainly the catalyst for the matter being raised at that meeting. At that stage, what we wanted to do—which we thought that we could do fairly quickly—was get the matter resolved to everyone’s satisfaction by having the independent evaluation carried out. It was sensible for that to be done by the inspectorate. I do not think that that was a knee-jerk reaction, but it was certainly a reaction to what had happened. We wanted to accelerate the process, as we needed an answer to the questions fairly quickly.

Des McNulty (Clydebank and Milngavie) (Lab): Who conducted the independent evaluation to which you refer, which was commissioned by Mr Taylor?

Sir William Rae: When Mr Taylor disclosed the fact that he had had the evaluation conducted

independently, he did not initially tell ACPOS who the independent assessors were. However, as the chair of the ACPOS review group, I was engaged in discussions with him and he agreed to contact the fingerprint experts whom he had consulted to determine whether they were content for their details to be disclosed to me. Inevitably, that would mean that they would be consulted in any investigation. As it turned out, both were very co-operative. I think Mr Mackay got copies of their reports done on their review of the fingerprint. I did not meet either of the experts, but one was Mr Arie Zeelenberg and the other was Mr Torger Rudrud.

15:00

Des McNulty: I appreciate that you were not the one commissioning this. Were you aware that one of the independent experts, Mr Zeelenberg, confirmed in his evidence that he had already reached a view on the fingerprint before he came across to look at it?

Sir William Rae: I knew nothing about those individuals. I did not even know their names at that stage. As I said earlier, this quickly became a criminal investigation and the engagement of those two experts—

Des McNulty: I hope that you understand the seriousness of what I am asking, Sir William. In effect, a judgment was made by Mr Taylor, through ACPOS, and then by the Deputy First Minister, in making a statement, on the basis of the expert evidence of people who would make their minds up before they saw the material. That is a serious matter.

Mr McFee: I do not think that that is correct.

Des McNulty: It is correct.

The Convener: You need to make clear in your answer what you as a witness can speak to. The question is about Mr Taylor’s report, and obviously you are not Mr Taylor. With that proviso, you should answer what you can.

Sir William Rae: I am not in any way trying to be difficult here, but I knew absolutely nothing about the point that Mr McNulty is raising. It did not enter my thinking at all.

Des McNulty: I shall ask you a different question then. Again, you might not be able to answer it directly but, as chief constable of Strathclyde police, presumably you can get access to the information. We were told that on 5 March 1999, the expert witness for the defence, who was here a couple of weeks ago, looked at the fingerprint, investigated it and confirmed the identification. At that point, the mark was undamaged. We have a photograph that was taken two and a half weeks later by the American expert, which shows very clear evidence of

damage to the fingerprint. The fingerprint was in the possession of the police and was presumably under lock and key. Would there be any possibility of damage taking place by any other person to that piece of evidence?

Sir William Rae: Mr McNulty, I cannot answer that question. I do not know. I do know—and this does not intrude on Mr Mackay's investigation, because it was known—that the defence in the trial of Shirley McKie was given copies of the Crown evidence: the photographs of the mark. However, the defence worked from its own photographs taken at the time. I know nothing about the damage—I suspect that that is in the domain of Mr Mackay's work.

Des McNulty: Let us be clear. As I understand it, in a Scottish court, the experts would have to certify that they worked from the original material. You cannot work from material that is sent to you; you have to go and look at it in controlled circumstances. Mr Zeelenberg indicated that, when that so-called independent review was undertaken, he chose not to work from the original material, which he would have been obliged to do in a Scottish court setting. He chose to work from an internet picture. If proper court procedures had been followed, what he was saying should have been inadmissible, but ACPOS—or HMCIC—did not choose to do that in these circumstances.

Mr McFee: On a point of order, convener.

The Convener: There is no such thing as a point of order. Let Sir William answer. I am sure that he will find that he is not in a position to answer that.

Sir William Rae: It is a matter for the court to decide what evidence—

Des McNulty: I am just asking you for the legal position. Is it your understanding that the legal position is as I have indicated, which is that the expectation is that the expert works off the original material? They are obliged to respond on the basis of the original material. If somebody said in a court session that they had not looked at the original material but had looked at an internet photograph—

The Convener: Des, will you get to the point? You are straying from the issue.

Des McNulty: Is it not true that it would not be admissible in court to say that you had worked off an internet photograph?

Sir William Rae: I am not trying to avoid the question. I know from notes that I have received, and only from those notes, that the defence operated from material—which was the word used—that was not the original material. The court obviously accepted that. It is not a matter for me to comment on.

Des McNulty: The question is, was Mr Wallace told—

The Convener: Okay. Enough, Des. That was your last question.

Mrs Mulligan: My questions are on the management and culture of the SCRO, and I would be happy if Mr Mackay and Mr Robertson felt that they could answer too, based on their experience.

It has been suggested to the committee, in written and oral evidence, that the Glasgow bureau exhibited high levels of stress and low levels of morale, possibly leading to high levels of absenteeism. Was that your experience, either from working with the bureau or from reviewing it? Are such problems in the past or do they persist?

Sir William Rae: I expect that members are aware that, when all these events were happening, significant issues of recruitment and retention of fingerprint experts had arisen in the SCRO. It was a period of considerable automation of processes. I do not want to use the acronyms, but members will know that computerisation came into play. Instead of easing the burden on fingerprint experts, it increased the burden because of the rate at which fingerprints were processed. That was before the Shirley McKie case.

The director at that time was a chap called Hugh Ferry. He had raised with the controlling committee the difficulty with staff numbers. At the early stages, considerable backlogs were building up in fingerprint identifications at the SCRO. That is one of the issues that were resolved as a consequence of what Mr McInnes did.

There was a lot of stress and strain because of the volume of work. However, the SCRO had a world-beating reputation. In all my experience with the staff there, I have found them highly professional. Their standing throughout the country has been exceptionally high. Clearly, the events we are discussing have had a big impact on that standing. My day-to-day dealings with the SCRO were not close enough to allow me to make a judgment about morale, but these events will have had a big impact on morale and on sickness levels.

Mrs Mulligan: Mr Mackay?

James Mackay: Convener, I am unable to answer the question.

Mrs Mulligan: Mr Robertson?

Scott Robertson (Formerly Tayside Police): I am sorry; I am unable to answer the question.

Mrs Mulligan: Sir William then. You say that you think that there were some difficulties. Was

Glasgow any different from other offices in Scotland or elsewhere in the country?

Sir William Rae: At that time, I had very little knowledge of the other fingerprint bureaux in Scotland. However, it is not difficult to understand that the volumes going through the Glasgow office were substantial. The staff there had a different operation. They were holding the national collection and they were providing the 24-hours-a-day, seven-days-a-week Livescan process, which was a facility offered to all Scottish forces and to forces south of the border. The other bureaux were much smaller operations and the staff there were under a different set of demands.

Mrs Mulligan: It has been suggested that there was an unhappiness that the person at the helm of the fingerprint agency in Glasgow and elsewhere was not a fingerprint expert. Is that an issue or is that just a by-product of people's unhappiness?

Sir William Rae: It needs to be understood that the market in fingerprint officers is limited. That lies at the heart of the difficulties that we have had in filling vacancies. People take a long time to reach fingerprint expert status and there is a lot of demand for their services. To find someone who has the skills to manage the service and who has a forensic or fingerprint background is the ideal situation that we would wish to achieve, but that is not always possible. A good manager with the right sort of experience and background can undertake the role but, in an ideal world, it would be good to have someone who also had an understanding of fingerprints.

Mrs Mulligan: Could someone who was not a fingerprint expert resolve disputes among fingerprint experts within an office? If one expert says one thing and another says something different, could someone who did not have that experience resolve the dispute?

Sir William Rae: For professional disputes, that could be difficult although perhaps not impossible. For the day-to-day management of the organisation, it should be possible for any good manager to address the interactions that take place among individuals.

Mrs Mulligan: Do you think that that is what happened in this case, when a fingerprint that had been identified was then identified as not being the fingerprint of the person in question?

Sir William Rae: I cannot comment on that. I have no reason to believe that that was the case. This seemed to me to be a relatively routine matter in the way in which it was processed. Nothing was cited to me that gave me cause to believe that it was anything other than that.

Mr McFee: I have a question for Mr Mackay that I know will be difficult, so I will try to phrase it as

loosely as possible. I will not ask him to divulge anything that is in his report, although everybody in the entire western world has seen the executive summary of it—

Margaret Mitchell: I have not seen it.

Mr McFee: Apart, it would appear, from Margaret Mitchell, everyone has seen the executive summary of the report, although we all kid on that nobody has looked at it.

During your time there, did you gain an impression—you need not say what that impression was—of the culture that operated in the Glasgow office? Did you gain a feel for that?

James Mackay: Yes. However, I will not go into specific details on that, as you can appreciate.

Mr McFee: I was not going to ask that. I just wanted to understand whether you had gained an impression about that during your time there.

Did you visit the SCRO in Glasgow during the investigation?

James Mackay: I have visited it. Mr Robertson dealt with operational matters and I dealt with strategic matters, so I did not deal with specific matters relating to that.

Mr McFee: Mr Robertson, did you gain an impression of the culture of the Glasgow office—you need not say what that impression was—while you were at the SCRO to speak to the people who were involved?

Scott Robertson: I never made any visits to the SCRO personally, as the members of the team did that. I cannot go any further than that.

Mr McFee: If you think that this is difficult, you should try sitting in this seat and asking the questions.

Scott Robertson: You might like to try answering.

Mr McFee: Since writing the report—again, I do not ask you to reveal what any of your conclusions were or how you would have been influenced by what has happened since you wrote the report—have you heard anything that would lead you to alter the conclusions of the report that we are not to discuss?

James Mackay: I wrote the report and submitted it in October or November 2000. After I retired in March 2001, my knowledge of the SCRO and of policing in general has come only from what I read in the press.

Mr McFee: Since writing the report, has anything made you feel the need to go back to Scottish ministers and say, "Hey, I would like to give you an update"?

James Mackay: No.

