

JUSTICE 1 COMMITTEE

Wednesday 6 September 2006

Session 2

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JUSTICE 1 COMMITTEE

28th Meeting 2006, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marilyn 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)
Alex Neil (Central Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Deputy Chief Constable David Mulhern (Scottish Police Services Authority)
William Taylor (Former HM Chief Inspector of Constabulary for Scotland)
Joanne Tierney (Scottish Fingerprint Service)
Mr Jim Wallace (Orkney) (LD) (Former Minister for Justice)

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

Wednesday 6 September 2006

[THE CONVENER *opened the meeting at 10:02*]

Items in Private

The Convener (Pauline McNeill): Good morning and welcome to the 28th meeting in 2006 of the Justice 1 Committee. All members are present. I welcome to the committee once again Jim Fraser, our adviser to the inquiry, Catriona Hardman and Rob Marr, our legal advisers, and Ken Macintosh MSP, who has been joining our meetings. We might be joined later by Des McNulty and Alex Neil.

I ask members as usual to check that their mobile phones are switched off, which is helpful for broadcasting.

Do members agree to consider agenda items 3 to 5 in private? Item 3 is consideration of the committee's approach to the budget process 2006-07, item 4 is consideration of whether to extend the contract of the committee's adviser on the Criminal Proceedings etc (Reform) (Scotland) Bill and item 5 is consideration of whether to accept written evidence received after the deadline for the receipt of written submissions to the Scottish Criminal Record Office inquiry.

Members indicated agreement.

Scottish Criminal Record Office

10:04

The Convener: This morning's meeting is our seventh oral session on the inquiry into the Scottish Criminal Record Office. At previous meetings I have made a statement about the terms of the inquiry and I will repeat those remarks before we begin today. The inquiry is a parliamentary one, 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 questions truthfully. Although I have the power to require witnesses to give their evidence under oath, I do not intend to use that power at this stage. However, I put it on the record that, if the committee considers that witnesses are not giving us their full co-operation or answering our questions truthfully, the committee can recall them. In those circumstances, I will use my powers under the standing orders as authorised by section 26 of the Scotland Act 1998 to require those witnesses to give evidence under oath.

The overriding aim of the inquiry must be to help to restore public confidence in the standard of fingerprint evidence in Scotland, and I expect that the report that we produce at the end of the inquiry will contribute to that process.

Our first witness is William Taylor, who is a former HM chief inspector of constabulary for Scotland. I welcome him and thank him for coming to the meeting.

William Taylor (Former HM Chief Inspector of Constabulary for Scotland): Thank you.

The Convener: We have approximately one hour for questions—of which we have a number—to Mr Taylor, which is never long enough. In giving us the information that we need, it should be remembered that it is always helpful to us if answers are kept as brief as possible.

Marlyn Glen (North East Scotland) (Lab): Good morning, Mr Taylor. Will you outline for the committee the circumstances in which HM inspectorate of constabulary for Scotland was approached to bring forward the primary inspection of the SCRO fingerprint bureau from December to May 2000?

William Taylor: Yes. The process is reflected in the report that was produced. I was asked to bring forward the inspection and to separate the bureau from the SCRO as a whole because of particular concern about identification in one case. It was thought timely to look at the bureau as a whole,

and I therefore agreed that it would be proper to bring forward the inspection. Obviously, we had a timetable, which meant that there had to be some reorganisation, but I was content to bring forward the inspection process.

Marlyn Glen: Will you explain in detail what a primary inspection involves and how you and your team carried out the inspection process?

William Taylor: The process was an inspection and not an investigation. It is important to remember the differences between the two. We would look at an organisation rather than individuals, and at areas of performance and potential improvement rather than liability and culpability. I am talking about a generic process that has developed over time and will continue to develop.

At that time, the general approach involved creating protocols or questions, which would go to all the stakeholders and parties involved. We would receive information, which would be analysed, and research would be done on the activity in question—in this case, on the fingerprint processes in the bureau. Then, there would be a series of interviews with people that would normally use a questionnaire base. Verbatim answers would not be used—the aim was to gather generic evidence about activities and how people do things. Such evidence would be gathered over a period of time by a lead staff officer who would be supported by other people.

I would direct the process throughout, but would become personally involved once the evidence had been gathered. In the case in question, I had two days of interviews with various people. We would look at the results of the process and the evidence that we had gathered in the interviews, reach a view on what we had found and how any necessary improvements might be made, and a judgment would be made. At the end of the day, I was responsible for reaching a judgment on what we had found and what would need to be done to secure improvements. Ordinarily, we would provide in draft form details of the judgments that had been made so that people could check for factual accuracy, although they would not, of course, be allowed to change the views that I had expressed unless there was an argued case. We would then publish our findings. As a result of the interest that was generated in part by the case that we are discussing, we made public some emerging findings, which was not the norm.

Mike Pringle (Edinburgh South) (LD): May I ask—

The Convener: I am sorry, Mike, but Margaret Mitchell will ask the next question.

Mike Pringle: I am sorry.

Margaret Mitchell (Central Scotland) (Con): I want to question Mr Taylor more about the timing of the process. I understand that Donald Dewar announced in February 2000 that Mr Taylor would undertake the inspection in response to public concern about the case. Is that correct?

William Taylor: The decision about what to inspect and when was mine. That is the nature of the independent inspection process. I was approached by the SCRO executive committee to bringing forward the inspection, and I had to take a view on whether I could do it. The decision about what to inspect and when was mine. A programme was set out, because everybody had to fit into it, but I decided what to do.

Margaret Mitchell: I want to be clear. Is it correct that Donald Dewar announced in February 2000 that you would undertake the inspection?

William Taylor: You have an advantage on me as I do not have the detail. If you can refer me to something, I will happily look into it.

Margaret Mitchell: When were you first aware that you would be asked to carry out the role?

William Taylor: I cannot give you a specific date based on the history that I have here.

Margaret Mitchell: Can you give me an approximate date?

William Taylor: I think that we began the work in April and continued into May, although we may have begun it a little earlier in March. The report does not say when we started the process; it reflects only what we did and when. I am unable to give you the date.

Margaret Mitchell: It is an important point, and I hope that you can come back to the committee with the information. The term “public concern” concerns me, given that “Frontline Scotland” had screened a public report and come to a fairly definite conclusion in January 2000 and, as I understand it, the announcement was made in February 2000. The information is germane to our examination of the circumstances of and background to your report.

William Taylor: I may be able to help on that, but I may not. The simple reason is that I am relying on two things: the report and background material. First, if the information is in the report, I can talk to it. Secondly, the material that supports the report was retained only for a certain period. In this case, one file that may have contained the information—I do not know—was destroyed as part of a routine process. What I have left to me is my report and some information in boxes back at HMIC. However, the correspondence file was destroyed five years after the inquiry was closed, so I have not been able to go back to the file and

check the detail. I may be able to help you, but only if the information exists. It is not in my head.

Margaret Mitchell: Perhaps you could consult some diaries or something to trigger your memory, because the information would be helpful.

You also mentioned that there was a departure from the normal process in announcing the interim findings in the June before the inquiry was completed.

William Taylor: Before the report was published?

Margaret Mitchell: Yes.

William Taylor: Yes, that is correct.

Margaret Mitchell: Why was that?

William Taylor: There were two reasons. First, I had taken the view that the organisation was not fully efficient and effective, and it was important to move the process on. Secondly, there was an interest, because I had been asked to examine a particular aspect of the inspection, which was the re-look by two people at the marks in the McKie case. Having done that, it was important to publish the results as quickly as possible.

Margaret Mitchell: May I suggest that, with hindsight, you might not have published an interim report, given the significance and huge consequences of your findings? Would it not have been more prudent to wait until the final report was published rather than—as it seems to me—bow to public interest and come out with interim findings on such an important issue?

William Taylor: No, I do not agree with that. The judgment to be made in my role as an independent inspector was based on public interest, transparency and openness. Having taken the view that the organisation was at the time not fully efficient and effective, I think that it was the proper action to take.

Margaret Mitchell: Where is the balance in your mind between public interest and ensuring that you have covered everything? Is it not better to be completely happy with a report and present it formally rather than in an announcement to the public before it is signed off properly?

William Taylor: No, that is not an appropriate description. I would not have announced the emerging findings if I had not been satisfied that they were proper findings. It is simply that the publication of the report would have taken a bit longer, because we would have needed to pull it together to get it printed. I was entirely happy with the findings. I would not have announced something if I had not been satisfied that I had reviewed it and arrived at a judgment on it. The view had not changed—it was simply that the findings were announced.

10:15

Margaret Mitchell: It is a matter of perception, protocol, etiquette and treating everyone with the consideration that they deserve. I am afraid that publishing the interim findings in the way in which you have described looks like a knee-jerk reaction under pressure.

William Taylor: I do not believe that to be the case. The question of treating people fairly is fundamental to someone in my role, because I depend on support and co-operation. Before the emerging findings were given out publicly, the information was properly shared with those who had a proper interest in it. There was no question of my being in any sense disrespectful to anyone.

Mike Pringle: You talk about who makes decisions. Who made or influenced the decision to include an examination of the Shirley McKie case in your inspection?

William Taylor: I was asked whether I might do so as part of the inspection process. For several reasons, I had concerns about the suggestion. It was part of the process for us to consider a number of cases, to see how matters were handled. Overall, we looked at 24 cases, which was perfectly normal. In this case, we went the extra mile by having an expert examine the mark. It was my view that that would not necessarily add a great deal to the inspection process. The debate involved my making it clear that I would examine the case in order to inform the inspection process. It was not an investigation and it had no criminal, civil or disciplinary implications—that was not my role. The purpose of my looking at the case was simply to add value to the inspection. For the purposes of the inspection, the result of that examination was not necessarily the issue—the issue for me was the effectiveness of the organisation.

Mike Pringle: So you did not make the decision to examine the mark. Who told you that they wanted you to do that?

William Taylor: The decision to examine the mark was mine. The executive committee raised the issue, I listened to the arguments about whether I could examine the mark as part of the inspection process, and I was content to arrange that. I made clear to everyone what the implications of the decision were. It did not add enormous value for me. It was not made in pursuit of a criminal or disciplinary inquiry and it had nothing to do with civil litigation. It was all about helping to improve the efficacy of the organisation. That is where it added value for me.

Mike Pringle: You have just said that, ultimately, you made the decision. However, you were carrying out an inspection. During that process, did someone from outside say to you that

it would be a good idea for you to examine the mark? Who influenced you to make that decision?

William Taylor: The information is included in the report. The SCRO executive committee asked me whether I would have the mark reviewed as part of the investigation. Having considered the matter, I said that I would do that.

Mike Pringle: I wanted that point to be made on the record. Who made the decision to select Arie Zeelenberg and Torger Rudrud to examine the mark?

William Taylor: That was me. I am speaking from memory, as I suspect that the file that contains the relevant letters is not available to me. I began by telephoning some colleagues in Europe in order to get someone to help. That was the process.

Mike Pringle: So you did not immediately think, "I will contact those two people." You sought advice about who you could bring in as independent experts.

William Taylor: I did not have to seek advice, because when I was the Metropolitan police's assistant commissioner I was also the United Kingdom representative on Interpol and the vice-president for Europe, which meant that I was chair for Europe and ran Interpol business for Europe. My work in that role included examination of how DNA and fingerprints were dealt with throughout Europe. I set up a number of committees to examine the processes for the recruitment and retention of fingerprint experts, because I was anxious to ensure that there was some standardisation throughout Europe, so I knew quite a bit about the European scene.

Mike Pringle: You knew where to go.

William Taylor: Quite so.

Mike Pringle: When was it decided that the findings of the two people in question would be published? Was that decision taken at the same time as the interim decision?

William Taylor: Oh, yes. Those two decisions were linked. It is clear that there was interest in the results of that work. Because it was an inspection and not an investigation, it seemed appropriate and right that that element should be part of the whole. The key thing for me was that my emerging findings were about the efficacy of the relevant part of the SCRO organisation. We wanted to move forward and to ensure that continuous improvement was made.

Mike Pringle: My final question is quite a big one. What lessons do you believe must be learned from the McKie case?

William Taylor: I must step back from that and repeat what I have said. From my perspective—

given my role and approach—I was interested in the totality of the way in which the SCRO bureau and the force bureaux operated. The McKie case was but one case. In my view, the lessons that need to be learned are those that were reflected in the recommendations. In the interests of the criminal justice system as a whole and of fingerprint evidence in Scotland and beyond, it is important that those improvements are secured. The individual case will always be an individual case. For me, it is simply part of the whole picture. My reservations about the organisation's efficiency and effectiveness at the time were based on the generic inquiries and statements that I have mentioned. I felt that it was important to move the bureau as a whole forward and, for me, the McKie case was but one small part of that.

The Convener: I want to ask a few questions about the management and culture of the SCRO. Let us begin with the management issues. You will know that John McLean, the former director of the SCRO, conducted a survey of staff employed in the service, the results of which showed that staff felt that there was an absence of meaningful and visible support by senior management, particularly in relation to the criticism that the bureau had faced about its handling of the mark at the centre of the McKie case. At the time of your inspection, did you encounter similar disenchantment with senior management among staff?

William Taylor: Forgive me if it seems as if I am avoiding the question—I hope that I am not—but I was examining the overall management and not the performance of individual managers. That is my first point.

The report reflects the fact that I was concerned about the organisation as a whole. I was concerned about its governance, the way in which decisions could be made, its introspection and how someone who looked at it from the outside could query aspects of its independence. I was also concerned about the way in which it set about operating, its standards and the transparency of those standards. That was my focus. I hope that that is a helpful response to your question.

The Convener: I want to drill down into those issues. You examined the management as a whole and identified that governance issues existed. What do you mean by that?

William Taylor: In a sense, the organisation was run by committee. The Scottish Executive and the chief constables were involved and the Convention of Scottish Local Authorities represented the police boards. There was heavy oversight.

Moving downward, I considered the rich mix between management and fingerprint expertise and whether the two sat comfortably together. I

had to consider whether resources were being managed well and how they were deployed; whether the demand was managed properly and how it could be controlled; and how the whole situation could be improved to tackle issues such as the backlog. The whole picture of how the service was managed and operated led me to the view about the need for change in the overall structure and about how it might be improved.

The Convener: Did you pick up issues about stress levels and low morale among the staff?

William Taylor: There were one or two indicators on that. In those days, what we called sickness or absence levels were high and persistent. People were clearly working under pressure because of the backlog. Decisions had to be made about leaving work on one side to give priority to other work. Decisions were made about what might or might not be weeded out and when. A series of issues affected the ability to be efficient and to produce the best results. We were interested in outcomes, so that the—

The Convener: In your view, was that situation a normal one that might be found in any work environment in the criminal justice system that is under pressure, or were you alarmed by what you saw? How would you pitch it?

William Taylor: Most people work in an environment in which they are busy and under pressure. Sometimes, the demands exceed the capacity to deal with them. However, my concerns were that the issues that I identified were persistent, long standing and had been identified previously—several reports before mine had pointed out what needed to be done, but the situation had not moved forward with the acceleration that I would have expected and anticipated. In my view, the organisation was not at that point efficient and effective, which was a matter for all those who were involved in the management of the process, from the top to the bottom.

The Convener: You said that you were concerned about the way in which decisions were made and independence. I want to hear more about that. To set the context, I will describe my interest. In the past few months, the committee has heard from various witnesses a concern about the culture that may have existed in the SCRO. One of the experts to whom you referred, Mr Zeelenberg, has written a paper on that and has given evidence to the committee that the alleged misidentification occurred as a result of the ingrained culture in the organisation, which must be transformed. You are one of the few witnesses who spent time in the SCRO and who could corroborate Mr Zeelenberg's evidence. Did you witness the kind of culture to which Mr Zeelenberg referred?