15:15

The Convener: Mr Mackay, we are conscious of what you said in your opening statement and we are genuinely not trying to entice you into discussion of areas that you do not feel that you are in a position to discuss. However, I must express a wee bit of surprise that you were not able to address those questions. We had—or so we thought—carefully designed our questions to stay away from areas that you might not wish to discuss.

Can you or Mr Robertson tell us anything on those matters, which are of interest to the committee? Questions in this area have arisen time and again in evidence from many witnesses. Anything you are able to say would be welcome, so I invite you to take the floor. If you tell us that there is absolutely nothing you can say, that will be better than our trying to squeeze answers out of you on matters about which you feel you cannot speak.

James Mackay: That is appreciated, convener. As I said in my opening statement, we came here today wanting to be as helpful as possible. However, we were working and are speaking now under particular legal constraints.

There are various factors involved. During our inquiry, we visited various bureaux. We found various documentation relating to fingerprints and we questioned various people in general terms. It was interesting that we had to tell ACPOS about best practice and about what it ought to be discussing further. Neither I nor Mr Robertson is a fingerprint expert, so throughout the process we relied heavily on expertise. One senior officer on our team was a fingerprint expert. We utilised that officer for advice, but not with respect to any particular aspect.

Perhaps Mr Robertson and I can speak about this next point in tandem. We had separate roles in the inquiry, which I think was necessary. There was a strategic aspect and an operational aspect—Mr Robertson was certainly involved in the operational aspect. There are one or two points that we would like to speak about, including one that Sir William Rae has mentioned. Cropping issues have come up. Cropping was a general feature that we found in fingerprint bureaux. I am not being specific. We felt that it was of interest to ACPOS and that it was a matter for further debate.

The second point is about court presentation skills. It occurred to us, when we spoke to fingerprint officers from throughout the country and when we read court transcripts, that best practice ought to come into vogue in court presentation. Normally, a fingerprint expert—from wherever—is

one of the first people to give evidence and investigating police officers and police witnesses follow. Because of the nature of court procedure, those police officers do not hear the evidence that was given by the fingerprint experts. We felt that we ought to consider how that practice should be progressed in the future. I am speaking in general terms.

Pat Wertheim's court presentation skills were highlighted at various stages. Those presentations were easily understood by all members of court and by all the stakeholders, if we consider that the defence has a right to clarity, fairness and transparency and to a clear presentation. We found that to be very important.

Scott Robertson: I would like to add to that, if I may. We cannot answer questions about the report. As Mr Mackay said, we are happy to speak in general terms about the presentation of evidence, best practice in presentation skills and cropping, for example, but there are difficulties for us in speaking to matters beyond those.

The Convener: Many members want to ask questions. I clarify that we are trying hard not to ask questions that you will not answer. We genuinely thought that the questions that we were going to ask stayed away from matters with which there are legal issues. We are still dealing with management and culture, but we will ask about processes. You can tell us whether you will answer questions about processes, but members will stick to their questions about management and culture in the meantime.

Margaret Mitchell: I suspect that Sir William Rae will answer my next questions on management and culture, although any member of the panel may do so.

That there was stress, strain and a backlog has been accepted. I think that Sir William said that the problems were due partly to new technology, but that the effects of the Shirley McKie perjury case were felt very much in the Glasgow bureau.

From the Black report, I understand that there was quite a lot of resentment because the four experts and two managers thought that they had received absolutely no support from anyone; indeed, I understand that things went a little further than that, in that they felt that they could not put their side of the case because there was a gagging order and the chief constable had said that they could not talk about the matter because it was sub judice. Who was responsible for the gagging order?

Sir William Rae: I would not recognise a gagging order. I have read that someone said that I spoke to the fingerprint experts to intimate to them that Mr Taylor's findings on the independent identification of the fingerprints would be made

public. I do not recollect speaking to the experts, but alerting people who were going to be involved about what would occur, that there would be a press conference and what would be announced is the sort of thing that I would have done. Clearly, the matter was not sub judice at that stage because there was no criminal inquiry. I may have been asked about the press conference at which I was to give the ACPOS perspective on what the fingerprint experts do. I may also have said to the experts that it would be wise for them to bide their time rather than to dash off to the media. Although I have no recollection of doing so, that is the sort of advice that I would have given in any event. Other than that, I had very limited contact with the individual players, including the SCRO people. I recollect trying to ensure that I wrote to Mr McKie to let him know what was happening and that I wrote to others, which would have included SCRO staff, to alert them to what was going to happen and what ACPOS was doing about it.

Margaret Mitchell: In assessing the culture of the Glasgow office in particular, what cognisance has been taken of the fact that four experts and two managers have been hit daily in the media with personal allegations? They do not appear to be able to speak in their own defence. In any organisation in which there are such circumstances, surely people's morale will be low, they will be under stress and they might even think that they have been hung out to dry. How much cognisance of such things was taken when the report on the Glasgow bureau was done?

Sir William Rae: You have to ask the then management of the SCRO what happened. From my dealings with Harry Bell, who was sensitive to the interests of the staff, it is clear that he had to deal with the matter in an impartial and straightforward way.

However, for some time, the service has had to deal with the fact that it is not unusual for such investigations to hit the headlines. It can be very difficult and uncomfortable for people to find themselves on the front page of the newspapers—I suspect that some members around the table have found themselves in that position. I believe that support for staff in that situation has, as the years have passed, become a bit more sophisticated, but it would be wrong to say that it was sophisticated at that time. Management would have provided the support that was thought appropriate, but I do not know what that was.

Margaret Mitchell: On what date did the matter become sub judice?

Sir William Rae: It became sub judice when the criminal investigation was launched and the report was submitted to the procurator fiscal.

Margaret Mitchell: Did the criminal investigation come about as a result of Mr McKie's letter?

Sir William Rae: As a result of that letter, the Crown Office appointed Mr Gilchrist to carry out the investigation. Once such a process starts, a series of rules on disclosure apply.

Margaret Mitchell: Given that certain matters would then have become sub judice, how prudent was it for you to apologise to the McKies before publication of the Taylor report, and for the First Minister and the Deputy First Minister to refer to "an honest mistake"?

Sir William Rae: My apology had nothing to do with the criminal investigation. We commissioned HMCIC to carry out an independent assessment and, on accepting his findings, felt that it was morally appropriate to apologise. I cannot speak for anyone else, but it was, as far as ACPOS and the SCRO executive committee were concerned, the right thing to do.

Margaret Mitchell: When you met Iain and Shirley McKie you went no further than apologising to them.

Sir William Rae: I apologised and gave them a copy of the press statement that I was to make four days later.

Margaret Mitchell: Did you refer at all to a "mistake"?

Sir William Rae: My press release will be around somewhere, but I am happy to assist the committee if it does not have a copy. In it, I said that we had accepted that the fingerprint had been misidentified.

Mrs Mulligan: Earlier, Mr Mackay mentioned presentation. Were you aware of concerns about presentation by the Scottish fingerprint service before you undertook your inquiry, or did your inquiry highlight the issue?

James Mackay: We had identified the problem and then apprised ACPOS of the need for vast improvements in that area. Some fingerprint experts have worked in the field for a number of years and have long experience of the trade, and it is necessary for management to revisit the issue and to consider the best way of serving the Scottish criminal justice system: What improvements can be made and how can things be made clearer to individuals in court? It is no good simply to say, "I'm telling you this as an expert". The matter must be explained thoroughly and in the kind of detail that most people in court can understand. I have to say that there was never a rigorous cross-examination of the fingerprint evidence.

Mrs Mulligan: So you would be happy to follow a line of presentation that was similar to that which was highlighted by Mr Wertheim, who works in the American system.

James Mackay: No—I did not say that. What I am saying is that training in presentation skills is needed, so that one has regard to the European convention on human rights, to disclosure and to how one presents oneself in court. Significant training is available in the police service, but it needs to be revisited—I am not speaking about any particular bureau—and that is something that we felt should be explored in the interests of best practice.

15:30

The Convener: We all have some interest in the matter: a constituent has raised the issue with me. It has been suggested to me by SCRO officers that those who went to give evidence at the trial were used to giving their evidence in a particular way but were not used to being cross-examined as they were at that trial. Have you considered that? They felt that they were not prepared by the Crown—not that the Crown should prepare witnesses—for the nature of the presentation.

Scott Robertson: Prior to the McKie fingerprint inquiry, fingerprint experts were not challenged rigorously.

The Convener: Precisely.

Scott Robertson: Perhaps defence lawyers and solicitors did not challenge them as they should have done—fingerprint experts were accepted as experts and were never really challenged. There may have been some form of challenge, but never had there been a presentation like the one that we saw at the McKie perjury trial. That is one of the areas that we should be examining so that there is complete transparency about fingerprint identification and how it is achieved, and so that presentations can be more professional than those that took place previously.

The Convener: I would like to make an observation. I entirely accept your point, but my view is that a person coming to the table with a glossy presentation does not mean that it is a better presentation. It is the quality that counts. I presume that you agree that a person not using a glossy PowerPoint presentation, or having verbal presentation skills, does not mean that their evidence is not good.

James Mackay: I am always interested in a sequence of events. With fingerprint evidence, there is a sequence of events, and I feel that all the stakeholders in the court should see a presentation that starts from a photographic impression of a door, a window, a car or whatever, and that the presentation should focus on the various stages of that sequence of events through to the actual fingerprint, which is then magnified and shown clearly to the court. I am not asking for glossy presentations, and we did not ask for that

at the time. We were not looking for slick presentations, nor were we comparing the American justice system with the Scottish justice system—far from it. What we were comparing was the way in which evidence was presented. On one occasion, we were made aware of a transcript, on which I will not go into detail other than to say that the trial judge did not get the best response to a question that he asked.

Mr McFee: On that point—

The Convener: You had better make it brief, because there are five other members who want to ask questions. If you do not make it brief, I will cut you off.

Mr McFee: When you were looking round the different bureaux and at the evidence from different places—not being specific, and all the rest of it—was it your impression that experts were, when asked, generally unable to explain points of comparison, and that in some circumstances what the jury was generally asked to rely on was the fact that experts could see those comparisons?

Scott Robertson: Yes.

Stewart Stevenson: I am going to ask some fairly neutral high-level questions about how the police service and the SCRO work and the standards to which they should adhere. In general, in the different specialisms within the police service in 1997—that being the period in which we are interested—in the processes that you have described in giving evidence, and more generally in the processes, to what extent was there documentation of the stepwise processes that were gone through and the documentation that would be produced? That is a general question about any part of your police experience that touches on your ability to answer that question. I will start with Mr Mackay, but I will get to you, Mr Rae—I can see that you are bursting to come in.

James Mackay: I am sorry, Mr Stevenson. Can you explain your question?

Stewart Stevenson: To explain where I am going to get to, I will give the context. Conflicting evidence has—at least in my view—been received about how well documented were the processes in the SCRO. Was there a manual that said, “You do X, Y, Z and you document it in this way”? Some people have said one thing and some have said another. What I am testing first—before I turn to the specifics of the SCRO and what might be known about that—is, in general terms, whether it was part of police culture to have a book that would say, “This is what you do.”

James Mackay: I cannot answer that question because I do not know the specifics. We had a different bureau in Aberdeen—

Stewart Stevenson: Let me be clear. At the moment, I am not talking about the SCRO; I am talking about the police in general.

James Mackay: I appreciate that. There was a clear and distinct line between police investigators and fingerprint experts, who worked in an area on which we did not encroach. We did not stand looking over the shoulder of a fingerprint expert in any investigation, asking how they arrived at their decision. There was a clear demarcation line. We accepted what the fingerprint experts told us; we did not examine their work and ask them to prove it. There was always that separation. I do not think that I am answering your question entirely.

Stewart Stevenson: Let me look at the other side of the separation. Given that the police were the gatherers of evidence that would be presented to the SCRO, did the police have a process to go through? For example, how did you allocate a letter and a number to a piece of evidence? We have talked about Y7, Q12 and so on. Is there a process to determine how the police do that when they gather evidence, and is it in a manual that is available to everybody?

Scott Robertson: That would be going back to 1996-97. There has to be an audit trail going through the system.

Stewart Stevenson: Correct. That is what I am looking for.

Scott Robertson: I do not know whether there was a manual or book that said that, but the system worked.

Stewart Stevenson: Are you talking about the SCRO?

Scott Robertson: I am talking about the police in general. I have experience of Tayside fingerprint bureau; however, in relation to the SCRO at that time, I speak in general terms. No matter which bureau it was, a scene-of-crime mark would come into the bureau, be processed and the result would come out at the other end. Whether that was documented in a folder that required things to be ticked off and which said, "This is how you do it", I do not know. However, it seemed to work, as fingerprints were coming in at one end and going out at the other.

Stewart Stevenson: I will make my question more specific. I will come to Mr Rae on this, too. Were you aware of there being a document that said, "Here's how you do it and here's how you document it"?

James Mackay: Perhaps I can answer that. I am not aware of any such specific document, but there is a training centre in Durham that produces a training manual. I imagine that that would have been in a bureau, but I could not give you a definitive answer on that. There would have been

written instructions from people in the bureau, as there are in all organisations, that would highlight their experiences, but we did not find a specific manual that would have helped us and we have no knowledge of any such document. We hope to come in due course to European reports, but we will leave that for the moment.

Stewart Stevenson: Therefore, without commenting on whether the outcomes were satisfactory, we can say that there was scope for variability in the processes that were adopted by individual members of the SCRO.

James Mackay: At that time, in some bureaux, the same person who conducted scene-of-crime examinations examined the fingerprints at a later stage. The SCRO was different, in that it dealt purely with the identifications or otherwise in its situation. There was a clear distinction, in that scene-of-crime officers conducted their investigations and found what they found by various means. DNA came into that, which led to the question whether items should be used for DNA or examined for fingerprints using aluminium powder or some other method. The question was whether to destroy the fingerprint to get to the DNA or to destroy the DNA to get to the fingerprint. Those were issues for scenes-of-crime fingerprint officers. It was up to the senior investigating officer or the detectives who were dealing with the case to decide whether to leave the issue entirely to the scenes-of-crime officer, who then carried out the process. The investigating officers were interested only in the end result.

Stewart Stevenson: I have a general question for Mr Rae. In the police force in 1997, were the processes that determined how the police went about their business documented? Was there a book that could be referred to?

Sir William Rae: Many of the processes were documented. We had force procedures manuals, force orders, law books and a great variety of instruction manuals. The issue that you are trying to get to the bottom of is about the documentation of certain processes. In the 1990s, I was engaged with the total quality management agenda.

Stewart Stevenson: Me too.

Sir William Rae: That was when ISO 9000 and other processes that were generally used in manufacturing and engineering started to come into the police service. I had experience of that in trying to persuade forensic scientists in the Strathclyde police forensic science laboratory that they had to document every single process. It took a little time to persuade them that that was the right thing to do, because that was not the norm in that era. That was the period during which documentation of every single step started to

appear. I cannot speak about what manuals and instructions were available in the SCRO, but it had to operate within the rule of law. People would have known well that there were certain standards for how material was to be handled if it was to be evidential, and that the rules had to be complied with. However, I suspect that the level of detail that Mr Stevenson seeks would not have existed at that time.

Stewart Stevenson: That confirms the view that we had come to, notwithstanding the fact that we have had evidence suggesting that there was a standard. One of the documents that I have before me—I cannot find it at the moment—refers to the use of ISO 9002, but that came much later.

Sir William Rae: That was a result of a recommendation that came from the subsequent work.

Mike Pringle: I want to move on to the fingerprint processes.

On 28 August 2003, long after you retired Mr Mackay, and made your report, you gave a precognition statement that contains matters that are now in the public domain because they were part of a court case. Are you happy to answer questions on those?

15:45

James Mackay: No, because they are still confidential documents.

Mike Pringle: My understanding is that the precognition statements are no longer confidential.

Scott Robertson: Those precognitions were released to the press but we did not give consent for that, nor were we asked whether we consented to their being made public. Had we been asked, we would not have consented. As far as we are concerned, any discussion of those precognitions would breach the confidentiality of the Mackay report.

James Mackay: They remain confidential.

Mike Pringle: Okay. I will move on then.

You have outlined for the committee your understanding of the processes that were undertaken for the identification and subsequent verification of the marks by the SCRO fingerprint bureau in 1997. In your understanding, how have those processes changed?

James Mackay: We only saw a snapshot of the situation between June and October 2000. I cannot speak about any change thereafter. I am sorry, but we had retired and we cannot speak about that.

Sir William Rae: One of the recommendations in Kenny McInnes's report on the processes was

on the introduction of blind testing—that was the phrase that was used prior to the current process. The system was that the fingerprint officer who initially identified a fingerprint against a latent mark indicated on the back of the photograph their individual details and which finger the photograph related to. It was then passed on to someone else to verify. The individual who was being asked to verify the identification would have known who had identified the fingerprint in the first place. That was thought not to be good practice.

As a consequence, a new system was introduced. I will not be able to walk you through it in detail, but once a fingerprint had been identified by one person, it was moved on for verification in a way that did not allow the individual who was carrying out the verification to know who had made the initial identification. That is what happens in the SCRO fingerprint bureau.

Mike Pringle: So at the time, that was the practice in the SCRO fingerprint bureau.

We heard evidence in one of our other sessions that someone could mark up an identification on behalf of someone else. Has that practice now ceased? Was it common practice previously? Was that the practice in the other three bureaux in Scotland?

Sir William Rae: I cannot answer that because I did not investigate the matter. However, I know that a recommendation for the SCRO from Kenny McInnes's work was that it was not good practice for the photographs to be marked in such a way that the individual who was to validate the identification would be influenced. Blind testing was introduced as a response to one of the recommendations that followed from the McInnes and HMIC reports.

Mike Pringle: At any point was a blind test done on mark Y7, which was found on the door frame?

Sir William Rae: I am not aware of the processes that were involved in that.

Mike Pringle: On 23 May, Mr Ferry gave evidence to the committee. I ask all three panel members to comment on this, if they can. I quote from the *Official Report* of the meeting the exchange between my colleague Mr McFee and Mr Ferry:

"Mr McFee: I asked a specific question about what would happen if one expert disagreed; you told me that if one disagreed, it was not an identification. Are you now saying that that is not the case?

Hugh Ferry: No—I am saying that it is possible that other experts could examine a mark and have a consensus. I am trying to make a distinction.

Mr McFee: So you just keep going until you get a consensus.

Hugh Ferry: That is possible."—*Official Report, Justice 1 Committee*, 23 May 2006; c 3148.]

Is that common practice at the SCRO? Is that good practice? We heard that Mr Ferry just kept going until he got enough people to make an identification. Was that the case?

Sir William Rae: You would have to ask the question of someone from the SCRO. From my perspective, simply keeping going until one finds enough people who will say yes does not sound like a defensible approach to adopt.

Mike Pringle: That is what Mr Ferry said.

Sir William Rae: I was not at committee; I cannot comment.

The Convener: I will bring in the other panel members on the point.

James Mackay: I am afraid that we are unable to answer the question.

Mr McFee: Can I ask—

The Convener: Hold on. Is Mike Pringle finished?

Mike Pringle: Yes.

The Convener: I am a bit concerned. I thought that the witnesses would be able to answer a wee bit more than they are doing. I will set out our problem. I, for one, understand the basic principles that we are defending here and the legal issues that are involved. However, the committee is trying to address the failings in the case. The problem is that you are saying that there are questions on the process that you cannot answer, although we feel justified in asking them. Can you see our problem? It seems that someone should be able to answer Mike Pringle's question. If your report looked at all of this—which I assume that it did, for you to come to the conclusions that you came to—surely it is legitimate for Mike Pringle to ask the question.

James Mackay: Our report was wide ranging; we looked at various issues. Nevertheless, having gone to the Crown Office, the report remains confidential. Even though it is in the public domain, it is still a confidential report. Accordingly, if we were to go into various issues that surround the question that has just been asked, we would be breaching that confidentiality.