William Taylor: I have not seen Mr Zeelenberg's evidence, although I guess that you have summarised part of it.

The Convener: You say that you have worked with Interpol. Are you familiar with the concept that I am talking about?

William Taylor: Which concept?

The Convener: The idea that, in the fingerprint service in Scotland—and, I am sure, in other countries—a culture exists in which experienced people tend to take decisions that are relatively unchallenged and there is an environment in which junior people may not feel that they can disagree with the experienced people. Let us establish whether you are familiar with that type of culture.

William Taylor: You are asking a general question. I have been familiar with the fingerprint area for many years. First, what is indicative of that, of course, is that there was a time-based approach to expertise—

The Convener: I am sorry. I do not have time for this. For me, this is the nub of your evidence. Are you or are you not familiar with the concept that I am talking about?

William Taylor: Just to be clear, if we are talking about what the culture is in that organisation, the report clearly sets out the concerns about the fact that the processes were not as good as they should have been, that the way in which people were made experts was not as good as it should have been, and that the quality assurance processes were not as good as they should have been.

10:30

The Convener: Right, but if they were not as good as they should have been, is that the same as saying that there was an ingrained cultural problem in the organisation that led to some mistakes?

William Taylor: There is a big jump between saying that there were cultural problems and saying that they led to a mistake. That kind of connection comes down to specifics. First, if we are talking about a situation in which seniority played an important part, that is significant, because that is part of the way in which people have been trained and brought through. Secondly, if we are talking about not having proper standards in place and not having an organised way of approaching things, it is possible that people could be asked to do something in a way that is not in accordance with their processes and standards, and that would be unacceptable, because you need those.

If you say that, as was the case at the SCRO, the environment was not conducive to a better working culture, because of the ergonomics, how people did things and the room that they were in, you can conclude that those are all things that contributed to the lack of efficiency and effectiveness that I talked about. The culture was certainly introverted. It was clear that people often took the view that doing things the way they were done there was the best way, although there may have been good practice elsewhere that was not being shared. There was a bit of all of that, but there were a lot of good things as well. There was a lot of good expertise and a lot of good results, and people were working hard in the circumstances. Nevertheless, the environment was not one that I thought was conducive to being efficient and effective.

The Convener: How did you establish that? If the culture that you are talking about existed, how did you establish that, whom did you talk to and what did you see?

William Taylor: I would not want to pin the culture on one thing in the way that you are suggesting. There is no one word that answers the question in that sense. I need you to look at the situation as a whole. The way we did it was twofold. First, we asked some systematic questions about how people did things and what procedures were in place. We asked to see the rules, regulations and processes, and we examined them against good practice elsewhere and benchmarked them against other rules, regulations and processes in other environments. Then we asked people, "What do you do?" There was a whole series of questions; up to 80 questions were asked of the people whom we saw. We used their answers to do some analysis and take a view. It was a thorough, on-going process.

The Convener: So it is through the questions that you asked staff that you were able to establish the conclusions that you have talked about.

William Taylor: Two things are needed. First, you need documentation, so that you can analyse and decide on the best questions to ask. Secondly, as a result of that early analysis, and looking at research elsewhere and the environment elsewhere, you then pose a number of questions throughout the organisation. For example, if the policy is X, you check out the policy with the most senior person, but then you want to check that that policy is actually being implemented in practice by the most junior. The questions are designed to do that and to track through to find out whether what is supposed to be happening is actually happening. That involves face-to-face questioning.

The Convener: Is it your view, based on what you saw in the inspection, that less experienced

experts were unable to challenge the view of more experienced experts?

William Taylor: The environment did not necessarily allow that to happen. There should be processes in place that clearly do not have regard to individuals and personalities. They should be process driven to the extent that there is a standard and an operating mechanism that allows that perfectly proper challenge to be made. Fingerprint identification is an art, not a science per se, so there need to be processes in place that allow people to go back and say not only what they did, but how and why they did it. I know that you do not want me to go into this, but the difference between the numeric and the non-numeric standards is, in part, in the processes. We want people to say not only what they did, but why and how they did it. That requires definite and clear processes that can be audited, which provides certainty. In that situation, what is protected is the activity and not the individual. That is important.

The Convener: I know that there is a bigger picture. A main theme that runs through the inquiry is the culture that is alleged to exist. Among other things, I am trying to establish whether you are concerned that, because of process or personalities, less experienced experts in the SCRO could not fully challenge more experienced experts' views. Is that one of your concerns?

William Taylor: I can certainly endorse that concern vis-à-vis processes. Personalities are a question of the individuals who are concerned. I repeat that inspection concerns process, not individuals. I was not asked, and it was not my role, to check out personalities and how things worked between people, other than the most generic point of how people manage, what their leadership traits are, how they involve people, how they consult, how they ensure that people are happy and how they value people, all of which we cover as part of the inspection process. The distinction that I am making is about individuals—one against the other.

The Convener: I understand. Thank you.

Stewart Stevenson (Banff and Buchan) (SNP): Did you establish whether the processes that you saw during your inspection were different from those that prevailed in 1997, when the McKie fingerprint was harvested and commented on? Would you care to say anything about changes in that period?

William Taylor: I am not sure whether I can help you with much detail, if you are looking for detail. We considered how the 24 cases were ordered, marked up, dealt with and presented. After that, we analysed whether good practice and consistency applied. That is why we return in the

report to the need to have standards and to apply them throughout Scotland. You may recall that others had worked on an eight-force standard, but it had not come to fruition. The report is populated by the need to have standards to check against and to have the audit trail. I do not think that comparing what happened in 1997 with what was happening at the time of the inspection was part of the process.

Stewart Stevenson: Over what period did the 24 cases that formed the core of your review take place? Did they occur within a short period or did the oldest go back some distance, which would therefore give us insight into the evolution of the standards and processes?

William Taylor: I cannot say now. The 24 cases all have dates on them, so I am sure that the information is in a box at HMIC, but I do not have the dates to hand.

Stewart Stevenson: I am sure that you will see that I am trying to establish—to the extent that we can—whether the processes and procedures at the time of your inspection had improved from those that operated in 1997, when the case that has caused us to be here today started. It is important for us to try to understand that.

William Taylor: I am not sure whether I can give a definitive answer. However, I hope that it will help to say that the history, which is reflected in the report, was of people making improvements throughout. People were determined to do that, because reviews had taken place and reports had been issued, such as the Hamilton review. The intention and desire to make the difference and to move forward were clear. That was evident during the inspection process, but my concern was that action was not being taken expeditiously enough and needed to be accelerated and that some unresolved matters needed to be resolved. One of the major benefits of the inspection was to cause that to happen. There was an acceleration of activity, which was needed. Many of the issues had already been identified, both by external review and by the fingerprint bureau.

Stewart Stevenson: Are you also saying that, although people wished to make and were making improvements, the process of improvement was not being conducted in a systematic and controlled way?

William Taylor: In part I am saying that. The decisions that needed to be taken to move the situation forward had not been taken. Some of the things that needed to be done had been put on hold. For example, the look at the eight forces and the need to have an eight-force standard had been put on hold pending my inspection. I felt that that could have moved on in conjunction with my inspection, but nevertheless it was put on hold. That is a judgment that someone must make.

Stewart Stevenson: Was the situation—I characterise it for you to challenge—one in which the most junior people were the most enthusiastic about improving the processes, and management at a more senior level was less engaged and less able to drive forward the process of change? Is that what you are saying?

William Taylor: No. That would be too much of a simplification. There is no doubt that there was a genuine general determination to move things forward. There was an acceptance—even if it was only in relation to the backlog, the way they did things and so on—that what they were doing and the position that they were in was unacceptable. However, there is certainly sometimes reluctance to change. That is exemplified by the issue of the change from a numeric standard to a non-numeric standard—some people believed that that would be an inappropriate change. The fact that there was reluctance to change in some areas does not, however, mean that the determination to improve did not exist in others. That is shown by the fact that an internal report had suggested a series of improvements, some of which I picked up, endorsed and took forward.

Stewart Stevenson: From what you say, there appears to have been consensus that certain changes should happen. At the time of your inspection, was an individual responsible for making those changes or were they not happening because they did not sit at a single desk?

William Taylor: As I said, the inspection process is not designed to deal specifically with individuals, which is why no individual's name appears in our reports.

Stewart Stevenson: I hasten to add that I am not asking you to identify any individuals, but am merely asking whether that was the character of the difficulty.

William Taylor: Moving things forward was probably more of a corporate management issue about how the operation was set up, who had the power to do things and how things were managed by committee. Those were the kind of issues that were being taken forward. For example, as part of the process I took ownership of the understanding of the Hamilton report. It had gone in one direction and made suggestions, but they were thwarted. Some of my suggestions had already been made in that report.

Stewart Stevenson: I will focus on a specific issue that comes out of the McKie case. Did your investigations help you to understand whether the same standards were applied for elimination marks as for suspect marks?

William Taylor: The processes were different in different places at different times. One of the issues that comes out of the report is the need to

ensure that the processes are documented, standardised, clear and unequivocal. There is no doubt that the generic evidence that came out is that those things were done differently at different times by different people. I could not accept that from an inspection point of view.

Stewart Stevenson: That is what you were saying when you carried out your inspection after a period of change and improvement, so there is no material likelihood that the situation would have been better three years earlier, in 1997.

William Taylor: The weaknesses were still there in 2000 when we produced the report. They were clearly of sufficient concern to me that I did not give the fingerprint bureau the tick for efficiency and effectiveness. Improvements had been made. People were trying to improve matters and had identified many of the difficulties, but the process was not moving forward with the alacrity with which I felt it should.

10:45

Stewart Stevenson: Let me just put a full stop on that. In 2007, you did not have evidence that the weaknesses that you saw then had arisen subsequent to 1997. You had no evidence to suggest that those weaknesses had not also been present in 1997.

William Taylor: You said 2007, but I am sure that you meant 2000.

Stewart Stevenson: I meant 2000. We all look forward.

William Taylor: Quite. The whole purpose of the inspection process is to take things forward by highlighting to people an area that needs improvement, even if it is improving.

To answer the question, the issue was that, because we did not make an absolute comparison between activity in 1997 and activity in 2000, I could not be specific. However, what I said, and repeat, is that many of the issues had already been identified on paper and had been discussed and moved forward in part. However, taken collectively, not enough had been done and it had not been done quickly enough. As a consequence, I did not feel able to say that the bureau was as effective and efficient as it should have been.

Stewart Stevenson: In particular, what did you learn of the processes that came into play when there was disagreement among experts in the bureau?

William Taylor: Again, there was a need for a consistent process to deal with that. It was clear to me that things perhaps depended too much on the when, where and who rather than on procedures that were set in stone. When people hit a buffer—

for whatever reason—they need to be able to say, “This is the way we do things.” I was not confident that those procedures were set out with sufficient clarity that they would survive a change of personnel or change of circumstances. They were not sufficiently clear that I could have confidence that there would be a proper audit trail every time. Hence, I recommended that that should be made clear and unequivocal.

That kind of bulwark or protection is required for the people who work in an environment that involves a matter of art, opinion and expertise. One needs to be able to manage through the issues so that the process is not seen as an individual thing. When, as was the case in both the SCRO and force bureaux, one is dealing with small groups of people who are rubbing shoulders every day—of whom some may be more senior, some more junior, some quite new and some perhaps older—one needs to rely on processes and procedures to give people confidence that disagreements will not become issues between individuals, but issues concerning the activity.

Stewart Stevenson: Finally, did you form a view on the adequacy of training, and the level of ability that bureau staff achieved, in the presentation of evidence in court?

William Taylor: I will deal with that in two parts.

On training, it was clear that a lot of training activity went on and that people had been devoted to it. Indeed, quality assurance was suffering because training took priority—90 per cent of the quality assurance person's time was taken up with training. What gave rise to query and concern, which was eventually reflected in the report, was that a lot of training was internal. The training had been internalised probably for practical reasons and because people took the view that they knew more about the Scottish system than others and so on. Nevertheless, if people are not exposed to external training, that is a weakness. As a consequence, although competency testing was there in part, it was not advanced enough or good enough. More could be done. A lot was being done but, in my view, it was not enough.

Stewart Stevenson: Was the training focused? My specific question was on training for the presentation of conclusions and evidence in court, which is one particular competency.

William Taylor: That was my second point, which I was about to deal with, but I thank you for the reminder.

Two points arose concerning the presentation of evidence in court. First, people do not often go to court. People could become quite expert in their own environment without ever giving evidence in court because, for the most part, fingerprint evidence goes unchallenged in court. That

happens for a variety of reasons, one of which is that challenges are normally sorted out in advance of the court process. Therefore, people do not often present evidence in court.

Secondly, the training had been unchanged and had not been updated for many years. It was a matter of, "We go along, we do this and we present this." The weakness of doing things in that way—and this is the nub of the issue—is that evidence is not given in a "This is how we did it" or, "This is why we did it" way. There is no need for people to explain in detail or justify the way in which they did things. Really and truly, people would go to court and say, "I am an expert. This is what I have done and this is my view." The training that people had in presentational skills was inadequate; it did not deal with the need for them to be able to explain their evidence.

Stewart Stevenson: From your broader experience, is that category of expert witness different to other categories of expert witness in that they were not being challenged on the processes and reasoning that drew them to their conclusions?

William Taylor: I guess that the immediate answer to the question is yes. The slightly qualified answer is that, over a period of time, the expert witness has become more likely to be challenged than previously. That is due in part to two things: the way in which the criminal justice system has developed and the general challenge in our society to expertise and professionalism, but fingerprint experts were probably behind that ballgame of change.

Mr Bruce McFee (West of Scotland) (SNP): My question relates to the presentation of evidence in court and the conclusions that you reached. Did you read the transcript of the McKie trial?

William Taylor: Did I personally?

Mr McFee: Yes.

William Taylor: I hesitate because I cannot give a categorical answer. We had the information as part of our inspection process. It was looked at, analysed and fed in as part of the process. I cannot be absolutely sure that I read the whole thing in detail. I am sure that I would have looked at parts of it.

Mr McFee: So you would be aware of the responses that the individual experts made to questions.

William Taylor: I am sure that that would have been part of our evidence gathering and of our looking at the whole case, but I would have to go back and check the detail.

Mr McFee: Did other aspects of the information that you received from the trial give you cause for concern?

William Taylor: The question is too specific. I would have to go back and check the detail. From memory, I cannot say whether any such issues emerged. As I said, we looked at the evidence as part of the whole in order to see what we could learn overall in a generic sense.

Mr McFee: Perhaps that could be the subject of an exchange of letters or whatever, convener.

The Convener: Okay.

William Taylor: If you provide me with some of the information, I will look at it and try to give a view. I doubt whether I have a record anywhere that says that I looked at this or that bit of paper and that this is what I learned. I doubt that that record exists. However, in a more general sense, that would have been the process by which we looked at something, analysed it and so forth. Of course, at the end of the day, although the decisions and judgments are mine, the report is a team effort.

Mrs Mary Mulligan (Linlithgow) (Lab): As part of the committee's remit, we are looking not only at what went on in the past but at what will happen in future. I am sure that you are aware that on 4 September Scotland introduced the non-numeric standard, which fingerprint experts will use from now on. I am aware that you were very involved in the introduction of that standard in England and Wales. What are the advantages of the non-numeric standard as opposed to that which was used previously?

William Taylor: First, I am pleased that it has been decided that this is the direction of travel. The essential difference is that with the non-numeric standard we are talking about an opinion. The system is one in which the person looks at the evidence and comes up with a view. In effect, it makes it very clear that the expert has to justify their position by going through the detail. They have to describe the way in which they looked at the mark—if a mark is involved—why they did things in the way that they did them and how they came to their conclusions. In my view, using the non-numeric standard makes the evidence very much clearer and stronger.

There is little intellectual case for saying that 16 points of comparison are better than 12. That does two things. People probably prevent themselves from giving evidence if it could either acquit or convict someone, clear them from an investigation or involve them in it. The system limits what people can do. In reality, people will look at a mark and say that, if it does not have 16 points, it is not evidential in court; yet if it has 12, they will think that the person is a principal suspect. The change will bring into reality what was already going on. The non-numeric standard gives some proper intellectual, professional underpinning to the expert evidence.

Mrs Mulligan: To follow on from the question that my colleague, Stewart Stevenson, put to you, do you think that the adoption of the non-numeric standard will help with the presentation of evidence, should the expert witness be called to court?

William Taylor: I think that it helps all the way through from the earliest point of receiving evidence, whether it be a mark or whatever else. The handling of that evidence is predicated on what must be done at the end. I think that the switch to the non-numeric standard will bring improvements throughout. It will ensure that there are standards and processes, and that the audit trail is there. It requires a much greater discipline than the 16-point procedure. Under that system, once 16 points have been identified, there is no need to explain or to go any further.

The change of process marks an enormous step forward. It is right. It is in the best interests of criminal justice as a whole. It is in the best interests of the public in terms of outcomes in detecting crime. It is in the best interests of experts, who will be able to show their expertise and defend themselves against challenge.

Mrs Mulligan: Clearly, you are very supportive of the move.

William Taylor: Does it show?

Mrs Mulligan: Absolutely. Are there any disadvantages or risks with the new system?

William Taylor: Yes, of course. There is always the unintended consequence. We do not know how things might pan out, although we have experience of other environments elsewhere in the world where the non-numeric system has operated for some time. On occasions, the challenge might be such that individuals could be bruised by the process. It is also a challenge that some people will find their environment a rather more taxing one in which to work. If a case goes before a court, there will be much more debate about it. That may open up the chance for some of the ultimate decisions to be different.

There are risks with the system, but I think that they are heavily outweighed by the advantages. I think that it is the direction of travel for expertise as a whole, which will be brought more into the regime of general expertise. That is one of the things that, from my perspective, fingerprint examination has had to do: to move itself much more under the general forensic expert umbrella.

Mr McFee: Your 2000 report identified a number of key concerns regarding the SCRO fingerprint bureau. I include in those the concern outlined in paragraph 5.9.1, in which you described a top-down verification process that was not good practice, and the concern in paragraph 6.1.1 about quality assurance. There, you stated:

"90% of the quality assurance officer's time was still being spent on training."

In 2004, the follow-up HMIC inspection effectively said that all the concerns that you had raised had been largely addressed, and it issued a clean bill of health. Have you had the opportunity to look at the 2004 report? Do you think that it is possible that all the concerns that you had raised in your report could have been addressed in such a short period?

William Taylor: I think that the answers to both those questions lie outside my knowledge. I did not follow through on the matter following my retirement. I have not read the 2004 report. In order to come to a judgment about it, I would not only have to read the report, but would also have to look at the supporting evidence. I do not think that I am able to give you a constructive answer.

Mr McFee: You have not read the 2004 report—okay. Have you read the action plan for excellence?

William Taylor: The clerk sent me a copy. I have had one glance at it—I have looked at it once—and I have it here with me.

Mr McFee: I will not ask a question on the basis of your having had a glance at it, so I will stop at that.

William Taylor: I have read it through once. Of course, I am not the owner of it, but if I can help the committee in some way, I will try to.

Mr McFee: I do not know how good your glance was, but I ask whether the measures that you see identified in the action plan address the problems that you encountered during your inspection. Perhaps my question is a little deep if you have only looked through the plan.

11:00

William Taylor: Again, I am being cautious and careful because the plan is not my work and I am not in a position to take a view or make a judgment on it. I will say two things that I hope will be helpful. All the work post the 2000 inspection was designed to try to deal with those issues and I am grateful that people gave them enough attention to the extent that they were able to say later that they had been dealt with or discharged. That must be a positive message. The action plan for excellence features on all the right areas. My marginal reservation—this is an uninformed marginal reservation—is that although some of the issues in the action plan have headed in the right direction, it says that more is yet to be done.

Mr McFee: Do you find it strange that the action plan for excellence says that more has to be done, but two years ago, HMIC effectively gave the fingerprint service a clean bill of health?

William Taylor: You would have to take each recommendation or suggestion of mine, look and see what evidence HMIC decided had been discharged post my time, and then examine that against a particular part of the action plan. For example, although I think that 80 per cent of people voluntarily signed up to become members of the forensic regulated environment, the ambition is for 100 per cent of people to sign up. It seems to me that much has been achieved, a little more is yet to be done, but I would certainly support the 100 per cent aim. That is what I meant by my earlier comment.

The Convener: Apologies to Margaret Mitchell, who had an interest in the non-numeric fingerprint standard. I invite her to speak about that now.

Margaret Mitchell: William Taylor was heavily involved in the introduction of the non-numeric standard in England and Wales. When was that?

William Taylor: It took a long time, but I think that it started around 1995-96. It took us quite a bit of time to get things moving because it was not simply a case of the police service deciding to adopt the new standard; it was obviously a complicated process. It took a considerable time to get to where we had to be.

Margaret Mitchell: So for a number of years before you came to look at the procedures in the Scottish fingerprint bureaux, you were heavily involved with the standard. It is probably fair to say that you said you were completely convinced that using the non-numeric standard was the best way to look at fingerprints.

William Taylor: Yes. I was the chairman of what was called the crime committee of the chief police officers of England and Wales. Part of my portfolio of responsibility was to drive things forward in the criminal policy arena. I took the view then—as did all my colleagues when the proposal eventually went to them—that adopting the non-numeric standard was the proper way forward.

Margaret Mitchell: When you came to look at the procedures within the bureaux, is it fair to say that you had a mindset or were even predisposed to think that they would not be as effective and efficient because you had already signed up to an alternative way of looking at fingerprints?

William Taylor: No. I would be saddened if you thought that that might be the case. There are two points. First, openness of mind is important for an inspector. We need to gather the information, do the analysis and consider the evidence. Secondly, I certainly had a view on whether there should be a non-numeric or numeric standard; my view was that the non-numeric standard was the preferred approach. The 16-point standard is an ambiguous standard and, as I said, it has no real intellectual underpinning.

As regards the way in which people went about things, I was perfectly open-minded about the processes and asked how they did the work and arrived at their conclusions. I do not think that the two things are difficult.

Margaret Mitchell: How many of the problems that were experienced—it is clear that there were problems because of the huge backlog of work—came from understaffing, a lack of resources and the fact that the staff were under pressure from the introduction of the automatic fingerprint recognition system and Livescan?

William Taylor: The report reflects, as I believed, that the service was understaffed and underresourced in a variety of ways. The problems ranged all the way from the number of people employed—of course, it takes time to gain expertise—through to the conditions in which they were working. A range of factors contributed to my making the judgment that they could not be effective and efficient. No one issue led me to take that view.

Margaret Mitchell: Was their record reasonable? Were disputes about how they had identified prints commonplace? Was that an issue, or did the McKie case make it one?

William Taylor: We looked at processes overall. As the report says, I was not satisfied then that the processes were sufficiently robust, were properly documented and were of a standard that would allow me to say that I had confidence that certain things were done in respect of each elimination or identification. The processes were not as well bedded in as they might have been. That led me to say that improvements needed to be made.

Margaret Mitchell: Is it the case that, as far as you knew, there had been no disputes in other fingerprint cases? Did the failure to have robust processes and procedures in place cause the problem to arise once, twice, on a number of occasions or often?

William Taylor: It is unusual for disputes about fingerprints to get to the point of a trial, because a number of checks are made before that. It is unusual for there to be disputes, but it is not wholly uncommon for experts to disagree or, after someone has said one thing, for another person to check a mark and to find something else. The processes that are in place would normally pick up that disagreement and allow a decision to be made at a much earlier point about how to manage the mark or what to do with it. Only occasionally do such cases pop out into the public arena in court proceedings. There are only a few such cases up and down the country and across the world.

Margaret Mitchell: My final question is about court proceedings. To what extent is the onus on

the prosecution—the fiscal—to get from an expert witness the information that they require for evidence? We have turned the issue around and have said that, under a non-numeric standard, expert witnesses will have more opportunity to explain issues, but to what extent is the onus on the prosecution service to be efficient and to ensure that, when an expert witness is on the stand, it knows what information it wants to elicit? Even a non-numeric standard will not help if the prosecution is not doing its job properly, as the information may not come out.

William Taylor: It is important for all those who are involved in the criminal justice process, including the prosecution, to have awareness and understanding. One reason why it takes so much time to move to a non-numeric standard is that we need to take everyone who is involved in the process with us. People need training so that they can understand the difference between a previous allegedly absolute 16-point standard and a non-numeric standard. It takes time to move to such a standard because we must ensure that lawyers, prosecutors, police investigators and those who are involved in defence understand it fully. If we expose the issue, they will reach a common understanding that allows them to do their job. They must be fully up to speed.

The Convener: I will end this evidence-taking session in a few minutes.

Alex Neil (Central Scotland) (SNP): I have two quick questions. In February 2000, 14 experts from Lothian and Borders police wrote to the Minister for Justice making a series of complaints about the SCRO and the quality of its work. Was that information passed on to you by the Minister for Justice? As part of your inspection, did you interview those 14 experts?

William Taylor: I will deal with the second part of the question first. Our interviews included people from Lothian and Borders police as part of the whole. We spoke to more than 76 people. For a specific answer to your question, you would need to check whether the people to whom you refer were on the list.

I do not recall whether that letter was passed to me. I would have to consider whether we had a letter of that kind and whether it was passed to me. I would have to go back to find out whether it was in the box or the original file, which is no longer with us. I cannot answer that question specifically.

Alex Neil: Perhaps, convener, we could write to the Justice Department to find out whether the letter was passed to the inspection team. If not, that would be serious.

My second point is—

William Taylor: I apologise for talking over you, but I want to make the point that inspections are about gathering generic bits and pieces of evidence. I cannot say specifically whether we saw that letter.

Alex Neil: Given that the complaints were from fellow experts in Lothian and Borders police, one would hope that they were taken seriously by the Executive and the SCRO and in your inspection.

William Taylor: Let me put the matter at a higher level, which may help you. I understood that there were differences of view. I was not concerned about specific differences of view from individuals, because I was carrying out an inspection, not an investigation. However, the fact that there were differences of view was well known to me and that fact itself was enough. We know that differences of view on the matter arise not only in Scotland, but in other parts of the world. That point was well made to me, which, for my purposes, was probably enough.

The Convener: Ken Macintosh has the next question.

Alex Neil: Sorry, convener, but I have a second question.

The Convener: You will have to be brief.

Alex Neil: William Taylor hinted earlier that, before the inspection, the inspectorate had already drawn attention in its reports to problems at the SCRO, but that nothing had been done. About six months after the report, in December 2000, he revisited the SCRO and at that point declared it effective and efficient. Had all the problems been sorted out in the intervening six months?

William Taylor: No. That may be a misunderstanding. The inspection in 2000, which was focused on the fingerprint bureau, was unusual. Normally, the bureau would have been inspected as part of the SCRO as a whole but, in this case, the microscope was put on the bureau. As we all know, when we put the microscope on something, we find out what is going on. The previous reports that helped to inform the inspection process, to which I alluded, included the Hamilton report, a consultancy report and internal reviews. Those were part of the evidence that we gathered that contributed to the judgments that I made for the 2000 report.

When I went back in December, that was for an inspection of the SCRO as a whole. The comments in the report to which Mr Neil referred related to the totality of the organisation. That report talks about the progress that was being made on the fingerprint bureau per se, through the responses of the Executive and the Association of Chief Police Officers in Scotland. However, the comment about the SCRO being effective and

efficient in December 2004 was about the organisation as a whole. That is the distinction.

Alex Neil: Unfortunately, I do not have time to pursue that matter, but I would have loved to do so.

William Taylor: I would be happy to do that.

Mr Kenneth Macintosh (Eastwood) (Lab): When you appointed Mr Zeelenberg as one of the experts for the inquiry, were you aware that he had already viewed the material in the case and taken a view on it?

William Taylor: I am sure that he told me that, although I am not sure at what stage. I cannot be precise about the time. As I said, I got the two experts by going to chief constables in Europe. Even the international fingerprint world is a small environment. I imagine that many people, particularly those who headed up bureaux in various countries, would be familiar with the arguments and the case. A lot of the information was available and discussed internationally. I would not have been surprised that he knew about the case.

Mr Macintosh: What do you think about the fact that, when Mr Zeelenberg considered the matter, he brought his own material with him, rather than use the original evidence?

William Taylor: We provided all the original material and an environment in Fife constabulary in which he could examine it in the way in which he chose to examine it. He provided us with his expertise and his independence—he was independent because he had no involvement in the case. I was interested in what he did, how he approached matters and what conclusions he came to. That was his contribution. As I have said, I was carrying out an inspection, not an investigation. If I had been conducting a criminal or a civil investigation, I would have done things differently, but my two experts—in fact, there were three of them—were there to meet the needs of my inspection.

11:15

Mr Macintosh: All the officers at the SCRO co-operated fully with the inquiry. Early on in the process, when you said that you intended to bring in independent experts, the SCRO officers said that that was fine, but raised concerns about the prospect of any Dutch experts being brought in because of the comparisons that had been done by Evett and Williams, which showed that Dutch experts were not competent to judge fingerprints to the same standard that British experts were. Given that it had been brought to your attention that the people at the core of the inquiry were highly concerned about the use of a Dutch

expert—although they had never met Mr Zeelenberg—why did you press ahead to employ a Dutch independent expert?

William Taylor: There are two points to make. First, I was conducting an inspection, not an inquiry, so it was for me to decide who I would bring in, once I had checked out who was available and had spoken to the people I knew about their expertise.

Secondly, the Evett and Williams review was produced at a particular point in time, so I am not sure that it has much relevance to the expertise of Dutch experts in general or to that of the individual who became involved in the case. Different views exist on the work of Evett and Williams and how it was done. What I took from that was that more rigour needed to be applied to the totality of the situation. I did not share the concerns of the SCRO officers, nor should I have done.

Mr Macintosh: I do not know whether it is possible to establish this, but I think that Mr Zeelenberg was one of the Dutch experts who took part in Evett's study. In his evidence, Mr Zeelenberg seemed to suggest that he was the expert who failed to make a correct identification, whereas we know that the two SCRO experts who took part in the study identified everything correctly.

My concern is that even though the SCRO officers raised concerns about the appointment of Dutch experts, you went ahead to appoint such an expert. Given that the suitability of Dutch experts to play an independent role had been questioned, would it not have been more sensible to go elsewhere—to England, America or Germany, for example?

William Taylor: I wish to make two points, the first of which relates to what you mean by "independent". To me, an independent expert was someone who had no previous involvement in the case. Would I have been able to find a fingerprint expert who knew nothing about the McKie case, given what was available on the internet? I do not know, because I did not look. For the purposes of my inspection, I was interested in someone who had expert status, who was probably running an organisation in their country and who had independence of mind and the capacity to think things through and explain how they had produced a result. From my perspective, I was entirely satisfied with what the experts did.

I turn to what I assume is the point behind your question. If I had been asked to conduct a criminal investigation, which might have had consequences for any experts who took part in it—they might have had to go into a court of law, for example—I would certainly have approached things differently. However, when I asked for help,

I made it clear to the people concerned that I sought help for the purposes of an inspection, that I wanted assistance with examining and understanding processes and that they would not be required to act as investigators. At that point in time, I said that they would not be required to give evidence and would not become embroiled in litigation because they would be helping me with my inspection. Later on, I was asked whether the experts' reports, which obviously came to me, could be released. I released them to others only after the experts and their bosses had agreed to that.

Mr Macintosh: I have a tiny separate question.

The Convener: You need to make it extremely brief.