The Convener: In relation to the failings, or the alleged failings, and the SCRO processes, can you clarify for the committee which questions you cannot answer, or will all questions result in the same answer?

James Mackay: We are trying to be as helpful as we possibly can. What we are trying to do is to answer questions that do not go into the specifics of our inquiry.

The Convener: Yes, but we are trying to ask you questions that we think are fair. Mike Pringle addressed the issue of evidence that we took that seemed to lead at least to an allegation of a failing within the SCRO. I have further questions on the process that I feel you need to answer. I do not feel that they contravene the confidentiality issue. From what you have said so far, you do not seem to be able to address even the question of your view of the culture of the organisation or the processes that it undertook.

James Mackay: As I said, we would like to be as helpful as we possibly can. Some of the questions that we are being asked seem fair and it appears that we should answer them. Nevertheless, our answers would be given as the result of our criminal inquiry and, as a consequence of that inquiry, our report. Accordingly, even though the question appears to be fair and not of serious consequence, we are nevertheless restricted in and constrained by what we can say.

Mr McFee: On that point—

The Convener: Hold on. I will let Mike Pringle finish up.

Mike Pringle: If Bruce McFee wants in on the point—

Mr McFee: I just want to clarify the matter. Mr Mackay, what have you been told about, or what is your understanding of, the possible consequences that you could face if you answer questions whose answers are in the report?

James Mackay: I have received confidential legal advice, as has Mr Robertson. We have taken that advice.

Mr McFee: You have taken it.

James Mackay: We are adhering to that legal advice.

Mr McFee: Perhaps Ms Durkin could explain what sanctions could be taken against Mr Mackay or the other author of the report.

The Convener: The witness does not need to answer that.

Mr McFee: The information would be useful, because the public might misunderstand the situation and think that Mr Mackay or Mr Robertson is trying to withhold information. I want it to be made clear that they are acting under restraint. That is only fair, although the situation is frustrating for us.

The Convener: Mr Mackay has already made it clear to the committee that he is under constraints. As convener, I have already expressed my surprise about the extent to which that restraint

binds him not to answer questions that we think are fair.

The committee will need to address the issue. As I said at the beginning of the meeting, our view is still that there are particular reasons why we should legitimately see at least the summary of Mr Mackay's findings—as he knows, most of us have seen the report. That is a question for the committee. I want to be clear with Mr Mackay about the matters that we can discuss. We have tried to be fair, but we do not feel that we are making progress.

Mike Pringle: We carefully framed several questions that we felt did not infringe on your situation, Mr Mackay. I framed questions about other documents, but you have made it clear that your opinion is that you cannot talk about those matters. In view of that, perhaps we can just ask the questions that the committee decided that it would ask. You can decide whether you can answer the questions and Sir William Rae can speak at any point. I will ask the next four prepared questions.

Sir William Rae: As I have said, I am trying to help. If the questions are about the process, the committee is asking the wrong person. It was Kenny McInnes who did work on the processes in the SCRO. Mr Mackay has difficulty in answering questions about the details of the case in point, but the work that Mr McInnes did would provide an understanding of the routine processes in the SCRO before all this came to a head. That work was focused on the report that has been submitted to the committee. It will always be difficult to go into the detail of the particular case, but I know that Mr McInnes's report examined the processes.

The Convener: That is fair enough—I note your point. Before we go further, I say that it is up to the committee to put to witnesses the questions that it sees fit to ask. We will get the message if the witnesses do not feel that they can answer.

Quite a few members want to ask questions, for which I will allow 10 minutes. I ask Mike Pringle to wind up what he was talking about.

Mike Pringle: Can anybody on the panel explain the involvement of the experts from Durham and how they became involved?

Scott Robertson: I cannot answer that question.

Mike Pringle: Does Sir William know about that?

Sir William Rae: All that I can say is that I know that experts from Durham were involved.

Mr McFee: Did they give advice to Mr Mackay, whom I am not asking for an answer?

Sir William Rae: I know that expertise rests in the fingerprint centre for the United Kingdom in

Durham. Experts from Durham offered advice, but I cannot go into the detail of that.

Mike Pringle: Did you gain an understanding of the processes that the SCRO followed when experts disagreed over the identification or otherwise of a mark?

James Mackay: I cannot answer that.

Mr McFee: Without telling us your view, could you tell us whether you gained an understanding of the process?

The Convener: I ask members to speak through the chair, please.

Mr McFee: Sorry.

Mike Pringle: I will go on to my next question. Recommendation 17 of the HMIC inspection of 2000 says that

“regular refresher training should be incorporated into a national training standard for fingerprint experts to ensure that expertise is maintained at the highest level taking account of developments in theory and technology.”

In the course of your investigation, did you have any concerns about the level of training that was provided to staff and, if so, did you perceive that that had any impact on the standard of work? In other words, was the training of a sufficiently high standard?

16:00

James Mackay: We were not fingerprint experts, so we made no recommendations about fingerprint training. However, training covers a wide sphere and, as we said earlier, presentation skills and the sequence of events at court are areas that it is necessary to cover in today's era. That was equally true in 2000.

Mike Pringle: I have two questions in one. I understand that you deployed a substantial number of officers on the inquiry. Is it the case that about 20 officers were involved in carrying out a considerable amount of work? That seems to be a fairly innocuous question. Finally, would you say that your inquiry was as robust and detailed as it could have been and would you still stand by it?

James Mackay: I stand by the inquiry. We felt that we were objective throughout. We conducted a comprehensive review. We utilised a computerised system that—

Mike Pringle: Are you referring to the HOLMES system—the Home Office large major enquiry system?

James Mackay: Yes. It was the first time that the second generation of the HOLMES system had been utilised. That is a tremendous aid in any investigation because it is a beast that consumes manpower—

Mike Pringle: Manpower and womanpower, I presume.

James Mackay: Absolutely. Nevertheless, it also creates an audit trail. That audit trail is still there for anyone to challenge. We have always been aware that people will challenge some aspect of an inquiry at some stage in the future. I am a great believer in the audit process. The HOLMES computerised system provides that; it provides detail. With any decisions that we make in an investigation in which we use HOLMES, policy is essential.

To give a brief answer to your question, our inquiry was comprehensive and full and I felt that, throughout it, the officers whom we used were experienced and remained objective.

Scott Robertson: I agree whole-heartedly with that. It was an extremely thorough investigation and highly experienced officers were involved in conducting it. I stand by the investigation.

Mike Pringle: Was it an independent investigation?

Scott Robertson: Absolutely.

Mike Pringle: So you still stand by your report.

Scott Robertson: Yes. We approached our investigation with no preconceived ideas and it was independent and thorough.

The Convener: I want to finish our questions to the present panel at 10 past 4, so it would be helpful if members could make their questions focused and brief. I will call Ken Macintosh first as he has not spoken.

Mr Kenneth Macintosh (Eastwood) (Lab): We again find ourselves in the frustrating situation in which we have a number of questions to put in a limited amount of time. With the convener's indulgence, I will do what my colleague Mike Pringle did—I will ask all my questions at once and the witnesses can respond to them as they see fit. Unlike the witnesses and the committee, neither Des McNulty nor I have received any legal advice, so we have not been guided on what areas we can ask questions about. I had hoped to ask a question about the precognition statement and I still do not understand why we cannot do so, given that it does not form part of a criminal investigation.

I will put my points to Mr Mackay. Because it is in the public domain, the Mackay report has been used by the press to make repeated allegations against the fingerprint officers concerned. The report makes those allegations even though, to my mind, it provides no evidence to support them. For example, it suggests that when the fingerprint officers gave evidence in the Shirley McKie case, they had a heated argument in the car park, but

they deny that vehemently. Your precognition suggests that one of the fingerprint officers, Hugh Macpherson, had been involved in identifying Shirley McKie's fingerprint in the baby-in-the-bag case, but he had no involvement in that case. The report suggests that there was a conspiracy among fingerprint officers but I do not believe that you interviewed Peter Swann or Malcolm Graham. Perhaps you did—I would like to know.

James Mackay: May I interrupt?

Mr Macintosh: Absolutely.

James Mackay: I understand that Peter Swann has given evidence to the committee.

Mr Macintosh: Yes.

James Mackay: I understand that he spoke about the statement and about the precognition. I think that that answers your question.

Mr Macintosh: Okay. So you interviewed Peter Swann, but he was employed by the defence and therefore, by definition, he could not be a part of any conspiracy. I do not understand why there is no reference to that in your report.

Finally, did you use Allan Bayle to identify any fingerprints that were then presented to the officers? Given what has happened so far, I can see that it is probably difficult for you to answer those questions, but if you can comment on any of them I would be grateful.

James Mackay: Sadly, although there has been a leak, the report is not in the public domain and it remains confidential. I am sorry, but I cannot answer any of your questions. I also point out that what has been leaked is the executive summary rather than the report. It is essential to note that.

Mr Macintosh: Indeed.

Convener, may I ask Sir William a question on a different matter?

The Convener: Please make it your final question.

Mr Macintosh: Sir William, when you were head of ACPOS, did you take the decision to suspend the four officers from duty?

Sir William Rae: Yes.

Mr Macintosh: When they were suspended, they were apparently removed from the expert witness list, although they were not officially told that. Was that your decision as well?

Sir William Rae: I have no knowledge of an expert witness list. That does not mean anything to me. At a particular stage in the developments, I decided that it was no longer tenable for the fingerprint officers to remain in their posts while the investigation was continuing. I wrote to the director of the SCRO to that effect and, as a

consequence, the officers were placed on cautionary suspension. As a result, they were not able to operate. That is what happened.

Mr Macintosh: My understanding is that the expert witness list, which is available in the SCRO and elsewhere, is a list of anyone who is available to give evidence in court. The officers have not been allowed to return to full duties since their suspension was lifted because they have not been allowed back on to the expert witness list. I am trying to find out who took the decision to remove them from the list and why no other experts were removed. The print was disputed. Why was it only the four experts who confirmed the identification of the print who were removed? At least six other officers in the SCRO agreed with the identification, and there are several others within the SCRO and elsewhere—

The Convener: Are you in a position to answer that question, Sir William?