Mr Macintosh: What contact did Mr Taylor have with Mr McKie and his family throughout the inspection?

William Taylor: As part of our care for everybody with a stakeholder interest, we maintained a contact. That was principally done through my lead staff officer, and the contact was to keep them up to date on what was happening. For example, it was no surprise to them that I was producing emerging findings.

Mr Macintosh: So you had constant contact with the McKie family throughout an independent inspection.

William Taylor: No, constant is not the word. They were made aware of what was happening—that is, when we started our inspection and when we came to the emerging findings. It was not constant contact, but awareness consistent with stakeholder interest and fairness that we would provide for anybody.

Des McNulty (Clydebank and Milngavie) (Lab): I have two questions. You went to foreign experts outside the UK, presumably to maximise the possibility of an independent judgment—I take it that that was the reason. However, Mr Zeelenberg has told us that he had already taken a view in connection with the identification, something which would make his participation completely invalid in any investigation, as you have indicated. Were you aware that Mr Zeelenberg had a view before he became involved in the process? It is an important issue.

William Taylor: Yes it is, and I am perfectly happy to deal with it.

I cannot tell you precisely the date and time that I knew that Mr Zeelenberg had looked at some of the material. Had I been conducting an inquiry or investigation, it would have been an issue, but it was an inspection, and I was looking for different things, including how things were done. I went outside the country to broaden my awareness of

practice. I knew about the practice in England and Wales, and it was part of the inspection process to look abroad.

Des McNulty: It was an inspection, not an investigation. In that context, why were the McKies kept informed of the process? I can see why that might be legitimate and appropriate in an investigation, but I cannot see why it was done in an inspection.

William Taylor: You used the phrase “kept informed”. I am talking about the key activities: the fact that we were doing the inspection, which was clear and had been announced, and the point in time when we would issue our results. That is what they were kept up to date about. It was a simple courtesy.

Des McNulty: I am sorry: that would be a courtesy in an investigation, but I do not see its appropriateness if, as you claim, it was an inspection. Constitutionally, I do not see the logic of the response.

William Taylor: You may not.

Des McNulty: I do not think that anybody would.

William Taylor: We may disagree about that, but I thought that it was common courtesy. It was an important case with a lot of public interest, and we tried to be courteous.

Des McNulty: I have one final question and will ask it courteously. You said that it was an inspection rather than an investigation, but it was obviously used afterwards to make a judgment on the case. In fact, it formed a significant basis of other people's actions. When passing on the outcome of your inspection report to others, what caveats did you include to say that the basis on which you had gathered evidence would not satisfy the requirements of an investigation and was merely meeting the standards that you identified of an inspection?

William Taylor: That was clarified at the outset, not at the end. At the outset, I made it clear to anybody who needed to know that it was an inspection process, that I was not involved in an inquiry or investigation, and that my processes were designed for inspection. That was clear. What others chose to do with the results of the inspection is different.

Des McNulty: Why was Mr Rae, who was on your board, so confused about the outcome? He seemed to think that it was an investigatory process.

The Convener: Please do not answer that, Mr Taylor. I gave Des McNulty as much time as possible. However, he has raised a subject that the committee might want to clarify with you before we move on.

Mrs Mulligan: Mr Taylor, you referred to your contact with the McKies, which you said was a formality. Was the draft report of the interim findings made available to them?

William Taylor: I personally never saw the McKies. My lead staff officer dealt with that. I think that they were advised of the outcome of the examination on the day that it was announced. I would need to check, but I think that they were told on the morning of 22 June that I was issuing the emerging findings that day. That was what they were apprised of. It was a simple courtesy to tell them that something would be made public and that they should be aware of it.

Mrs Mulligan: So that was the draft report prior to—

William Taylor: No, they would not have had a copy of the draft report. There was no draft report at that stage; there were emerging findings. I may even have given a press conference, but I cannot remember without reference to the documentation of that time. The McKies were informed as a courtesy. It was a courtesy call.

The Convener: What you are telling the committee is that the McKie family were not given the actual report but that, as a courtesy, they were told that there was about to be an announcement about emerging findings. That is your evidence.

William Taylor: Yes. The principal stakeholders, who were those with a management interest in the issue, were told on 21 June. We called a meeting—from memory, I think that it was held at Tulliallan—which the key stakeholders attended and at which I announced the emerging findings of my report. Then, on 22 June, those emerging findings were made public.

Mr McFee: Can you clarify that it was on that date that the then Minister for Justice, Mr Wallace, who will give evidence next, made the statement to Parliament? Perhaps we should ask him whether it was the same date.

William Taylor: There will be a record of the dates on which I did things.

Mr McFee: So it was on the morning of the same day as the emerging findings were made public that the minister made the statement.

William Taylor: That is my recollection, but I can check that.

The Convener: I will have to close the session at that. Thank you very much for your evidence this morning. I know that you have been as frank and open with us as possible. I think that we may need to come back to you for clarification on some issues, if you do not mind.

William Taylor: That will be absolutely fine.

The Convener: I am sure that there will be such a need. I thank you for appearing before the committee this morning. I am sure that we will be in touch.

William Taylor: If I have the information, I am content for you to have it. I will try to answer any questions that you have.

Alex Neil: Convener, reference was made during the questioning to Lord Johnston's direction to the jury on 14 May 1999. I point out that a copy of that charge to the jury has not been circulated to the committee and I suggest that it should be because it contains relevant information.

Mr McFee: I asked the clerk about a matter relating to that this morning. I think the suggestion was that we probably have received a copy of the direction.

The Convener: Members have made a couple of suggestions about further information that the committee may need to complete its inquiry and I am sure that there will be others, which we can discuss. We can always add suggestions about further information that we think that we will need. We will have ample opportunity to do that.

I now welcome our colleague Jim Wallace MSP to the meeting. He is here as the former Minister for Justice. Thank you for coming along this morning to tell the committee about your involvement in this issue as Minister for Justice. Margaret Mitchell will start the questioning.

Margaret Mitchell: Good morning, Mr Wallace. When did you first get involved with the Shirley McKie case in your role as Minister for Justice?

Mr Jim Wallace (Orkney) (LD) (Former Minister for Justice): I think that it was probably when it was flagged up to me that there was going to be a "Frontline Scotland" programme highlighting the case. I was probably aware before then that the case had had some profile, but my recollection is that the first time that I was alerted to the case in my capacity as Minister for Justice was when I was told that the programme was about to be broadcast.

11:30

Margaret Mitchell: From that point, were you involved in the case at any time before you made your statement to the Parliament in June 2000?

Mr Wallace: Yes. I received briefings and minutes and was made aware that, following the programme, there had been a meeting of the SCRO executive committee, which I think followed a meeting of the relevant ACPOS committee. The SCRO executive committee was obviously concerned about the content of the programme. It may fill in some gaps in Mr Taylor's evidence if I

say that I understand that it was as a result of the SCRO executive committee meeting in early February that he was approached and asked to take forward an investigation into, or rather an inspection of, the fingerprint bureau—it might even have been thought of as an investigation. As a full inspection of the SCRO was included in Mr Taylor's schedule for later in the year, I think that it was thought that he would bring forward the inspection of the fingerprint bureau and that the Shirley McKie case would be specifically considered. Clearly, discussions then took place between the SCRO executive and Mr Taylor. I think that it has been mentioned that the First Minister indicated what was going to happen during First Minister's question time in late February. In early March, I was certainly minuted about the change in procedure and about the fact that the fingerprint bureau was being taken out of the process and examined earlier and that issues relating to Ms McKie's case would be specifically considered.

Margaret Mitchell: "Frontline Scotland" highlighted the matter, and it was discussed in the public domain, but were you concerned that things were being brought forward almost as a knee-jerk reaction as opposed to saying, "Let things take their course—we're going to look at the matter in December anyway"? Were you concerned about perceptions?

Mr Wallace: I do not think that I was concerned that things were being rushed forward. The "Frontline Scotland" programme raised concerns and they were in the public domain. It would have been difficult for me to sustain answers to questions—not least from people such as Mike Russell—until the following December, when Mr Taylor was to undertake his inspection of the SCRO as a whole.

It should be remembered that I was not the only person who was concerned; chief constables, who are level-headed people, were also concerned. The impetus came from them via the SCRO executive. There was public concern. An inspection was going to take place in the normal course of events, but it was right to accelerate the fingerprint dimension of that inspection. It was the right thing to do in hindsight, but it was also widely welcomed at the time.

Margaret Mitchell: I am pursuing your role as Minister for Justice. I understand that the impetus came from ACPOS, which decided to bring things forward, and you think in hindsight that doing so was fine. It is clear that you had to be fair to all parties.

Mr Wallace: Yes.

Margaret Mitchell: That brings me to the statement that you chose to make to the

Parliament in June 2000, in which you commented on what we now know were emerging findings, as opposed to the completed report, which was produced in 2001. Will you comment on that?

Mr Wallace: Certainly. On the evening of 21 June, I was advised that HM chief inspector of constabulary for Scotland, Mr Taylor, had emerging findings that included his independent experts' claim that the fingerprints had been misidentified and were not those of Shirley McKie. I think that Mr Taylor briefed me and that I said to the Parliament that I had received a briefing from him.

That evening, I met Sir Roy Cameron, who was then the chief constable of Lothian and Borders police, but for the relevant purposes was the secretary of ACPOS. I was told that Mr Taylor intended to make his findings public the following day and that he had met chief constables at Tulliallan, I think. In my statement to Parliament, I said:

"I was informed yesterday by Mr Taylor that the inspectorate's work is now complete and that he expects the report on his inspection to be published in six to eight weeks' time. However, the inspection included findings in relation to the Shirley McKie case and, having regard to the position of Shirley McKie and her family, who have pressed for an independent inquiry, and to the public interest in this case, Mr Taylor felt that he should announce the findings that were emerging from the inspection as soon as he was in a position to do so. They were announced earlier this morning."—[*Official Report*, 22 June 2000; Vol 7, c 681.]

I was briefed that the inspection was complete and that although the report was not in a position to be published, it was important to put emerging findings in the public domain. I endorsed that view. My view was that if the findings were to go into the public domain, it was important that I should make a statement to Parliament. I recollect that that was widely thought to be the right thing to do.

Margaret Mitchell: You mentioned emerging findings and when the report would be completed, but you went a little further: you apologised for the distress.

Mr Wallace: Yes. I said that I very much regretted the distress that had been caused to Shirley McKie and I do not retract that one iota. I had a battle with officials on how far I should go, because there is a knee-jerk reaction when litigation is in the air—it is a bit like the idea that if a driver bumps someone with their car, the last thing that they should say is that they are sorry. I disagreed with that reaction.

Without accepting any liability on the part of the SCRO, ministers or Strathclyde police, I thought that this lady had had a pretty rough time. She had stood trial in the High Court and been acquitted. The judge in that case had apologised for what she had gone through. When I reported to

Parliament that the chief inspector of constabulary had reported to me the findings of his inspection and particularly his finding that the fingerprint marks were not Shirley McKie's, I did not think that it was amiss to express regret, for very human reasons. Politicians are entitled to be human from time to time and to say that, if people feel that they have been through the mill, we regret that.

Margaret Mitchell: I put it to you that it would have been more prudent to wait for the report's publication. By all means, you should have made known the emerging findings and the fact that the report was complete, but you should have waited to consider the findings in detail. It is clear that your sympathies lie with the McKies and you have made it clear that you thought that the girl had had a rough time. On the basis of an interim report, you were convinced that a misidentification had occurred. The report was not complete, because it had not been published. You used the term "emerging findings". You took it upon yourself to say to Parliament not only that interim findings had been reached, but that you were perfectly happy with that and that you apologised to everyone. Do you think, in hindsight—

Mr Wallace: You are distorting what I said. I did not say that I was perfectly happy with that and that I apologised to everyone. If we are going to deal with the matter, you must be accurate about what I said and not put words into my mouth.

Margaret Mitchell: I take back what I said. You thought that Shirley McKie had had a rough time and you had great sympathy with her. You recognised the distress that she had experienced. Did you accept that a misidentification had occurred? Were you not going to look further at the Taylor report or question the experts to decide whether you were perfectly happy with how everything was handled? You were the Minister for Justice. I presume that you considered all parties in the scenario and ensured that you were fair to everyone.

Mr Wallace: I was the Minister for Justice. There was a chief inspector of constabulary who was appointed for his experience, expertise and independence. As the committee heard today, his expertise and experience were considerable. If the chief inspector of constabulary tells the Minister for Justice that he commissioned independent experts to examine the matter and that he is satisfied that a misidentification occurred, it is not the minister's job to second-guess his independent chief inspector of constabulary. If we went down that road, we would come to a grinding halt.

At that point, I had been in office for only about nine months. I had worked with Bill Taylor and found him to be a man of integrity and of considerable ability. He talked frankly and did not waffle around the issues. He briefed me on what

he had found and on other emerging findings and I thought that it was my duty to speak to Parliament. I would be in a much more difficult position today if I had hidden that information from Parliament for three or four months.

Margaret Mitchell: I do not think that it was a matter of hiding that information. However, you could have said, "I am in receipt of this information and will take time to consider it." Did you make your announcement to Parliament the same day that you received the findings?

Mr Wallace: I made the announcement at lunch time the following day.

Margaret Mitchell: Without seeing the published report.

Mr Wallace: That same morning, the chief inspector of constabulary announced what had happened. I also announced to Parliament that as part of the process arrangements had been made to brief the McKie family and the SCRO staff.

The Convener: While we are on the subject of your statement to Parliament, I wonder whether you could be crystal clear about what you were apologising for. After all, other politicians have said other things about this case. You have told Margaret Mitchell about the stress that you believed Shirley McKie had endured. Were you also apologising for the misidentification?

Mr Wallace: Please bear with me—I am trying to find the part in my statement in which I actually used those words.

I said:

"Mr Russell asks about an apology. I am sure that everyone in the Parliament recognises that this case has caused great distress to Shirley McKie and her family. I very much regret that and hope that the action we have taken to set up the inspector's inquiry and to announce the key finding at the earliest possible moment will reassure Shirley McKie and her family of our good intention to see that effective action is taken to remedy deficiencies in the present system."—[*Official Report*, 22 June 2000; Vol 7, c 684.]

I expressed regret that the case had caused Ms McKie and her family great distress. I did not in any way admit any liability on anyone's part and was very careful not to use words that could have been interpreted in that way.

The Convener: In his written statement to the committee, Iain McKie has said that in June 2000 you apologised and confirmed that the print was not Shirley McKie's. Is that correct?

Mr Wallace: I have just repeated the terms on which I made an apology. Moreover, I accepted what I had been told by the chief inspector of constabulary, which was that there had been a misidentification of Shirley McKie's print. To be honest, that is the basis on which I subsequently

treated the case. Having received advice from our independent chief inspector of constabulary—actually, the Queen's independent chief inspector of constabulary—we proceeded on that basis.

The Convener: We will come to that other issue. At the moment, I want to ensure that we are clear about your statement to Parliament.

Mr McFee: Mr Wallace, you made your statement after the perjury trial resulted in a not guilty verdict and after you had been advised by Mr Taylor that there had been a misidentification. Given that Mr Taylor was making a statement, if you had just said nothing or had simply said, "Nae comment," you might have been accused of hiding from the issue.

The Convener: Mr Wallace has answered that question already.

Mr Wallace: I am pretty sure that what you have suggested, Mr McFee, would have happened. As you might recall, at that time, I was also answering First Minister's questions and I suspect that I might have been asked a question by Mike Russell, if by no one else.

The Convener: I want to move on. In November 2001, Shirley McKie served proceedings against the Scottish Executive, which were settled earlier this year. We understand that initially the Executive had argued that the action should be dismissed, suggesting that as witnesses in a criminal prosecution the SCRO fingerprint experts had absolute immunity. However, that argument was subsequently rejected by Lord Wheatley. Can you tell the committee anything about that?

Mr Wallace: I cannot answer your specific legal point on whether the individual officers had absolute immunity. However, I can tell the committee that I was certainly aware that there might be some dubiety over who the proper defender would be in such an action. Indeed, I think that parliamentary questions were asked about it. I believe that the original action was served on five or six defenders, including the Scottish ministers. I took the view that as, if there were to be a settlement or a finding in favour of the pursuer, the award of damages would come from the public purse, it would not be right for us to dance on the head of a legal pin—I think that that was the phrase that I used—over who was or was not the proper defender. I therefore took the view that Scottish ministers should be the defenders for the purposes of the action.

11:45

The Convener: Whose decision was it to settle the McKie case?

Mr Wallace: Ultimately, it was the present Cabinet or the present Executive. I was no longer

a minister when the decision was made. It would be fair to say that I always thought that settlement was probably the right course of action ultimately. I could elaborate on that in answer to further questions.

The Convener: So the decision to settle was taken later.

Mr Wallace: The decision to settle was taken after I ceased to be a minister.

The Convener: Did you have any discussions with officials about the 2001 legal proceedings? Were you briefed?

Mr Wallace: Yes. As I have indicated, I do not think that we would have been thanked for having lengthy legal discussions about who was an employer and so on. As the money was going to come from the public purse, I thought it appropriate that Scottish ministers should put themselves in the front line as defenders.

There was also an issue about what potential liability there could be. Interestingly enough, although there had been inspections, the ACPOS presidential review, the inquiry that had been done for the Crown Office and a separate SCRO executive disciplinary investigation, no work had been done for Scottish ministers. I was involved in what might be described as the commissioning of what came to be the MacLeod report—at the time, we did not know that it would be conducted by Mr MacLeod—for the purposes of securing independent advice for the Executive. We needed our advice to be able to make a judgment on the issue of settlement. As lawyers know, a mistake might be made in a situation, but the people who made it can be found to have exercised the judgment and skill that would be exercised by a person who was conducting their professional duties reasonably. We were in the dark, which is why we thought that it was appropriate that the Scottish ministers ensured that an independent investigation was done for them. That was ultimately done by Mr MacLeod.

The Convener: I am just trying to understand the parts of the process that leads to settlement. I am interested in establishing your part in that. Was it your view that the Executive should settle this case?

Mr Wallace: I practise law and, in most cases, my view is that, if you can settle before you get to the door of the court, that is usually better all around. I did not think that lengthy, drawn-out proceedings were in anybody's interest.

I agreed that what became the MacLeod report should be commissioned. I was no longer the Minister for Justice when that work was done and I do not believe that I ever saw the MacLeod report.

The Convener: I should emphasise that we understand that you were involved at the beginning and that another minister—whom we will question next week—was involved afterwards. I am simply trying to understand what was in your head when you were the minister. I have not seen the legal documents, but I understand that the case against the Executive set out to prove that there was some malicious behaviour that resulted in a misidentification. Would that be your characterisation of the legal proceedings?

Mr Wallace: I do not think that I ever saw the closed record in the case until some time later, when I was cited as a witness. My recollection is that some of the advice that I got from the solicitors was that—with all due respect to my fellow members of the Faculty of Advocates who drafted them—the pleadings were a bit of a mish-mash and that, although there was some suggestion of malice, the case was not particularly clearly pled one way or another. I will probably have fallen foul of the dean of faculty by saying that.

The specific charge, to put it that way, was not particularly clear. That was another reason why it was important that we got independent advice.

The Convener: So when you were involved, it was not clear to you that the basis of the legal proceedings was that there was malicious intent.

Mr Wallace: It was there as part of a much wider pursuer's case. That was one of the difficulties. I am not saying that malice was not suggested, but there were also questions of incompetence. At the time, I had not seen the detail of the closed record, which is very long.

The Convener: It is important for us to draw out this information from you. When the committee examines people, it needs to understand whether they are saying that an honest mistake was made or that there was malicious behaviour. That is why I am chasing you a wee bit. You said that there should be speedy action and that the Executive should seek a settlement if the case was heading in that direction. Were you aware that settling the case perhaps involved an admission that there was some malicious intent?

Mr Wallace: I said that we should get on with the matter and that we should not let it drag on. However, I also said that we needed to get advice on the basis on which we would settle. I will give an example to illustrate the point. If it had been found, on the basis of advice from an independent expert, that a mistake had been made but that such a mistake could have been made by any reasonably competent person exercising their professional skills, that would probably not have entitled Ms McKie to damages, because it would not have met the standard of negligence. I do not

know whether that was the finding, because ultimately I did not see the report, but it was one of the outcomes that I postulated when we discussed the matter.

There might have been a case for an ex gratia payment, recognising that Ms McKie had been through the system and that it had not served her well. However, the amount that was paid would be very different if an independent expert said that there was negligence or evidence of malice. For that reason, it was important for the Executive to get independent advice. I never saw that advice, so I cannot tell the committee whether the ultimate settlement in any way reflected evidence of malice. I do not and should not know the basis on which the figure was arrived at. However, I thought that it was important that ministers should get independent advice, which would inform the settlement. It took some time for the Executive to find an expert, which was difficult.

The Convener: Is it correct that, although no decision had yet been reached to settle the case, the point of your involvement was to begin discussions with officials about how to handle the matter?

Mr Wallace: Yes. I had discussions with officials about how the matter should be handled.

The Convener: Did they issue written advice to you on how to proceed, or were the discussions just verbal?

Mr Wallace: The advice that I received raised the issues and it was suggested that we should seek independent advice, which was sensible. Another factor in play was that it had been decided that the four SCRO officers would not face disciplinary action.

Stewart Stevenson: You are saying that the case could be examined under three potential headings. The first was fault. It would be useful if you would confirm, as I think you have, that throughout you accepted that there was fault. The second was negligence. In your view and the view of your advisers, if there had been negligence, a potentially valid case could have been brought against the Crown. The third heading—at the top level—was malice. I take it from what you have said that relatively early on you were advised that there was no evidence of malice. Does my simple-minded, non-legal approach—I am not a lawyer—of looking at the issue on those three levels have sufficient validity for me to persist with it? Is my characterisation of how you reacted in looking at it in those three ways accurate, or do you wish to adjust what I am saying?

Mr Wallace: Your question is helpful. To be legalistic—

Stewart Stevenson: Feel free.

Mr Wallace: You say that there was fault, but fault has overtones that I would not want to be read into it. The assumption and the basis on which I proceeded was not that there was fault but that there had been a misidentification—that the identification was wrong.

Stewart Stevenson: Let me make it clear that I am using the word “fault” in the common English sense of a conclusion that was reached in an environment that was subsequently shown to be incorrect.

Mr Wallace: I accept that. There were possibilities that it was a misidentification that any reasonably competent skilled person could have made or that it was negligence, recklessness or malice. Those were the options.

Had I ruled out malice? I was aware that the allegation had been made—not just that it had been made in the legal context of the pleadings, but that it was being made more widely in the press and in some correspondence. However, the fact that the four officers had not faced disciplinary action made me sceptical of that head of claim.

Stewart Stevenson: But at no stage in the process were you able to discount negligence, the existence of which would be necessary for the McKies to sustain a civil action against the Executive.

Mr Wallace: Yes. Obviously, negligence would be the basic minimum to be established for an action to succeed. Over and above that, there was the question of whether, even if there was not negligence, it would be right, in the circumstances, to make some kind of payment to Ms McKie.

Stewart Stevenson: But that is entirely outwith the court system and, therefore, in a sense, is a different issue.

Mr Wallace: Yes, it would be outwith the court system, but it would influence any settlement of the action that was proposed. The fact that it was an ex gratia payment would mean that it would be outside the court system, but it would still be made in the context of the fact that there was litigation.

Stewart Stevenson: Indeed. So, throughout your involvement, you and your officials felt that there was a case of negligence with which you had to deal.

Mr Wallace: No. I am grateful for the opportunity to clarify. The point that I am trying to make is that we did not know—we had not commissioned any inquiries of our own. That is why we commissioned the advice that was, ultimately, Mr MacLeod's to establish whether, in his view, there was negligence. Do not get me wrong—there was the potential for negligence, but we did not have any evidence as to what had caused the misidentification. That was our reason for commissioning independent advice.

Stewart Stevenson: But it was on the basis that that was the fulcrum on which the case would hinge.

Mr Wallace: Yes. If the advice that we got was that there was negligence, there would not be much point in carrying on defending it.

The Convener: I do not want to keep this going for much longer, as we are behind time, but I will allow a brief question from Bruce McFee if it is on the same issue.

Mr McFee: Mr Wallace, you make it clear that, in your view, whether the case was eventually proven through a decision of the court or settled through an ex gratia payment, there were grounds for some sort of settlement, whether moral or—

Mr Wallace: That is a good way of putting it: whether it would be a moral or a legal obligation.

Mr McFee: You said earlier that the judge expressed some sympathy—which, indeed, he did—at the end of the perjury trial. Can I take it from that that you have read either all or part of that?

Mr Wallace: No, you cannot take that from that. I am just aware that that happened. I have not read Lord Johnston's charge to the jury, but I was aware that an apology of some kind had been given to Ms McKie.

Mr McFee: It was, indeed, after the verdict.

Mr Wallace: I thought that it was after the verdict.

Mr McFee: Are you aware of any of the contents of the charge to the jury?

Mr Wallace: No, I am not.

Mr McFee: At that time or since?

Mr Wallace: If you go back, you will find that, at that time, I was negotiating a coalition agreement and my mind was otherwise engaged.

Mr McFee: But presumably when you became Minister for Justice, which was the result of the coalition agreement, you could have turned your attention to the issue.

12:00

Mr Wallace: Absolutely, but I did not ever feel the need to read Lord Johnston's charge to the jury. There had been a not guilty verdict. That was the fact of the case.

Mr McFee: I was going to ask you whether anything else in Lord Johnston's charge to the jury helped you come to the decision or feeling that some form of compensation was appropriate, but if you did not read the charge, that could not have happened. Did your officials read the charge?

Mr Wallace: You would have to ask them, although I assume so.

Mrs Mulligan: I have just a small supplementary on that before I move on to my questions. You said that if somebody is in a car crash, they are advised not to say anything because they could end up being liable. Were you not concerned that offering an apology could be detrimental to the public purse?

Mr Wallace: My concern was such that my words, which I have repeated to the committee today, were carefully chosen. Nothing admitted any liability.

It is an issue of culture. If we are in a car crash in which someone is hurt, we can feel sorry for the fact that they are hurt. We have become too litigiously minded. If we are in such a human situation, it is inhuman not to express regret that the person is in that situation. However, it is important to distinguish between doing that and making any admission of liability. I chose my words carefully so as not to admit liability.

Mrs Mulligan: So you do not believe that what you said had any influence on the outcome of the eventual settlement.

Mr Wallace: I have no reason to believe that it did or that it should have.

Mrs Mulligan: Aside from the Shirley McKie situation, were you aware of any concerns about the operation of the SCRO?

Mr Wallace: I cannot remember whether I was aware of any before the "Frontline Scotland" programme. If there were concerns, they were not focused until after the programme.

Mrs Mulligan: I appreciate that that was a short period of time.

You have already indicated your involvement in the discussions with Mr Taylor about bringing forward and carrying out his inspection. As Minister for Justice, what involvement did you have in the subsequent inquiries by ACPOS?

Mr Wallace: I did not have any direct involvement. I was not questioned. I was aware that both ACPOS and Mr Taylor in his inspection report had talked about resources, and we were able to find more in that financial year. To that extent, we made the response that we could.

Although it does not relate to ACPOS, there was another important issue that was flagged up and that came through in Mr Taylor's report. The evening that I was told what the emerging findings were, I asked who, if it came to it, would carry out suspensions. I hasten to add that it was not suggested that any officers should be suspended, but I could see a chain of events that could lead to that. Would suspensions be done by me, the

chairman of the SCRO or the chief constable of Strathclyde police? There was a bit of uncertainty, which is one reason for the legislation that we passed earlier this session to clarify the lines of accountability and the work on changing the overall management of the common police services.

In that sense, I was involved in the ACPOS inquiries—and I was obviously very much aware of them—but I was never interviewed in relation to its presidential review.

Mrs Mulligan: That feeling of a cluttered chain of command also came through in Mr Taylor's evidence this morning.

Mike Pringle: In 2001, the Glasgow fingerprint bureau moved from what were local offices to a central bureau. Mr Wallace, did you have any influence in that regard? Were you asked for your opinion on the move?

Mr Wallace: I would have to check, but I think that the move was in train before my involvement. I do not remember being asked to approve the move to Pacific Quay, although I opened the new bureau. The move was certainly expected.

Mike Pringle: The HMIC inspection made 25 recommendations and other suggestions about how to improve the SCRO and the subsequent inspection in 2004 indicated that those recommendations and suggestions had been acted on. Were you involved in the process or kept informed about what was going on?

Mr Wallace: Yes—as part of the generality. After all, a senior Scottish Executive official sat on the SCRO executive committee. I am not saying that the official was expected to report back after every meeting—that would not have been appropriate—but it would have been expected that if any important issue arose it would be taken up with the minister. A number of Chief Inspector Taylor's recommendations—not least the recommendations about resources—were clearly directed at the Executive, so we had to address those recommendations. We were very much engaged in trying to resolve governance issues. The fact that an inspection report made a series of recommendations meant that follow-up inspections to chart progress were obviously important. Of course, there was also the ACPOS review and the change management team worked on the matter.

Mike Pringle: Did you have further involvement after you ceased to be Minister for Justice?

Mr Wallace: I think that from time to time I asked what progress, if any, was being made in relation to the litigation, but I did not have further involvement until the past six months, when obviously I could not ignore the matter.

Mr Macintosh: It is interesting to hear your views. I already knew your personal views on the apology, which you confirmed today, but I am slightly surprised by the extent to which you accepted that there had been a misidentification on the basis of one report. A case was heard and a verdict was reached, but the verdict was not necessarily linked with a misidentification. There were also the two experts' findings.

Let us consider the matter from another angle. Do you also feel regret about what happened to the SCRO officers? They were the subject of an inquiry and a criminal investigation, as well as being suspended and subject to a disciplinary inquiry. Every inquiry found that there was no case to answer and that there had been no malicious conduct. The SCRO officers would have liked a day in court, so that the findings of those inquiries could be tested, but they have never had such an opportunity. Although every inquiry that they have faced has cleared them, they are still not fully back on operational duties. Is that also a matter of regret?

Mr Wallace: I will answer the first part of your question first—I tried to make this point in response to Margaret Mitchell.

If you were Minister for Justice and a chief inspector of constabulary—whose role was to act independently and to give you independent advice—made it clear to you, without any qualification, that the emerging finding was that a misidentification had occurred, I think that you would find it difficult to second-guess that finding. Indeed, to second-guess the view of someone for whose integrity one had huge respect and whose very purpose was to be independent would be a dangerous road to go down. One might reach a stage at which—my comments are purely hypothetical and are no reflection on any current or former chief inspector of constabulary—one lost confidence in the person and thought that their advice was manifestly duff. In such circumstances one might say, "This cannot go on." However, that situation did not arise. It certainly did not arise with Bill Taylor, nor did it arise subsequently when Sir Roy Cameron was the chief inspector, during my tenure as Minister for Justice.

As far as the SCRO officers are concerned, I was advised that, because of some emerging findings in the Mackay report—although I emphasise that I never saw the Mackay report, and nor would it have been appropriate for me to see it, as it was a Crown Office document—four SCRO officers had been suspended. I did not think that it was appropriate, nor would it have been proper, for me to intervene and ask for them to be reinstated. Bill Gilchrist, the senior Crown Office official who dealt with that and who no doubt made recommendations to the law officers,

decided that no criminal action should be taken, and I have never thought anything other than that that would have been done after careful examination of such reports as were there. The officers are entitled to the presumption of innocence, as any citizen is.