Sir William Rae: I have nothing to do with that list. I beg your pardon—I did not understand the question properly, but I now know what Mr Macintosh is referring to. I had no influence over the matter.

Mr Macintosh: Would it have been your successor who made the decision?

Sir William Rae: No. It would not have been anyone from the police service. It would not have been someone from ACPOS, anyway, who was involved in that. It might have been something that was dealt with by the management of the SCRO in consultation with—

The Convener: Moving on.

Mr Macintosh: Convener, for the record, I wonder whether it is possible to pursue that point with the fingerprint service. Within the remit of the inquiry, there are a lot of outstanding issues about the way in which the officers have been treated. They have not been reinstated to the expert witness list. Until recently I thought that ACPOS was the reporting head—

The Convener: We have clarified that ACPOS cannot help us on that point. I am sure that the committee is happy to get it clarified at some point, but we need to be clear about who we should clarify it with. I am happy for you to drop a note to the committee about that and we will consider it.

I want to try to conclude the session. Des McNulty was anxious to get in. Are you still keen to do that?

Des McNulty: Yes.

The Convener: I ask you to be brief because the committee wants to conclude some other issues.

Des McNulty: I wish to confirm my understanding of the task and remit that Mr Mackay and Mr Robertson were given. My understanding is that the Lord Advocate, on receipt of a letter from Mr McKie, asked Mr Gilchrist to undertake an investigation. You, as part of that investigation, were asked by Mr Gilchrist to produce an official police report. Are those the circumstances in which you were asked to undertake your task?

James Mackay: We were first asked by Sir William Rae to conduct an investigation.

Des McNulty: Was that a criminal investigation?

James Mackay: No. Thereafter, a criminal allegation was made, which resulted in the Crown Office appointing Mr Gilchrist. As a result of that, we were asked to report to Mr Gilchrist. It then became a criminal inquiry. Sir William Rae dealt with that very issue in his opening statement.

Des McNulty: I just want to be clear what your remit was for the work that you undertook. You were given a remit, first by Sir William Rae; then, the Lord Advocate asked Mr Gilchrist to conduct an investigation once your work was already in progress. You were then asked to conduct an official police investigation. Is that correct? I just want to be clear about the remit.

Sir William Rae: The process started with the aim of getting to the bottom of the matter—to establish why there was a difference in the identification of fingerprints. The remit of the work that I had commissioned Mr Mackay to undertake did not necessarily change, as I wrote in correspondence at the time. The function was still the same: it was to get to the bottom of the matter. However, Mr Mackay then started reporting to the procurator fiscal, rather than to me. I understood that, on 6 July, the Lord Advocate issued the instruction that Mr Gilchrist would carry out the investigation and that he would be assisted by Mr Mackay for part of it.

Des McNulty: Mr Mackay, did the report that you prepared for Mr Gilchrist for the part of his investigation that you were asked to undertake contain any recommendations? Were you asked to make any recommendations?

James Mackay: By the Crown Office? No.

Des McNulty: You were not asked to make any recommendations in that report.

James Mackay: I should mention that the investigation, as such, was three-pronged. We had the remit from Sir William Rae; we had the criminal aspect; and encapsulated in that criminal aspect was the matter of complaints against the police. We were reporting to three different bodies, as it were: we were reporting to Sir William Rae; we were reporting to the Crown; and we were

reporting to the deputy chief constable of Strathclyde police in relation to complaints against the police. We were not asked to make recommendations.

Des McNulty: I just wanted to be clear about that.

I wish to turn to the procedure relating to the criminal aspect—if we can describe it in that way—as I understand it. Mr Gilchrist received a report from you. He completed the other aspects of his investigation. Presumably, the outcome of that work was passed to the Lord Advocate, and he made the decision about that.

James Mackay: I cannot comment.

Des McNulty: We know that the Lord Advocate made a decision. In this case, the decision was that the four people from the SCRO had no criminal case to answer. That was the declaration. Officially, in legal terms, they are innocent of any of the charges that you investigated. Is that the position?

16:15

James Mackay: Yes.

Des McNulty: Are you content with the verdict?

James Mackay: I cannot comment on that.

Des McNulty: As Sir William Rae responded to Bruce McFee, that is the outcome of the legal process. We have reached the end of a legal process—an investigation—on the basis of which the Lord Advocate has come to a judgment, and that is the end of the matter.

James Mackay: In any police inquiry, there has to be a clear line. Despite what one reads in the press, I submitted the report in October 2000 and, to this day, I have had no contact with the Crown Office.

Des McNulty: I think that that is entirely correct.

James Mackay: That is how it should be.

Des McNulty: That is exactly the point that I am making. The process with which we are involved—

The Convener: This is not an exchange; can we get to questions?

Des McNulty: I just want to be clear about the process with which we are involved. Mr Mackay was asked to do an investigation. The investigation that he conducted made no recommendations. It was received by Mr Gilchrist, who reported to the Lord Advocate. The outcome of that process was that the four fingerprint experts had no case to answer. That is factually the case. Do the witnesses agree?

Scott Robertson: Yes. That is the normal process of any police report.

Margaret Mitchell: I fully appreciate the constraints under which you find yourself today—they are clearly not of your making. Your remit was to conduct an investigation into all the circumstances that resulted in the identification by the SCRO. Will you indicate whether part of that remit was to look at some broad headings—for example, the scene-of-crime investigation? Did you consider the sequence of events leading to the identification?

James Mackay: As I am sure you appreciate, I cannot comment on the report. With the convener's permission, we want to present a couple of general issues about the fingerprint service in Scotland that might be of interest to the committee. However, I am afraid that I cannot speak specifically about the report.

Margaret Mitchell: Your remit was to look into all the circumstances. Can you not even say whether you started your audit trail at the scene of the crime, at the very beginning of the murder investigation?

Scott Robertson: I can say that it was a thorough and in-depth investigation.

James Mackay: Absolutely—a full and comprehensive investigation means just that.

Margaret Mitchell: So we can draw our own conclusions from that.

James Mackay: Yes.

Margaret Mitchell: As part of a full and comprehensive investigation into the identification, would you consider the sufficiency of the evidence presented by the Crown?

James Mackay: A full and comprehensive investigation takes in everything that we know about the issue from the investigation's very inception right through to the day on which we submit the report.

Margaret Mitchell: You made a good point about the audit trail and you pointed the committee to the HOLMES computer system, which might contain all that we need to know.

James Mackay: Yes, but that remains confidential because it was part of the report and part of our criminal inquiry, as such.

Margaret Mitchell: Okay, I understand that. Sir William, can you tell me who would have access to the HOLMES computer system? At the very beginning of an investigation, I presume that a policeman is called to the scene. He has a notebook and, thereafter, all the people who come and go and all the relevant information is recorded in that notebook. Is that correct?

Sir William Rae: That is the textbook approach to such matters.

Margaret Mitchell: Have you ever known such a notebook to disappear?

Sir William Rae: There are retention periods for notebooks that I cannot give you off the top of my head, but there are lots of notebooks out there. I have not been involved in any case in which a notebook has disappeared, but I cannot say that it does not happen.

Margaret Mitchell: Is the notebook information the kind of information that is retained on the HOLMES computer system?

Sir William Rae: It could be.

Margaret Mitchell: Would that have relevance in this case, perhaps?

Sir William Rae: I do not know. In dealing with a normal murder or serious crime investigation—if there is such a thing—the investigating officer will be interested in anything that happened from the start of the case until it is reported to the Crown, as Mr Mackay said. If an officer arrived at the scene of a crime and noted something down that was relevant to the investigation, that would be important for the investigation.

Margaret Mitchell: Ultimately, who would be responsible if a notebook was lost or something untoward happened at the scene of the crime at that initial stage, at which point there is a policeman on the door who has been instructed to ensure that only authorised people gain access?

Sir William Rae: Are you talking about retaining the notebook or losing the notebook?

Margaret Mitchell: I am talking about the consequences of the loss of a notebook coming to light. Who would be responsible for that? Would just the police officer who was at the scene of the crime be held responsible, or would it be his superior or someone even higher than that?

Sir William Rae: I am sorry, but I am not sure what you mean by “responsible”.

Margaret Mitchell: If, for example, something untoward happened and a practice was followed that was not the textbook practice—

Sir William Rae: If something inappropriate occurred and the officer concealed that or did not declare it, that individual would be held accountable.

Margaret Mitchell: So there is no chain of responsibility. If there is a police constable outside the door of the scene of a crime, he is responsible—the responsibility does not go further up the chain of command.

Sir William Rae: We have a discipline system. Ultimately, I have responsibility for everything that happens in the Strathclyde police force. I have

vicarious liability in relation to the actions of all of the officers. I would expect the supervisors—the sergeants, inspectors or whoever—to supervise their staff in such a way as the things that you are talking about do not happen.

Margaret Mitchell: So not only the police constable who is present is in charge of the scene of a crime. Once a murder is discovered, a superior officer would be in charge of the scene and would be responsible for feeding the information into the HOLMES computer system.

Sir William Rae: If it was a serious crime, a senior investigation officer would be appointed fairly quickly. That officer would then take command of the investigation and there would be a process involving the collection of the relevant evidence, which would be fed into the computer system. That would be at the direction of the senior investigating officer.

Margaret Mitchell: Would there have been such a notebook in the McKie case?

Sir William Rae: I have absolutely no idea about notebooks in relation to that case and, anyway, even if I did know, I could not say. Sorry, I am not sure what you are getting at in relation to the notebook.

Margaret Mitchell: I am asking about standard practice. I am trying to establish whether it is standard practice to record who comes in and out of a crime scene and any other relevant details and whether the same procedure was followed in this case.

Sir William Rae: If there is a body or another piece of relevant evidence inside a house or a property, one of the standard practices is to post someone to note who is going in and out of the premises. That is a matter of routine in most serious investigations.