Likewise, I can readily understand that they had been under a cloud for some time when it was found that there were to be no disciplinary proceedings, and I hope that no one is suggesting that I should have intervened in some way and said that there ought to be disciplinary proceedings. I know that Mr Macintosh is not suggesting that, but I sometimes get the feeling that some of the criticisms that have been voiced implied that there should have been some kind of intervention. That would have been wholly wrong and immoral. I recognise what the officers themselves have said about living under some considerable pressure, and that is also a matter of regret.

Mr Macintosh: It is a difficult point, but do you accept that, at the time of the statement that you made in Parliament, much was made of your describing fingerprint identification as an art form rather than a science? A lot of criticism was voiced about that, but since then there have been a lot of statements confirming it. Fingerprint identification relies on expert opinion, and in this case it is a question of disputed opinion, and that is ultimately what is at the heart of the matter. You were made aware of a report from Mr Taylor, which made some findings, but there are plenty of other experts who are not quoted in that report but who were quoted in the trial—independent experts who agreed with the SCRO officers. It is a question of disputed identification; that is at the heart of it.

The Convener: And your question is?

Mr Macintosh: I am asking Mr Wallace whether he agrees that that is what is at the heart of it. Does he agree that, as we look at how we can restore confidence in the fingerprint service, we must accept that it is a disputed identification, not a misidentification?

Mr Wallace: The first point to make is that the description of fingerprint identification as an art rather than a science was given not in my statement to Parliament but in answer to a question from the Justice 1 Committee's predecessor committee, during the budget process. I stand by that description. I know that it caused some furore at the time, but I noted that Mr Taylor used the expression about three times in the course of his evidence to you today. If it was all mechanical, you would not need experts. I accept the scientific point that fingerprints are unique, but considerable expertise must clearly be brought to bear. With a non-numeric standard, possibly even more expertise is needed.

With regard to the second point in Mr Macintosh's question—that it can all be boiled down to a dispute of opinion—that was one of the reasons why, as a minister, I wanted independent advice from another expert, to help to guide ministers in dealing with the Shirley McKie litigation. I have not had the benefit of seeing the outcome of that, so I do not think that it would be right for me to speculate. I acknowledge that others take a contrary view, but I do not know what advice was ultimately available to ministers on that.

12:15

Alex Neil: All the credible expert witnesses—which is 95 per cent of them—have said that there was a misidentification. In a letter to the Minister for Justice dated 12 December 2000, William Rae, who at the time was the chief constable of Dumfries and Galloway police and the executive chairman of the SCRO, admitted categorically that there had been a misidentification. He also suggested strongly that early action should be taken to resolve the financial situation with the McKie family and to provide restitution. He stated that the matter

“needs to be thrashed out between the Executive, Strathclyde Police, the SCRO Controlling Committee and Director behind closed doors to try and reach a sensible, pragmatic agreement on the way in which the action will be addressed.”

Basically, at that time, he suggested reaching a fairly quick out-of-court settlement, to be agreed by all the parties.

Your department replied on 7 February 2001. I have the letter here, but I will give what I think is a fair paraphrase of the reply to William Rae's suggestion: thanks, but no thanks. Jim Wallace rightly said that he apologised for the distress to the McKie family. He also said that he did not want the matter to drag out and that he wanted a resolution as quickly as possible. However, the reality is that, despite the suggestion that William Rae—the then executive chairman of the SCRO—put in writing to your department, the matter was dragged out, mainly by your department, for another five and a half years before a settlement was reached, putting Shirley McKie and her family through a lot of trauma. Was that an acceptable way in which to proceed at that time?

Mr Wallace: Frankly, most litigation goes on too long—that is a feature of our system. I suspect that the case probably did not last much longer than many other litigation cases, although that does not necessarily reflect well on the system.

I was anxious that there should be a settlement. However, equally, I had a responsibility to the public purse not simply to settle on any terms. It was important that ministers had independent

advice to justify the basis on which a settlement was made. I think that I am right that the quest to find that independent advice started in the spring of 2002, which is not long after the exchange with Willie Rae that you mentioned. I am sure that I asked what was happening on several occasions. There were difficulties—the officials would be able to elaborate further on them. One was to find someone who had not already pinned their flag to a particular mast and decided that there was or was not a misidentification. I understand that there was also difficulty in obtaining some of the materials to be examined.

I ceased to be the Minister for Justice in May 2003. Self-evidently, it would have been better if the matter had been settled earlier, but that is certainly not a criticism of my successor, who was equally anxious that the matter should be progressed. However, we had a duty to the public purse to make any settlement on a basis that we could justify. During my tenure in office, I did not have sufficient information to justify a particular level of settlement.

Alex Neil: I accept that you had to look after the public purse, but it took two years from your statement in Parliament until the John MacLeod report was commissioned. That was two wasted years, during which the whole issue, according to Willie Rae and the McKie family, could have been settled amicably out of court and—who knows?—perhaps for much less than the £750,000 cost to the public purse. Why did it take two years before you commissioned the independent advice?

Mr Wallace: I think that Shirley McKie had taken another litigation procedure against the chief constable of Strathclyde police, which was also going through the courts at that time. I think that that did not prove successful.

Alex Neil: Surely that was not a reason for you to delay the process by two years.

Mr Wallace: No—but I would reject the idea that nothing was happening. On the point that, as a result of the ACPOS presidential review, there was a criminal investigation going on, the outcome of that could clearly have influenced any kind of settlement that there might have been.

Alex Neil: Is that the Mackay report?

Mr Wallace: There was more than just the Mackay report; there was the work that Bill Gilchrist was in charge of. There were disciplinary proceedings going on—or potential disciplinary proceedings that could have been going on, to be accurate. I am not sure that it would have been appropriate to have pre-empted the inquiries. Indeed, I do not think that the summons was served until December 2001.

Alex Neil: Why should any of those things have stopped you from commissioning John MacLeod's independent assessment of the misidentification? The report was private—the committee has had a real struggle to get any of the information in the reports published. Why did it take two years to commission that advice?

Mr Wallace: Actually, that advice was commissioned only about two or three months after we were engaged in litigation. There was no action against the Scottish ministers—I am fairly certain that the writ was not served until the latter part of 2001—so we would have been commissioning advice on the basis of a case that had not been brought against us.

Alex Neil: In December 2001, Willie Rae suggested—

Mr Wallace: That was probably shortly after the—

Alex Neil: He suggested that action should be taken and that heads should be knocked together.

The Convener: Mr Wallace, you can give us your opinion on this, but I do not think that you are in a position to tell us about that. We need answers on that point, but from other people.

Alex Neil: Could I just raise a point about this?

Mr Wallace: There was a case against—

The Convener: We need to wind up, so if you could make this brief, that would be helpful.

Mr Wallace: The case against Strathclyde police, which I mentioned, was current when Mr Rae wrote his letter. It was dismissed in February 2002. I do not know whether that is the case to which Mr Rae was referring.

Alex Neil: No.

Mr Wallace: That case was still live when he wrote his letter. I am just looking to see if I have a note of when the action was raised against the Scottish ministers and others. I suspect that it was in the latter part of 2001.

Alex Neil: While you are looking for that, I would also mention that you received a report on Shirley McKie from Professor Colin Espie, one of Scotland's foremost clinical psychologists. The report, which was commissioned by Strathclyde police, categorically stated that she was telling the truth. Did you receive that report?

Mr Wallace: I do not recall that, and I am not quite sure—

Alex Neil: He sent it to you.

Mr Wallace: I am sure—I get lots of correspondence. If you sent it to me, you ought to have got an acknowledgement of that.

Alex Neil: No, he sent it to you.

Mr Wallace: He sent it to me? I have been sent many things that I remember. That report is not one that I readily remember. Even if I had seen it, I am not sure what significance that would have had. That is not part of litigation. I am not challenging the guy's professionalism or anything like that, but if—

The Convener: We need to draw this to a conclusion. Could you wind up, please?

Mr Wallace: If we were engaged in litigation, that would be another piece in the jigsaw. However, the fact that someone—a third party—sends a letter would not lead one to conclude legislation on that basis.

Alex Neil: I will finish on this point. You accept that five and a half years was an unacceptably long time to take to reach agreement with the McKie family.

Mr Wallace: Five years is an exceptionally long period, but I do not necessarily apportion any blame. There were lots of reasons as to why that happened. It would have been far better and in everyone's interests if that had been done quicker. I do not know what proceedings went on after I ceased to be Minister for Justice, but I do know that efforts were made to remind those involved that the issue was still there and to try to address matters.

The Convener: I am sure that there will be more questions to other witnesses to try to piece together what we need to know about the process.

I am told that there is one final, minute question from Stewart Stevenson.

Stewart Stevenson: I am sure that this will have a brief answer. In relation to the perjury case, do you continue to accept, and have you always accepted, that it is the jury that is the master of the facts, that the jury found against the Crown and in favour of Shirley McKie, and that at no time have you sought to argue with the jury's conclusions?

Mr Wallace: I have never sought to question the fact that there was a not guilty verdict.

The Convener: That ends this evidence session. Thank you very much for appearing before the committee. I know that you are used to it, having been a minister.

Mr Wallace: It is like old times.

The Convener: I am sure that it was a pleasure. On behalf of the committee, I thank you very much for being so open and honest with us today.

We are considerably behind time, but people need at least a brief comfort break before we begin our next evidence session.

12:25

Meeting suspended.

12:34

On resuming—

The Convener: For our final panel, I welcome back Deputy Chief Constable David Mulhern, who is the interim chief executive of the Scottish police services authority, and Joanne Tierney, who is the training manager at the Scottish fingerprint service. I thank you both for returning to talk to the committee. The “Scottish Fingerprint Service Action Plan for Excellence” is a continuing piece of work we felt it important to keep in touch with.

As ever, we are running against time—I apologise for starting your evidence late. I have just found out that the Parliament meeting will start early this afternoon; I inform those who do not know that it will start at 2 pm. As members know, the rule is that we cannot meet at the same time as Parliament, so 2 o’clock is our deadline. We will get straight down to it.

Marlyn Glen: Neither the action plan nor the update on progress with the action plan provides details of the timescale for implementation or completion of many action points. I ask Deputy Chief Constable Mulhern to elaborate on the progress with the action plan, as outlined in the update.

Deputy Chief Constable David Mulhern (Scottish Police Services Authority): If it will help, I will go through the action points briefly or skip over those that we hope we can do. On action point 1, Sir David O’Dowd’s report has been received and is in my possession. We will push his report into the action points to ensure that we cover issues that he has raised.

On action point 2, an external practitioner has been appointed. He is a fingerprint officer who has just retired from the Metropolitan police and has more than 40 years’ experience. He will start work next Monday and will do a five-day scoping exercise for us on the issues with which he thinks he can assist us. We will thereafter commission further work from him.

On action point 3, we have met the Scottish Police College several times and we have commissioned it to undertake a formal evaluation of initial refresher training, and to work in partnership with a further education college that has yet to be identified. The intention is that we will reach the stage of taking a Scottish Qualifications Authority type of approach to expert training. We want to validate training and to recognise experts when they undertake training. Primarily, Joanne Tierney runs that for us.

On action point 4, we have created a dedicated Scottish fingerprint service website on which all manuals are now published.

On action point 5, benchmarking on accreditation is under way nationally with the national fingerprint board in England and Wales and internationally. I have met American colleagues to discuss how they can assist us on accreditation, so that matter is under consideration.

Action point 6, which concerns the Council for the Registration of Forensic Practitioners, is also under consideration. We are considering how we might incentivise fingerprint experts who are not members of the council to become members and give them more recognition. That is being addressed nationally in England and Wales, where mandatory registration is being considered. That would mean that if a question arose about a fingerprint expert’s continuing involvement, their accreditation could be removed, which would remove their ability to act as an expert. That is in line with the situation in America.

On action point 7, benchmarking of external competency testing is almost complete. We have searched for an external provider for such testing other than Collaborative Testing Services, which is an American company, but we are almost satisfied that no other external provider of that service exists and that CTS has a monopoly. If we want to continue external competency testing, it looks as if we must continue with CTS. I notice Marlyn Glen’s look of surprise. I had a similar reaction—the situation strikes me as being extremely strange, but it seems to be the reality.

Action point 8 is about the verification process between bureaux, which is being addressed by our external practitioner. We intend to move towards identical verification processes in the four bureaux, unlike the current situation. I would like to think that the external practitioner will have finished the work by November at the outside. Shortly thereafter we will be looking to formalise the standardisation of procedures.

On action point 9, the integration of scenes-of-crime officers went to the Association of Chief Police Officers in Scotland council on Monday past, 4 September. There was anticipation that we would have resolution in ACPOS terms, if I can put it that way, but perhaps not a resolution of the way forward. The resolution does not give us a definitive position on whether all scenes-of-crime officers will move across to forensics or whether some police forces will stand back from that position. Unfortunately, that matter remains under consideration, although we had expected it to be concluded on 4 September.

Action point 10 is about a scientific advisory group on DNA and fingerprints. It met for the first time on 19 August. The feedback that I got from that meeting was extremely positive. Quite incredibly, I think that it was the first time forensic

scientists and fingerprint experts had been brought together in one room to allow them to talk to one another. It seems that everyone there enjoyed the experience greatly and is keen to extend and continue that work.

On action point 11, joint fingerprint forensic submissions are in the same position as the scenes-of-crime officers—that was discussed at Monday's ACPOS council meeting.

On action point 12, the non-numeric fingerprint standard was introduced, as members know, on 4 September, so that point is completed.

On action point 13, IDENT1 is on course for delivery by July 2007, as intimated in the action plan. There is now expectation that we will start to roll out IDENT1 in December this year with a limited introduction. That date might well be accelerated and as a consequence, we might be able to bring forward from July its delivery. That date will not slip; if anything, it will come forward.

I will deal with action points 14, 15 and 16 together. They deal with the leadership competency framework, corporate strategic plan and collaborative vision and values. That work is being led by the head of the fingerprint service. He has had several meetings. We have now engaged external support for him to try to bring forward the work. A meeting is planned for 19 September, by which time the Scottish fingerprint service will have identified high-level answers to those issues so that it can go to that meeting with the forensic science service to examine how they will integrate and merge the services and their values and business plans. It is hoped that things will move quite quickly following the meeting on 19 September.

On action point 17, I have received a draft of the corporate communications strategy, which has been sent back for further work. It is a work in progress that is now moving along quite quickly.

Action point 18 is about the team-based culture. We are hoping that as we move through a lot of the other actions, the team-based culture will start to develop itself. In order to push that along, I have scheduled regular six-weekly meetings with each of the bureaux to talk about issues that exist among them. They are now meeting collectively under focus group arrangements—the first meeting was held two weeks ago in Perth. They are coming together to talk about issues that are common to them, rather than issues that separate them. In the longer term, I like to think that that will fall out of other work that is happening.

Action point 19 is about a career framework. The work is on-going. We are considering how we can enhance our current career framework. Joanne Tierney is examining continuous professional development and we are also looking at how we

will develop our fingerprint experts into managers and leaders of the service for the future. My view is that we currently have a very front-loaded system of training, in which a trainee receives almost non-stop training in the first three years. Trainees reach expert status around the three-year period, but there seems thereafter to be very little follow-through. Joanne Tierney is very conscious of that and is developing a continuous professional development programme to address it. That takes us back to how we can accredit the programme and make people interested in doing it, and how we can demonstrate through a career framework that through CPD people can enhance their opportunities to advance in the service up to managerial level. I do not think that such a framework exists at the moment.

12:45

Absence levels in the bureaux remain high, particularly in Glasgow. We are pushing the attendance policy forward quite quickly and we anticipate that within weeks we will have a policy to propose to the bureaux. On action point 21, I am trying to drive forward the single organisation, which involves considering all our other actions to try to get people to move together and to work together more. I was talking to Joanne Tierney this morning about our planned Scottish fingerprint conference, which we hope to deliver in January or February next year. We anticipate that the conference will demonstrate to the national and international community that the Scottish fingerprint service is getting its business in order, that it is talking as a service and that it is so confident in its abilities that it feels able to run a national conference.

A "safeline" is almost in place. We are reprinting the accompanying publication material and branding it as being from the Scottish fingerprint service so that we can market it within the service. Contractual issues that got in the way of that have been resolved and we are getting those posters printed. The safeline will be in place imminently.

The stakeholding engagement plan, to ensure that we understand exactly who our stakeholders are, is being developed. It is a complete document. On the ethical contract, there are meetings this week to consider how to develop that. I have met the human resources and organisational experts that I have on board to discuss how we can take that forward. They gave valuable advice. Action point 25 is the identification of international experts, which, as the committee knows, we have in place.

I am sorry that that was so quick but I hope that it was helpful.

Marlyn Glen: It was fine. We can use the *Official Report* to check back, but that was a

helpful way to address my question and leads directly to my next question.

There is a great deal going on. It is not just that there is a lot of information, but that there are a huge number of changes to introduce quickly—for any organisation—and the action plan does not directly address the risks that are associated with all those changes. There is a significant change in the management process, particularly in respect of the incorporation of the Scottish fingerprint service with the new Scottish forensic science service. To what extent has a risk management assessment been carried out? How will the identified risks be mitigated?

Deputy Chief Constable Mulhern: That is an interesting question, because no risk register is currently running. The meeting on 19 September will bring fingerprinting and forensic science together to talk about how the organisations will merge. That is when I would expect such a document to be produced, in order not only to identify the work streams but the risks that we run in delivering them. That was a well-placed observation.

Marlyn Glen: Is that something that you will have to work on?

Deputy Chief Constable Mulhern: Yes.

Marlyn Glen: That seems to be a really big deal. Did you say that absence levels in Glasgow remain high?

Deputy Chief Constable Mulhern: They do.

Marlyn Glen: I would have thought that that goes hand in hand with all the change and the reasons for stress and so on.

Mr McFee: In oral evidence to the committee, Robert Mackenzie stated that you had specifically apologised for the use of the word “misidentification” in the introduction to the action plan. Is it correct to say that you apologised for the use of that word? Why did you use the word in the first place?

Deputy Chief Constable Mulhern: I thank you for giving me the opportunity to clarify my position on that. I met Robert Mackenzie and Alan Dunbar on the day of publication of the action plan. That was as a consequence of a telephone call that I had received, which advised me that there was real anxiety and concern among those two individuals and the other four experts that were involved in the McKie matter about my use of the word “misidentification” in my action plan.

I met the two individuals—they were the only ones who were available that day—and apologised for causing them anxiety and concern. I stress that I did not apologise for using the word “misidentification” in the plan—indeed, I stand by

that position. I apologised, rightly—I do not regret having done so—for causing them anxiety and concern. After all, to do so was not the reason why I had used the word.

Mr McFee: And what was the purpose of, and basis for, using that word?

Deputy Chief Constable Mulhern: Do you mean for using the word “misidentification”?

Mr McFee: Yes.

Deputy Chief Constable Mulhern: It was because I accept that there was a misidentification of the McKie mark.

Mr McFee: Okay. That is quite a clear response.

Staff in the Glasgow fingerprint bureau remain convinced that there was no misidentification, while staff in Aberdeen, Dundee and Edinburgh disagree with that and agree, instead, that there was a misidentification. I have seen a letter to Lord Cullen that was signed by dozens of people from the Glasgow fingerprint bureau. How many people at that bureau have examined the mark?

Deputy Chief Constable Mulhern: My recollection is that 50 people signed the letter from the Glasgow bureau. However, I understand that nothing like that number of people have seen the actual mark. I do not think that, beyond the six individuals who I know have seen it, the mark can have been seen by even that same number again.

Any conclusion that we come to must centre on the culture in the service, which perhaps brings us back to earlier comments about the team. We might have a team in the Glasgow fingerprint bureau, but we do not have a team across the Scottish fingerprint service. I feel that that culture issue manifested itself in the way in which 50 individuals signed a document and stated a position that they were not really able to state.

Mr McFee: The majority of people who signed the letter had not seen the mark or made any comparison that would justify their decision on this matter.

Deputy Chief Constable Mulhern: I should qualify that remark. The mark is now in the public domain and on the internet, so those people might well have seen it. However, they have not seen it formally.

Mr McFee: The committee has heard a lot about the issue of culture. How can the Scottish fingerprint service hope to move forward as a united organisation while this dispute remains in some individuals' minds?

Deputy Chief Constable Mulhern: I have never underestimated the challenges. The biggest challenge that we face is that the organisation is seriously split on the matter. I like to think that we

can find areas of agreement, such as the fact that the non-numeric standard is a modern approach and is the way in which fingerprint experts want to go about their business. By introducing such changes, we can demonstrate that staying in the past is no solution and that looking to the future will allow us to move forward and leave the past behind. Other elements of the action plan will allow us to do that. For example, it will help if management can get out and meet, have dialogue with and engage with staff.

I was interested to hear Bill Taylor's comments about the culture in 2000. The Independent Counselling and Advisory Services report, which was published in April 2006, shows that many of the problems—in management, leadership, communication and support—have still not been resolved. If we can put in place measures that deal with those matters, and can satisfy the staff that those measures are in place, they will be willing to move forward. However, at the moment, because they do not see the organisation moving forward, they are simply staying where they are.

Mr McFee: Correct me if I am wrong, but you are saying that you accept that there has been a misidentification, that the organisation accepts that there has been a misidentification and that, frankly, it is time to move forward on the basis of the changes that have been made.

Deputy Chief Constable Mulhern: As the strategic leader of the Scottish fingerprint service, I accept that there has been a misidentification. The organisation has an appetite for moving on. Indeed, when I meet each of the bureaux, everyone is enthusiastic about doing so.

Stewart Stevenson: Many of your remarks—in particular, your talking through the action plan—will make my job a little bit easier. The ICAS report mentions

“an absence of meaningful and visible support by senior management”.

The CPD that Joanne Tierney is providing that will enable the practitioners who have been in the service for more than three years to move into and be trained for management presents an opportunity to close the gap between the practitioners and management in the long term. What are you doing in the short term to put in place a management for the fingerprint service within the forensic science service that will have the practitioners' confidence, given that one of the issues is that management has not properly understood the job that the practitioners are doing? Whether one accepts that or not, it is an issue for the staff.

Deputy Chief Constable Mulhern: As you would imagine, we are still working on the structure of the new organisation—perhaps we should not still be doing that six months away from

it appearing, but we still are—and there are a lot of challenges in front of us. For example, what will the structure look like and who will the director be? No director has yet been appointed—we are working with an interim director.

Forensics and the fingerprint service each have four regional centres. The geographical locations happen to be the same, but the physical locations are not the same in all places, although they are in some. There are opportunities to straddle both disciplines and to bring them much closer together by having a single management structure, but that is more difficult in places where the locations are not the same. How we will manage that is still up for discussion.

We are still in discussion about the fingerprint service's future identity. To me, it makes sense that it should become a full and integrated part of the forensic science service but not be assimilated by it. The fingerprint service should still have an identity, but it may well not be called the Scottish fingerprint service any more because we will have a Scottish forensic science service with various branches—chemistry, biology and fingerprinting. I do not envisage that the Scottish fingerprint service will necessarily exist in the longer term.

We have to consider how we will shape the senior management structure. Will we have excess in the senior management structure when we reshape it? Will we allow the current system to move over as it is and think about reshaping it when we get the forensic science service in place, as we move forward and as we better understand the business?

Those are the real challenges for us over the next six months. I try to reassure the Scottish fingerprint service that it is not being assimilated because, just now, it is the only national organisation that we have. The Scottish forensic science service is still to be created and each of the four laboratories works, in effect, to different processes, procedures and standards. The Scottish fingerprint service has those standardised already, so we will be able to move many of the good practices that are in place in it over into forensic science, where they will become the standard.

That does not address the management issue about which Stewart Stevenson asks, but it addresses the confidence that I am trying to build in the Scottish fingerprint service. Its staff have a full part to play in the creation of the forensic science service. I tell them that they should not come to the table and allow themselves to be overwhelmed and consumed by the bigger being of which the SFS will become part. I cannot give you a structure now, because we do not have it and the dialogue is still to be had to a great extent. However, I am confident that the Scottish

fingerprint service will be an important and significant part of the new organisation and structure; it will not merely disappear.

Stewart Stevenson: So, you are suggesting that the Scottish fingerprint service will make a clear, visible and specific contribution to the creation of the forensic science service and will value having made it.

Deputy Chief Constable Mulhern: Yes—exactly.

Stewart Stevenson: The ICAS report also suggested that management was autocratic. What does the service think of you?

Deputy Chief Constable Mulhern: That is a really good question. I will perhaps turn to Joanne Tierney and it will be an unfair question.

Stewart Stevenson: It may be an unfair question, but it is an important one.

13:00

Deputy Chief Constable Mulhern: Certainly.

Joanne Tierney (Scottish Fingerprint Service): I will pass the question back to you. What is your perception of what the staff think of you?

Deputy Chief Constable Mulhern: They would probably say that I am not there often enough, because I apparently have another day job. I would like to think that they perceive me as being open and willing to listen to them. This is no reflection on anyone else, but I have been in the bureaux outside Glasgow more in recent months than others have been there in recent years.

Stewart Stevenson: Are you saying that you have put yourself about a bit and that you believe that the staff value that?

Deputy Chief Constable Mulhern: I like to think so.

Joanne Tierney: The staff welcome clear direction from Mr Mulhern as interim chief executive of the SPSA. Much of the staff's current anxiety is focused on what the structure will look like. As Mr Mulhern says, he has put himself out in the bureaux and let the staff ask him directly about that issue. When he gives them the answer that the matter has not yet been decided, people can have faith in that, because if he does not know what the picture is, we cannot know either.

Stewart Stevenson: The report highlights a lack of experience and expertise in the discipline of fingerprinting on the part of management. Is that problem as significant as it was previously or has it been attenuated by the steps that you are taking to create a path into management for practitioners?

Deputy Chief Constable Mulhern: If staff want to move into the management regime, they have to do that for themselves. At the moment Joanne Tierney is going through the Chartered Institute of Personnel and Development. The head of the Dundee bureau, who has moved temporarily to my team to support the forensic side, is also going through the CIPD. There are examples of individuals progressing themselves, but that is not done in a structured way that is organisationally focused. Instead, it is left to the individual. We were asked what we are doing about integration. The head of the Dundee bureau now works alongside the interim director of forensic science as his deputy. The aim is to ensure that the interim director has a focus on and an understanding and appreciation of fingerprints in the small team with which he is working.

Stewart Stevenson: You talked about an attendance policy. When do you intend to test whether that has positively affected both attendance and morale? I suspect that the two go together to some extent.

Deputy Chief Constable Mulhern: I introduced an attendance policy when I was deputy chief constable of Central Scotland police, which experienced the most significant decrease in the number of absences in a year of any police force in Scotland. We reduced self-certificated absence by more than 50 per cent. I can say that the policy will work because it worked there. However, as we all know, attendance or absence policies work only if managers make them work. The policy, like any other, will fail or succeed on that basis.

The Scottish fingerprint service currently has an attendance policy, but the absence rate is 20 per cent, so it is not working. We must look at how we can ensure that management applies the attendance policy robustly and supportively. We must support those who need to be supported, whereas the people who need attention in respect of their attendance must be dealt with robustly. Instead of imposing a new attendance policy on the Scottish fingerprint service, I have handed over the issue and asked people to compare the policy that I introduced at Central Scotland police with every other force attendance policy in Scotland. When they have done that, they can tell me why they would not choose the policy. The outcome of a meeting that I attended yesterday was that it is anticipated that next week a decision will be made to choose the Central Scotland police attendance policy. We will then consider how to implement the policy.

Stewart Stevenson: In your response, you focused on improving attendance, which is fair enough if the policy is an attendance policy. Did morale improve when attendance improved, or did the policy have the opposite effect?

Deputy Chief Constable Mulhern: Again, that is always the testing question. To use your term, I put myself about among Central Scotland police to ask that very question. When I introduced the policy, it is not unfair to say that it was the most unwelcome policy that had ever been introduced in Central Scotland police. Within six months, however, there was an almost unanimous view that it was a great thing because suddenly, people found themselves with more of their colleagues beside them at work and people were getting less work to do because there were more of them to share it out. That policy improved morale significantly.

The Convener: I will stick with the theme of management changes. I have a theoretical question for you. It is theoretical because we have not finished our inquiry and I want to be open-minded about everything that I hear. The committee has heard evidence about a culture that might or might not have existed in the SCRO that contributed to the disputed misidentification, or whatever you want to call it—I am just quoting. If one subscribes to that theory, and given what we heard from the inspector this morning about the concerns in his report about resources, governance and management being contributory factors to the culture, it seems to me that what one does about the management structure is fundamental. Do you accept that changing the management is important? If one subscribes to the theory, it could even be about personalities.

Deputy Chief Constable Mulhern: Definitely. What you heard from both contributors this morning was a sense of confusion about what the governance arrangements at the SCRO were. Although I am still not satisfied that we have got it right, we will have it right on 1 April 2007 when the Scottish police services authority comes into being. We will have a chief executive and a board that will include lay members who will hold not only the chief executive to account, but the directors of operation. The chief executive will have line management responsibility for each of the directors with a caveat around the Scottish crime and drug enforcement agency, which will be dealt with slightly differently. For the first time, the other directors will be line managed by an identifiable individual—that has not happened so far and will not happen until 1 April 2007. That is how we will ensure that we have that top level of governance and proper management.

We will then be able to exert influence and pressure through the directors to ensure that management is appropriate within each of the directorates and is held to account. If you were to ask where the problem has been, I would say that the top level has contributed to the problem. Where the Scottish fingerprint service and the bureaux have sat in the past has not helped either;

there has been confusion about where they fit into policing organisations.

The Convener: To play devil's advocate, here is my more controversial question: if management has been a contributory factor, do you not think that the officers at the centre of the case have a big grievance? They are feeling all the pain; they are the ones who cannot give evidence in court; and it is against them that the allegation of making a misidentification, or whatever you want to call it, has been made. Do you feel that the management of the organisation will feel the same pain as the people who are at the centre of the situation?

Deputy Chief Constable Mulhern: When we look at the six people at the centre of the case and ask whether they have been well treated, well managed and well supported throughout, we have to conclude that they have not. It would be wrong to come to any other conclusion. I stop short of using the word "grievance" because I am reflecting on what Jim Wallace said before me—that everything is happening in a legal context.

The six have not been well managed. When I met them I told them that I commended the dignity with which they have acted and recognised the lack of support that they have received throughout. Management has not treated them well.

The Convener: With whom does the buck stop then? That is what ordinary people ask. Supposing the premise is that something went wrong, that is because the processes and the management were not right. The staff at the bottom of the tree cannot be expected to take responsibility; the management is responsible. Is it just too difficult to see our way through all the different people who have made decisions about the organisation? Is that really where we are?

Deputy Chief Constable Mulhern: That is part of it. Since 1997, the SCRO has had three if not four directors, which does not help. The SCRO controlling committee has been through numerous executive chairs and seemed to evaporate in about 2003-04. Since then, the common police services programme board has been introduced. I hesitate to say this, given that I report to the board, but it has not necessarily provided management or demanded accountability of the individual directors.