The Convener: Before we close, I should give Mr Mackay and Mr Robertson the opportunity to talk to us about any issues that we have not asked about.

James Mackay: There are two areas that it would be helpful for the committee to know about. First, we were privy to an Interpol European expert group report that was published in 2000. The report, which I am sure could be obtained with ease, identified causes of erroneous identifications. As well as mentioning the need for a strong quality control process, it highlighted issues such as an environment of poor-quality marks, expertise bias, pressure and people's belief that they are right. It also mentioned issues of rank and scientific decisions, which it said were inappropriate, and it talked about culture. That report is in the public domain.

The other aspect that Mr Robertson and I considered was elimination standards, which were a cause of general concern. We were never able to establish what the standard was in terms of points. We have all heard about the 16-point identification standard, but we never found the threshold in respect of eliminations. We felt that the people who look at eliminations must not have the frame of mind that they are just in an assembly line or pushing paper. That is very important. We wanted some form of standard for eliminations because we could never establish what the standard throughout Scotland was. We suggested that the standard for eliminations should be 16 points, but we were told that that would put considerable pressure on bureaux throughout the country. We are not experts, but we considered that that was a general issue.

The Convener: I see that Mike Pringle wants to make a point, but I cannot take any further questions as we do not have time. Is it a point of clarification?

Mike Pringle: I just wanted to ask a question from the section that we have not done much on. I had wanted to ask about the future development of the Scottish fingerprint service.

The Convener: What Mr Mackay has just said is very helpful as it tells us quite a bit. We will examine the report that he mentioned. As usual, we have run out of time before being able to ask whether the committee should consider changes in the service. Should we consider further changes or are the issues that have been mentioned the main recommendations?

James Mackay: I appreciate that we considered the issue some six years ago and that much change has been under way since then. I do not feel confident to speak about anything since that date.

The Convener: I thank all three witnesses for giving evidence. I realise that Mr Mackay and Mr Robertson have had to do their best to answer questions that they felt they were not in a position to answer. I hope that they will appreciate that the committee has tried to construct questions that would not be difficult for them. We genuinely thought that they would be in a position to answer our questions because we noted what they said in their letter to us. I also thank Sir William Rae for answering thoroughly all the questions that he was asked.

James Mackay: Convener, let me say that we appreciate that we have all tried to be as helpful as possible within the constraints. However, I want to mention that there has been a tendency for everyone to use the generic title "the SCRO", whereas the organisation has several sections. Our work focused only on the fingerprint section.

Sadly, over the past six years, only negative comments have been made, which have overshadowed much of the good work that the SCRO as a whole has undertaken. We were impressed by the expertise, integrity and commitment—indeed, the passion and dedication—of fingerprint personnel in Scotland and internationally, who play a vital role in the criminal justice system. The 1997 case has left many victims in its wake—Marion Ross, of course, but also the McKie family. Those in the fingerprint world in Scotland and elsewhere are also victims.

The Convener: Thank you. I suspend the meeting for a few minutes for a comfort break. We will reconvene with our second panel.

16:30

Meeting suspended.

16:42

On resuming—

The Convener: I welcome our second panel of witnesses. You have had a long wait and I apologise. I am afraid that the committee has a reputation for keeping people waiting; it is because of the number of complicated and intricate issues that we want to examine. I am grateful to you both for joining us. I formally welcome James Black, who is a human resource consultant, and Doris Littlejohn, who was chair of the scrutiny committee.

We have a number of questions on your report. I will begin by asking Jim Black to tell us a little about his background and to explain how he came to be appointed in the first instance.

James Black: From 1978 to 1991, I worked in personnel, or human resources—at one time on this very site, with Scottish and Newcastle Breweries. In 1991, I joined what was called United Distillers and worked there for about 10 years before I began to work for myself. Also, when I was at university, I did a bit of personnel work and stuff like that.

When I was at Scottish and Newcastle and then at United Distillers, we occasionally used Mackay Simon, a firm of employment law solicitors in Edinburgh. After I started to work for myself, I got a phone call from Shona Simon—I suppose it must have been in 2001—to say that Mackay Simon was acting for the SCRO and needed an investigation officer. She asked whether I would like to submit my curriculum vitae. The CV went to Kath Ryall, to the four experts and to the management of SCRO, and they agreed that I would be the investigating officer under the ad hoc investigation procedure that they had set up. That is how I became involved.

Stewart Stevenson: What was the scope and remit of your investigation?

16:45

James Black: My background is in business and industry. I had 25 years' experience of helping line managers, mostly, to carry out investigations while keeping an eye on law and case law, and on how case law changed procedures. The scope of my report was very much within those areas. It was the kind of disciplinary investigation that I had been part of within business over the years, working on all aspects from internal discipline—leading to a decision to give somebody a warning, for example—to preparing for tribunals.

The committee will have seen within the report the definitions of misconduct and capability, which are the kind of things that we considered all the time in industry. In the investigation, we looked to see whether, within those definitions, the four people who were initially involved and the other two who became involved had stepped outside the bounds.

Stewart Stevenson: So the two headings were "Are the people capable of doing the job?" and "Was misconduct a part of what happened?"

James Black: Correct.

Stewart Stevenson: Would it be fair to say that your investigation was split into two parts: the first part based on trying to understand the world within which those people were working and the proper processes and standards that they should have been adhering to; the second part based on your speaking directly to the six people who were in the system?

James Black: Yes. I had discussions with, I think, Harry Bell—it is many years ago—and with people from Mackay Simon. One of the employment law solicitors was assigned to give me advice on what I should be doing on the legal side and Harry Bell advised me on what I might like to look at. You will perhaps have seen that there was quite a long appendix of things that Harry Bell spoke about.

I then stood back and asked, from an independent point of view, what I really had to know. My progress from there was to spend some time at the SCRO and to speak to the training officer in particular, but to other people as well, about the processes that were in place at the time of the events. There have obviously been changes since then.

I cannot remember the exact sequence of events, but I then went down to New Scotland Yard and spent the day with the head of the fingerprint bureau there. He introduced me to several of his people and they showed me the

processes that they were involved in and the processes that they had used in the past. Similarly, I went to Manchester and spent the day with the Manchester fingerprint bureau, where mistakes had been made in the past. A mistake that the bureau had made had gone to court and it had found the mistake only afterwards. It had dealt with issues such as that, so it was felt to be a useful place for me to visit.

Stewart Stevenson: You say that, in London, they showed you the processes. What does that mean? Does that mean that they talked you through the processes that they went through, or was there a document that described the processes? How was the balance struck between those two things?

James Black: I arrived, I was welcomed, I had a cup of coffee and then I was farmed out to various fingerprint people in New Scotland Yard. I spent an hour or half an hour sitting with them, seeing how they would receive a fingerprint from the crime scene and what processes they would go through to identify it. I was not shown a document; I was shown how they would do it. I then spent some time discussing that with the then head of New Scotland Yard, who was a Scotsman. We discussed how the processes had come together and how they operated.

Stewart Stevenson: So it was sitting-next-to-Nellie training.

James Black: It was a practical exercise in which I spent time with people who actually did the job and I saw what happened.

Stewart Stevenson: You are a professional manager in HR. When you came into the SCRO in Glasgow, how did what you saw in London compare in terms of consistency of approach and so on?

James Black: You are asking me to say something about 2001. The people were very pleasant and professional, and they were concerned about the situation.

Stewart Stevenson: You are right to pull me up on the date. What I am really seeking to know about is the extent to which you were able to compare the way in which the fingerprint bureau in Glasgow worked in 1997 with the way in which the corresponding bureau in London worked.

James Black: That is a broader question than you realise. At the time, I worked for a whisky company that made very good whisky. Somebody came along and said to us that it would be a good idea to have ISO 9002. Before we had ISO 9002, we had far fewer documents than we had afterwards. As I mentioned in my report, whatever else happened in the fingerprint bureau within the SCRO, at the time, everyone in industry was doing

that kind of thing, if for no other reason than to put "ISO 9002" on their vehicles. Yes, the processes certainly seemed to be more haphazard in Glasgow, but the offices in Manchester and New Scotland Yard, along with the rest of industry, admitted that at one time their processes were a lot more haphazard. We have heard quality management mentioned. At the time, the firm that I worked for put a lot of effort into achieving ISO 9002. That did not mean that our whisky had been any poorer prior to that, but it meant that we had a better grip on how we made and bottled the whisky.

Stewart Stevenson: Let me play back what you said: you said that Glasgow was, at the relevant time, more haphazard than London.

James Black: I did not say that.

Stewart Stevenson: You used that phrase.

James Black: If I said that, I was wrong. I think that I said that my impression was that the processes were more haphazard in both places compared with in 2001, after ISO 9002 came along.

Stewart Stevenson: Those questions were for preparation and to understand the context. Is it the case that the evidence that you gathered on whether there was a lack of capability or misconduct was derived from interviews that you had with six people in the SCRO and no other cases?

James Black: That is correct.

Stewart Stevenson: To be slightly cheeky, was that not the equivalent of saying to someone, "I think you're not capable of doing the job or you're guilty of misconduct—what do you want to say to me?"

James Black: That is cheeky, because it does not recognise—

Stewart Stevenson: How should I ask the question then?

James Black: To be honest, I do not think that it is cheeky at all, but I have 25 years' experience of people denying that they have done things, of considering the facts as they are presented and of making decisions on the balance of probability—that is the evidence standard in the industry—about whether someone is telling the truth. Those decisions are always difficult, but given the facts as they were presented to me, my interpretation of those facts and the experience that I had, I felt that there was no evidence of misconduct or lack of capability among the group, within the definitions that were used in industry.

Stewart Stevenson: So you were an expert who was brought in from outside to test the individuals' personal credibility.

James Black: That is one way of describing the situation.

Stewart Stevenson: Ms Littlejohn, will you tell us a little about the scrutiny committee's role?

Doris Littlejohn: The scrutiny committee had a limited role, which was to consider the report that the investigating officer produced and to decide, on the basis of the facts that he had established in his investigation, whether his recommendations were justified and whether there was any basis for instituting disciplinary proceedings.

Stewart Stevenson: What did you conclude and to whom did you report?

Doris Littlejohn: We concluded unanimously that a thorough investigation had been carried out and that, based on the facts stated as having been found in the report, the recommendation that no disciplinary proceedings should follow was justified. I sent that report to Mike Blair, who was the head of the SCRO.

Mike Pringle: So you at no point considered identifications of fingerprints. You were not involved in that at all.

James Black: I am not an expert in fingerprinting. Similarly, someone who is not an expert in brewing or distilling can advise on procedures—they can ask questions and find out what happened. That is a common role.

Mike Pringle: Following on from Stewart Stevenson's question, you talked about interviewing six people, which is a fairly small number. Did you not think that it would be wise to interview other people in the SCRO fingerprint bureau to find out what they thought?

James Black: No. In industry, disciplinary investigations usually happen very quickly. Six weeks is a long time to wait before an internal disciplinary procedure interview takes place. Within the constraints of the employment tribunal system, if you are found to have delayed an investigation by that length of time, you might find it difficult, so you try to get disciplinary investigations done very quickly.

The investigation was not and was not designed to be a police investigation; it was designed to be a very thorough investigation of the type that takes place within industry to determine a disciplinary outcome of some sort.

Mike Pringle: I had a business that employed 150 people and if I had to carry out a disciplinary investigation because someone had alleged that something had happened, I would not have just gone to one member of staff to ask what they thought. I would have gone to the shop manager and other members of staff to ask them what had

happened and what evidence there was. However, you did not do that.

James Black: Who else could I have gone to about the identification of a fingerprint? I wanted to know whether these people had followed correctly the process as it stood at that time. It seemed to be the case that they had done that; they had signed things and looked at things professionally, and they did not seem to have been under the kind of pressure that was recorded in some of the reports. For example, when one person disagreed with one of the experts, he was not pressured to agree, but he went off to another expert and other people seem to have been brought in. I did not think that other people had anything to add to what had been done. Obviously a lot was going on in the SCRO at that time and I found that other looks had been taken at the fingerprints, but I did not think that I needed to go and ask people whether they agreed that the fingerprint was so-and-so's. I needed to find out what the processes were at the time and if they had been followed. It seemed to me that they had.

Mr McFee: You said that when one person did not agree, they were not pressured but they went on to ask someone else.

James Black: One of the people in the expert team was fairly confident that the fingerprint was what Hugh Macpherson said it was—

Mr McFee: Are you talking about Mr Geddes?

James Black: I cannot remember the chap's name. He was not pressured, but he went to ask another expert to look at it.

Mr McFee: Was that person one of the six people whom you interviewed?

James Black: In the end, I did not interview Mr Geddes.

Mr McFee: How do you know that he was not pressured?

James Black: Because he never had to sign or agree that the fingerprint was what it was claimed to be.

Mr McFee: You told us that you interviewed six people. Then you told us that when someone did not agree with the identification, or however you want to put it, they were not pressured to agree. How do you know that if you did not speak to him?

James Black: What effect would that have had on the identifying of that fingerprint? That person was not asked formally to identify the fingerprint. He went off to find someone else who was able to help.

Mr McFee: You told us that that individual did not come under any pressure to agree. How do you know that if you did not interview him?

James Black: De facto, that person was never asked to carry out an identification of that fingerprint.

Mr McFee: You said that that individual was not pressured. I want to know the basis on which you make that statement.

17:00

James Black: He was never formally asked to identify the fingerprint. Whatever he was asked to do and then felt unable to do—

Mr McFee: I accept that what you say may be true. The issue is the jump that you make in asserting something to be the case when you have not spoken to the individual concerned. That is pertinent to Mr Pringle's question about why you did not speak to other people. I wanted to establish that.

Mike Pringle: I return to the next question that I was going to ask. Your remit was to decide not whether there had been a misidentification, but whether the six people had followed a process. That is all that you were there to decide on. You were not there to decide—as we have heard from the Mulhern report—that there had been a misidentification. We heard from Sir William Rae about his report. He says that there was a misidentification. However, you were not there to consider that issue. You were there to interview a small group of people in order to decide whether they had followed a process.

James Black: That is correct.

The Convener: The committee has tried to establish what process existed at the time. By all accounts, it would appear that there was no written procedure. You referred to a process—can you clarify which process that was?

James Black: There was no written procedure, but my recollection is that people had clear ideas about what they had to do in the SCRO. For example, names were written on the back of photographs and 11 points had to be found for an ident. There was general knowledge about how the system had to operate. Ultimately, the process was governed by the fact that the person might at some point be in court with the identification, so they had to be clear about the identification and they had to know that everyone else who might be in court with them was clear about it. They had to be able to justify the identification if they ever got to court.

The Convener: What was your inquiry looking for? If issues of discipline were involved, were you looking at misconduct?

James Black: I was looking at misconduct and capability. Evidence might have emerged that one

of the experts had signed the back of the form without having looked at it or that one of them had not been qualified to the level at which they could make such a decision. I had to consider all the general matters that might be found in industry. From the conversations that I had with the experts, my impression was that they had looked at the initial mark diligently; they had set aside enough time; they had the expertise, by way of qualifications and length of experience; and they were up to date with the latest expertise in the fingerprint world.

The Convener: In reply to a question from Mr Pringle or Mr McFee—I cannot remember which—you confirmed that you did not interview Alister Geddes. Perhaps it is just your choice of words, but he was asked as the second person in the process to make an identification. That is correct, is it not?

James Black: Yes. My recollection is that Hugh Macpherson went to him because he was a member of his team. Alister Geddes had a general feeling that he agreed, but he did not feel able at that time to give a full identification. Hugh Macpherson then asked Charles Stewart.

Mr McFee: How do you know that, given that you did not speak to the individuals? Those suppositions are always being made.

The Convener: You have pressed Mr Black on that point already.

You concluded that there was no evidence of low performance standards or of disregard for the procedures of the organisation. Can you comment on that?

James Black: I reached that conclusion in the light of the standards that I understood to apply at the time, having been given background information. From my conversations with experts and the two managers who were involved, it seemed to me that the procedures that were in place at the time had been followed.

The Convener: How long did it take you to make that assessment?

James Black: I started my work around November and finally started to write the report at the end of February. As I said, I visited New Scotland Yard and Manchester and spent time with the SCRO training officer.

Mike Pringle: Did you visit any of the other bureaux in Scotland?

James Black: No.

Mike Pringle: Did you not think that it would be necessary to compare what was happening in Glasgow with what was happening in those bureaux? Clearly, comparing what might happen in Manchester and London under a different legal system—

James Black: I visited two very professional fingerprint bureaux. There is no doubt that tensions existed between the fingerprint bureaux in Scotland at the time, of which I was aware, but that did not affect my decision to go to Manchester and New Scotland Yard. The fingerprint bureaux there were big and professional and I thought that seeing what happened in them would be worth while.

Mike Pringle: Despite the fact that you—

The Convener: I have the floor at the moment, Mike.

Mike Pringle: I am sorry.

The Convener: I let you ask two questions, but I will not let you ask a third.

I want to be clear about the evidence that was used. You have probably often heard the culture at the SCRO being discussed. Were you aware of the allegation that has been made at the time?

James Black: Yes.

The Convener: Did you consider the culture of the SCRO as part of your investigation?

James Black: Yes. My experience over the years is that there are often difficulties and tensions in workplaces, but people hope to do the best they can and tensions do not necessarily mean that professional, excellent work cannot be done in workplaces. Indeed, my impression from speaking to experts and others was that part of the tension in the SCRO at the time resulted from the management trying to ensure that identifications were 100 per cent certain. That was the kind of pressure that was on people, rather than pressure to not identify fingerprints.

The Convener: So you saw no evidence that a culture—

James Black: No. All the experts said that Pitt Street—I think that that is how people referred to the organisation—had been a difficult environment and that it did not have the proper desks, lighting and other things that they would have liked, but people nevertheless worked hard to a high professional standard.

The Convener: In your 25 years' experience, have you examined workplaces in which tensions or difficult cultures have existed?

James Black: Yes. I am a human resources professional and I hope that I have helped to make places better. I have worked in plants in which there have been overtime bans, difficulties and disagreements, but people have still got on with their duties in a professional way.

The Convener: Finally, on a more important matter, it has been alleged that there is a culture in

the organisation that means that people almost psychologically agree to identifications. Are you telling the committee that you have experience of workplaces in which there have been such tensions—yes or no?

James Black: Yes. I think that there are tensions in every workplace. With respect to the SCRO, I got the impression from the people to whom I spoke that, despite such tensions, people had a lot of pride in ensuring that work was done as independently as possible. There was pressure on people not in the sense that they necessarily had to agree with others, but because they would have to go to court at some point to justify a decision.

The Convener: So you would say that that was the prevailing culture. Officers would have to justify in court whatever decision they had taken.

James Black: I think that that was always at the back of their minds. It might have been easy to agree with people for the sake of a quiet life, but decisions could come back and bite them if they found themselves in court and could not justify those decisions.

Stewart Stevenson: I want absolutely to bring us back to the fact that we are dealing with an employment situation. I put a proposition to you and seek your response. When you were looking at the question whether misconduct had arisen, you could have established misconduct only if one or more of the individuals who were subject to the process had knowingly deviated from the standards that were required. Is that a fair comment?

James Black: Yes.

Stewart Stevenson: But that was entirely independent of whether the standards were—in the objective sense of the outside world—the correct standards or, indeed, the standards that could deliver the right result.

James Black: Yes. I was not able to comment on whether the standards were appropriate or whatever in the SCRO or the fingerprint bureau in 1997.

Stewart Stevenson: So, in a sense, the misconduct issue is quite a narrow one in employment terms. Misconduct occurs when people deviate from what they are told the job requires, even if what they are told is wrong.

James Black: Yes.

Stewart Stevenson: You established the standards by way of your scrutiny of other bureaux. There was no book against which you could measure them.

James Black: I felt that there was a process from which people had not recklessly or

deliberately deviated. They had not deviated from what would be expected of them at that time.

Stewart Stevenson: But in no sense does the absence of misconduct or, indeed, the absence of lack of competence tell us anything in itself. They could be competent and not guilty of misconduct, but that would tell you nothing about whether, or not, they delivered the right result.

James Black: Yes.

Stewart Stevenson: That is fine. Thank you.

Mike Pringle: I return to the point that I was about to make earlier. You talked about the tensions between the Glasgow fingerprint bureau and the other bureaux in Scotland. Perhaps “tensions” was the wrong word to use; there is now a gulf as wide as the Grand Canyon between them. You also said that there were tensions within the fingerprint bureau in Glasgow. However, despite knowing about those two areas of tensions, you did not see fit to ask the other bureaux in Scotland or anybody else in the SCRO what they thought. You could have done that in trying to identify the tensions.

James Black: But those tensions were away back in 1997.

Mike Pringle: I quite accept that.

James Black: I am not sure what I would have learned from asking about them. I had six weeks in which to do the investigation. I have said that that was quite a long time in employment terms. You might ask why I did not go and speak to the Dutch experts or other people, but I was looking at the processes that had taken place in the SCRO at that time. I was trying to get a working knowledge of what other fingerprint bureaux did. I then had to ask the question whether the experts and the managers who were involved in the SCRO had followed the process. The answer seemed to be yes.

Mike Pringle: Seemed to be?

James Black: I think that you are playing with words. I thought that. What word would you like me to use?

Mike Pringle: I return to the earlier point that you went to see someone in Manchester and someone in London, but you did not—

James Black: That was not going to make me a fingerprint expert.

Mike Pringle: I am not suggesting that it was.

James Black: All that I was doing was getting background information. I was aware that there was some tension, but I do not see what going to any of the other Scottish bureaux would have added to my working knowledge in enabling me to

decide that the SCRO process was A, B, C and that the experts and the managers involved had followed A, B, C. That is what it seems to me.

17:15

Mike Pringle: No tension existed between Glasgow and London or between Glasgow and Manchester. To analyse the tension and what caused it, surely—

James Black: In all honesty, I do not think that the tension had anything to do with the processes in the SCRO and whether people had followed them. I am saying that I was aware of tensions, but I do not see how, if I had found out that Aberdeen did not like B, that would have had any bearing on the fact that doing A, B and C had been agreed as how things would operate in the SCRO or on how those processes had operated in the SCRO.

Margaret Mitchell: Is it fair to say that, as Sir William Rae said in his evidence, the SCRO fingerprint bureau—the Glasgow bureau—had a worldwide reputation? Is it fair to say that as a result of concluding your report, you were satisfied that that reputation was deserved because of the processes, standards and day-to-day working of people in the bureau?

James Black: All that I can say is that the people to whom I spoke in the SCRO fingerprint bureau took great pride in the SCRO and that people in Manchester and at New Scotland Yard held it in great regard. A great deal of upset was felt in New Scotland Yard and Manchester that the situation had arisen.

Margaret Mitchell: Your report shows that when you went to the SCRO, a great deal of stress and resentment was being felt, because although many things were going on in the background, including much media coverage, the experts in question and the two managers had never been given the opportunity to put their case and—worse still—no one had challenged the information that was deeply damaging not only to those people personally, but to the worldwide reputation that had been established over the years.

James Black: How people felt that they had been managed lies outside what I was asked to report on.

Margaret Mitchell: At the beginning of your report, I understood you to refer to a perception among staff—for example, the question was asked:

“What concerns and issues are impacting on your working life at the present time?”

Is that correct? Am I looking at the right document?

James Black: On what page is that question?

Margaret Mitchell: I am looking at the Independent Counselling and Advisory Services facilitators’ recommendations and key issues.

Mr McFee: James Black is not from ICAS.

Margaret Mitchell: He is not. Oh, well—okay.

James Black: I certainly said at the end of my report that I felt that much work had to be done to help the people involved to be rehabilitated into work. They had certainly felt a lot of tension. To an extent, the issue is outside my remit. They saw the three-hour interviews that I held with them as the first opportunity to state their case to somebody and to have it written down.

Margaret Mitchell: Much has been made of the culture. Rather than anything being wrong with procedures, processes or the standard of work, is the culture a possible explanation for the general resentment and stress in the bureau?

James Black: When I met the people involved, all this—the suspension, criminal investigation and disciplinary investigation—was finally taking place. The situation in 1997 and 1998 was completely different.

Mr McFee: On the last page of your report—page 41—is appendix 5, which is entitled “Outline Sequence of Events on Y7 (without chronology)”. You referred to Mr Geddes—or we believe that you meant him—in response to a previous question that I asked you. Will you show me where he features in the outline sequence of events?

James Black: Mr Geddes does not appear in it. In all honesty, the issue seemed minor at that time, because he had not been pressed to make a formal identification.

Mr McFee: So, anybody who was not pressed to make a formal identification is not in the list.

James Black: In terms of the identification of Y7 and the related conduct and capability issues, Mr Geddes had never been asked to make that identification.

Mr McFee: Had he not?

James Black: He had never been asked to formally identify it; he was asked to do some work on it. I am sure that lots of people within the SCRO were asked at various times to do that. My impression is that lots of people said, “I am sorry, I cannot make this”, and the work would move on to somebody else. My impression is that people were not pressed in that way.

Mr McFee: So, Mr Geddes is eliminated from the list for the sake of clarity.

James Black: Mr Geddes did not become part of the formal aspects of the formal identification of Y7.

Mr McFee: Okay. I will leave that stuck to the wall.

How did you identify the process? We know that you went to Manchester and London. Who told you what the process was in Glasgow in 1997, given that it was not written down?

James Black: I had to base certain things on what people told me, as is the case with anything that is not done to, let us say, ISO 9002. The training officer who was in Glasgow at the time would have told me. As I said, I spent time with her—I think that it was a lady—and she took me through what the processes were.

Mr McFee: Can you remember her name?

James Black: No, I cannot. I cannot even remember anything in great detail about fingerprint expertise; it was a number of years—

Mr McFee: I accept that you were looking at a narrow field. You made a judgment that the officers concerned had complied with what I think you called ad hoc procedures. Is that fair?

James Black: Yes.

Mr McFee: You made a judgment, but you do not tell us what the ad hoc procedures were or who told you about them.

James Black: I do. As I said, I spent time with the training officer in the SCRO. That is where I got my information from. I compared that with what was happening in Manchester and London—

Mr McFee: And that was the training officer who was at the SCRO in 1997.

James Black: I think that that is probably the case—

Mr McFee: That is fundamental.

James Black: As it happened a long time ago, I cannot remember any of the detail. Although I cannot give you chapter and verse now, I am confident that, at the time, I had a good idea of what the ad hoc procedures were, and they were probably not dissimilar to those that were eventually written down under ISO 9002. My experience is that, when ISO 9002 came into most businesses, people were formalising—with i's dotted and t's crossed—what they had done fairly well up until then—

Mr McFee: So, you believe that the ISO 9002 process was just a formalised version of what happened in 1997.

James Black: I was making a general point.

Mr McFee: I am trying to deal with specifics.

James Black: I said that, in my experience, when companies with which I had worked introduced ISO 9002, often they were drawing

together documents that existed separately, dotting the i's and crossing the t's, and bringing together everything in a single document.

Mr McFee: But—

James Black: I accept the point that I think you want to make, but I do not have that knowledge—

Mr McFee: You do not know and you cannot tell us categorically today that the ad hoc procedures that you believe were followed were the actual ad hoc procedures that were in place in 1997.

James Black: I carried out an investigation. I am confident that I understood what the procedures were in 1997. I am confident that the experts had followed procedures, even though those procedures were more ad hoc then than they are today.

Mr McFee: You were told that by a training officer who was a lady.

James Black: I am confident that I understood the procedures.

Mr McFee: I am hearing you.

James Black: I am hearing you wanting to get the last word.

Mr McFee: I think that that is given to you.

James Black: I would think that that is probably unusual.

Mr McFee: Oh no; not here.

The Convener: Perhaps I will have the last word.

James Black: Thank you, convener.

The Convener: We just need to be clear. There is an issue about the processes at the time. Your evidence is that you made efforts to scrutinise the process—as far as you were advised and told. You measured the conduct and capability issues against what you knew the process to be.

James Black: Yes.

The Convener: That is what you did. Okay.

Is there anything that you want to add to what you have said so far?

James Black: No.

The Convener: There is just one further point that I would like you to confirm. I know that the process that you have described was agreed by all the parties before you conducted your inquiries. I take it that it is quite unusual to do that in a workplace.

James Black: Yes. My understanding is that, because the SCRO was in the strange position of being partly a Government agency and partly a police organisation, there were issues to do with

the different aspects of police discipline versus employment-law discipline and so forth. On the one hand, what was generally in place was felt not to be appropriate; on the other hand, the case had already begun to have such high publicity that it was felt that something very specific and appropriate had to be put in place.

The Convener: It was designed to be an independent process.

James Black: Yes. My understanding is that it was designed to bring somebody in from outside and then to have other checks and balances behind it so that everything did not fall on one person's shoulders. That is why the scrutiny committee was instated.

The Convener: We have no further questions. I thank James Black and Doris Littlejohn for waiting so long to speak to us. Thank you for your evidence; we are very grateful to you for your contribution.

James Black: Thank you.

Doris Littlejohn: Thank you.

The Convener: We have already agreed to take the next two items in private, subject to our returning to public session to record any decisions.

17:27

Meeting continued in private.

17:58

Meeting continued in public.

The Convener: I reconvene the meeting in public so that we can record a very important decision.

Following our request, the Minister for Justice has agreed to release to the committee copies of the two MacLeod reports and the Michael Pass report. The committee has agreed, in the public interest, to put the reports into the public domain.

The committee had sight of the reports only this morning and therefore wants to take some time to consider their contents. The full contents of the MacLeod reports and the Michael Pass report will be available to everyone tomorrow at 5 pm.

Meeting closed at 17:59

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