To avoid answering the question directly, I will say that post April 2007 things will become much clearer, because we will have definite lines of governance. We will see a change then. I accept your position. In the past, it was difficult to put one's finger on where the blame lay. In future, it will become easier to point and say, "That is where the blame lies."

The Convener: I emphasise that my point is not particularly that it is important to identify where the

blame lies. As you point out, many directors have walked away, but the people who are left—from the top to the bottom—are the ones who are feeling the pain. Will it take a long time to heal? So far, the processes are the right ones. It is clear from the evidence that we have heard so far that there are governance issues but, on the intangible issues, how long will it take for the processes and the management structures to achieve what you want them to achieve?

Deputy Chief Constable Mulhern: With greater clarity around management and a greater sense of ownership and responsibility, it could be quite quick. I have a sense that the staff want it. Any time I meet them, they talk enthusiastically about the future. If you want to put them into a depression, just reflect on the past.

Joanne Tierney: I have worked in what is now the Glasgow bureau since 2000. Since 2004, I have had SFS-wide responsibility. Each bureau has its own issues and concerns about what the service as a whole has been through, but they are all unanimous in their desire for clear, strong leadership, for a position to be taken that people can sign up to and to know where they are going in future. Many of the issues surrounding events become complicated and muddled when staff do not operate under the same terms and conditions. Some staff are more aligned to their force than they might be to the bureau. That lack of clarity accumulates.

What staff are crying out for and what the action plan will give us is an opportunity to consider the leadership structure that we need and a competency framework that will inspire people to sign up to and be allies of that structure. It will also give us an opportunity to get external validation, to enable us to say, "Yes, we operate professionally. We operate to high standards. We can improve upon those standards and we can move towards being world class." The staff need the chance to have pride in their profession. In all of the bureaux, in different respects, there has been some quite high-level criticism and public profiling of a profession that historically has not been subject to such public scrutiny.

13:15

Margaret Mitchell: We are aware that the Scottish fingerprint service moved to the non-numeric standard on 4 September. How well prepared is the service for that change?

Joanne Tierney: We have been moving to a non-numeric standard for a considerable time. We wanted to ensure that we had the correct processes in place to underpin such a move, and we are now confident that we have those processes in place. Staff have been trained and

are fairly confident in their ability to talk about their identifications, how they have reached them and their conclusions. To be honest, the staff were really looking forward to the change. Since Monday, we have been operating non-numerically across the four bureaux, and the staff are delighted. The change simplifies and streamlines the process by allowing people to carry out analysis, comparison and evaluation and to decide whether a mark is identified, not identified or of insufficient quality for a conclusion to be reached.

The move to the non-numeric standard is seen as a positive development across the service. For some time, we have been waiting for it, moving towards it and getting the necessary processes in place. We are now ready and the change has been made. It is a very significant step and shows that the service is moving forward. This is the way of the future, and we are coming into line with the rest of the United Kingdom. That indicates that we are an outward-facing service that is considering and coming into line with what is happening around the country. The introduction of the new standard is very welcome. Because it does not change the way in which we make identifications, it has not been painful for people to take on board.

Margaret Mitchell: Given the various strengths and weaknesses that you say exist in the different bureaux, are they all in the same state of preparedness to cope with the change?

Joanne Tierney: Yes. The fundamental process of making identifications does not change. The processes that we wanted to introduce to underpin the non-numeric standard centred on verification, competency testing for experts, court skills training and quality procedures. Those processes have come online for all the bureaux, so all of them were equally prepared for the change.

Margaret Mitchell: As you will have heard throughout the inquiries that have taken place, including the committee's inquiry, there has been a great deal of concern about the adequacy of court presentation. Have you ever looked at how the evidence was presented in the Shirley McKie case?

Deputy Chief Constable Mulhern: No.

Margaret Mitchell: Would that not have been a sensible place to start?

Deputy Chief Constable Mulhern: I do not think so. I have looked at court presentation today, and I will explain the changes that have been made. The committee has heard about alleged misidentifications that have proved to be unfounded in more than one case. I have been in dialogue with Mr Bayle about those cases. Invariably, he bases his position on the way in which fingerprints are marked up. When an expert goes into a court, they enlarge the fingerprints for

the court's benefit. They then add lines to draw attention to points on a print. That is done with very inadequate and inefficient computer systems that do not do a good job of pointing to the spots that the expert wishes to highlight. On more than one occasion, Mr Bayle has used such enlargements to determine an outcome and, consequently, to criticise the Scottish fingerprint service.

Ironically, although the use of court enlargements was, for want of a better word, abolished by the Crown in 2004, the measure was not implemented in the various procurator fiscal offices around the country that still liked to use them. However, about three months ago, the deputy Crown agent issued an instruction to procurators fiscal to stop asking for enlargements. For a start, what was being done with the product was confusing matters and, secondly, there was no evidence that the court was finding it helpful.

To put into context the presentation of evidence in court, I should point out that over the past 12 months and despite the thousands of identifications that have been made only 11 experts from the Scottish fingerprint service have given court evidence. We put an extraordinary amount of effort into training our people to prepare for court. Mainly, experts from elsewhere come and ask our people the most contrived, complicated and difficult questions about fingerprints—and, basically, terrify them. As I said, they do not normally go to court, but when they do, they find themselves being questioned by someone who knows even less about fingerprints than I do—and I do not know very much. The experience is entirely different.

As a result, we need to look at how we prepare our people to deal with those few occasions when they have to present evidence in court. Indeed, one of the bigger issues that emerged in the ICAS report was that people felt unprepared for such experiences, and I cannot help but reflect that it must have something to do with the terrifying moot court experience. They must think, "This is what the real thing will be like, only worse," when, in fact, what happens in court is entirely different.

Margaret Mitchell: You said that, with the move to the non-numeric standard, the onus would be on the experts to explain more when presenting material in court. I understand that. However, will the onus be purely on the experts? Is there not an onus on the prosecution and the fiscal to ensure that they elicit from expert witnesses the evidence that proves their points?

Deputy Chief Constable Mulhern: In general, I agree, but it would be inappropriate for me to say what a procurator fiscal should do in court. I have been a police officer for more than 28 years and have given evidence in court many times. I did not

think that the procurator fiscal's lack of police experience inhibited my presentation of evidence. It is too easy to say, "Well, they should understand the business"; the fact is that our job is to ensure that they do so.

I recently spent some time in America talking to people about this matter. Over there, they start from the principle that they need to understand what the court wants from them and then train their people accordingly. I do not think that we do that just now in this country. For example, our trainees receive an awful lot of court training in England and Wales, but that training simply prepares them to give evidence in an English or Welsh environment and so under English, not Scots, law. After my visit to America, I want to test whether we understand what our courts—and what Scots law—are looking for from our experts. I am not sure that we do so at the moment.

Margaret Mitchell: That is a fair point. After all, it is a matter not just of eliciting evidence to satisfy the prosecution but of satisfying the prosecution that its point has been made clear to the jury. That is hugely important. Certainly, your response shows that you are aware of the problem and are doing more about training.

I wonder whether you would care to comment on a final point. You involved Mr Zeelenberg in the action plan. He had already been involved in the Taylor report and has been lecturing on the Shirley McKie case in America. Given what I would call his less-than-cautious approach to this matter, do you have any reservations about his involvement?

Deputy Chief Constable Mulhern: Am I happy that Arie Zeelenberg has decided to turn this into something of a roadshow? To be honest, I have to say no. In fact, I will meet Mr Zeelenberg later this month to discuss the matter with him. However, I want him to concentrate on the action plan and consider how we take forward the organisation. Now that everyone understands his position on the McKie mark, I do not think that we have to keep rehearsing it. He came on board and agreed to support me in delivering the action plan, and I would like him to do that for me. As I say, that will form the basis of the conversation that I will have with him later this month.

Margaret Mitchell: I suppose that the point I was getting at is that it is like he has almost celebrity status; I was asking whether you believe that that compromises his ability to be subjective and as useful as he could be in commenting on the action plan.

Deputy Chief Constable Mulhern: His usefulness, to use your term, is compromised to some extent as we progress and he continues to articulate views that we have all heard before. He could be much more useful. If we want to talk

about celebrity status, I could give him a huge number of things to focus on that would allow him to look forward and would not diminish his profile. If he wants a profile, I can give him one, but it will be in taking the organisation forward and making it a world-class service. I would like to think that he buys into that.

Mr McFee: Have you any reason to doubt Arie Zeelenberg's professional expertise?

Deputy Chief Constable Mulhern: Not at all. I brought him on board because I asked many people who was the foremost fingerprint expert in Europe and I was told it was him. He chairs the Interpol fingerprint board and I was informed that his expertise and experience in fingerprints were second to none. I have no reason to doubt the truth of that from the meetings that I have had with him. He is overly focused on the Shirley McKie issue just now, which is unhelpful to the action plan, and that is the basis on which I have made my comments, but I have no reservations about bringing him on board or about the value that he can bring to us.

Mr McFee: I just wanted to be clear about that. Talking about celebrity status, I saw you on "Newsnight Scotland" the other night, although I do not know whether appearing on "Newsnight Scotland" represents celebrity status.

The Convener: We would never catch Bruce McFee doing that.

Mr McFee: I cannot beat Alex Neil to the punch.

Mr Mulhern, in answer to a question on "Newsnight Scotland", you said—I will paraphrase and you can be as accurate as possible—that something like the McKie case could happen again but should not because of the procedures and processes that have been put in place. Is that a reasonable paraphrase of what you said?

Deputy Chief Constable Mulhern: To contextualise it, I was asked whether the non-numeric standard would stop a McKie-type case in the future. The answer to that is that it will not.

Mr McFee: I beg your pardon, I should have said that you were brought on to the programme in relation to that one issue.

Quality assurance in the SCRO was criticised in the 2000 HMIC report and, from what I can gather, remains an issue. Do you have concerns about the focus of quality assurance in the SCRO's fingerprint service and, if so, how do you intend to resolve them?

Deputy Chief Constable Mulhern: Yes, I do have concerns. How I will resolve them is still to be addressed. Quality assurance is a fundamental issue for us. For example, the three bureaux outside Glasgow share the quality assurance role

with the trainer role. To me, that is fundamentally flawed. We cannot have the same person training staff and quality assuring them because, if they come to the conclusion that the staff are rubbish, that falls back to training and they are criticising themselves in effect. To me, it is simply wrong to connect those two roles. I have to address how to separate them and I am looking to do that at the moment.

Mr McFee: That was raised in paragraph 6.1.1 of the 2000 HMIC report and it clearly remains to be addressed. Are there any issues with quality assurance outwith the more peripheral bureaux, if I can call them that?

Deputy Chief Constable Mulhern: Yes. The Glasgow bureau has a quality assurance unit, and I want to examine how experienced in quality assurance and how well-trained to quality assure those people are. They are fingerprint experts but a fingerprint expert does not make a quality assurance professional. I want to consider how we ensure that those QA people are trained for their job. I am not satisfied that we are there yet with that.

Mr McFee: For the record, will you or Joanne Tierney explain the difference between quality assurance and verification?

13:30

Deputy Chief Constable Mulhern: The purpose of verification is very different from that of quality assurance. Verification is the process of putting a mark through a number of levels of check to confirm that it is what it is said to be. If the first examiner says that a mark has been identified, it goes to a verifier, who confirms the identification. In the Scottish fingerprint service, it also goes to a second-level verifier. I see quality assurance as very different. Quality assurance may have a facilitation role in verification, if there is a dispute about an identification. If the three people who have looked at the mark do not agree on the identification, quality assurance can enable the identification to be finalised in a conference-type environment. It also has a much wider role. It is responsible for ensuring that processes, standards and procedures are standardised, laid down and up to date. It must also ensure that they are applied. It is fine to have standards set out in a manual—our manuals are now on the internet—but I want to be reassured that they are being applied in practice. I rely on my quality assurance people to provide me with that reassurance, but I am not sure that they have yet done so.

Mr McFee: You have been very honest. Paragraph 591 of the Taylor report of 2000 identified a top-down process of identification and verification. A senior officer would say whether

there was an identification and the mark would work its way down to less senior officers. Can you assure the committee that that issue has been addressed?

Deputy Chief Constable Mulhern: The issue has been addressed.

Mr McFee: How has it been addressed?

Deputy Chief Constable Mulhern: In Glasgow, blind verification is operating. When an identification is made, the mark is anonymised and moved on to the first-level verifier, who gives an opinion. That opinion is anonymised and the mark moves to second and third-level verifiers. None of the three people involved knows what the identification is and who looked at the mark previously. That is important.

Outside Glasgow, we operate with fewer than 10 experts—more like five—so we cannot have blind verification. Staff know what the person sitting next to them is looking at. When the eureka moment comes, they cannot help noticing that person punch the air, although they may be the next person to look at a mark. However, we have a robust system to anonymise marks that have been identified.

Mr McFee: Is there a hierarchical structure within the system of blind verification? Does the mark go first to the top dog and then to the person below them?

Deputy Chief Constable Mulhern: No.

Mr McFee: Could someone with less experience look at a mark before someone with more experience has looked at it?

Joanne Tierney: Yes. That is the case in Glasgow. The first and second-level verifiers may be seniors or juniors. Third-level verification is done by the verification unit. Staff circulate in and out of the unit. In the other three bureaux, anyone can make, first-check, second-check and third-check an identification.

Mike Pringle: Some time ago, we heard in evidence that someone in the Glasgow bureau had started to write names on the back of idents to indicate who had made the identification. Could that happen now?

Joanne Tierney: No.

Mike Pringle: Was that a regular practice?

Joanne Tierney: I am not in a position to comment on the practice. I was not employed at the Glasgow bureau in 1997, so I do not know what happened then. However, in the current verification process the findings do not follow the marks around. Under the system that has been introduced across the bureaux, the first examiner writes down their conclusions, which are sealed

and removed from the mark. The verifier then writes down their conclusions. Writing on the back of photographs or signing things on behalf of other people does not come into play at all in the verification process that is now in place.

Mike Pringle: Were you surprised that that ever happened? When you worked in Northern Ireland and elsewhere, did anybody ever follow that practice?

Joanne Tierney: When I worked in Northern Ireland, it was not our experience that someone would sign on behalf of someone else. I cannot comment on the circumstances of how that arose or indeed on whether that was what happened in 1997.

Mike Pringle: In September 2004, certain staffing targets were suggested. How are you getting on towards meeting those targets?

Deputy Chief Constable Mulhern: I spoke to the head of service about those targets last week, particularly in relation to Aberdeen. Those are the targets that we work to, so we try to get as near to them as we can. I cannot say that we have met them all, but those are the targets that we all understand we are working to.

Mike Pringle: Are you getting there?

Deputy Chief Constable Mulhern: Yes.

Mike Pringle: There are quite a lot of trainee fingerprint experts in Glasgow. Are there enough?

Deputy Chief Constable Mulhern: Yes.

Mike Pringle: You and others have talked about the lack of numbers and the pressure of work. Has that been alleviated?

Deputy Chief Constable Mulhern: Yes. Joanne Tierney works directly with the trainees. My concern is that we must ensure that we do not overpopulate with trainees, because we run the risk of not having enough experts to act as mentors to bring them through their training and having to rely on trainees becoming workhorses. That is not what a trainee should be; a trainee should be there to learn. An issue that I have had to deal with in the past few weeks is whether to take on another trainee in Aberdeen. My view is that we should not and that we should advertise for an expert outside of Scotland. Going back to culture, I think that if we can bring new people in who have new ideas and who are not coming in as trainees, that can do nothing but help us.

Joanne Tierney: I would support Mr Mulhern in that a mass recruitment of trainees is advantageous neither for the bureau into which they are recruited nor for the trainees themselves. In Glasgow, two trainees are working their way through the programme. In the past year, seven trainees went through their advance qualification. I

would support Mr Mulhern's statements about the recruitment of trainees. In the smaller bureaux, for the sake of the bureau, for the sake of the trainee, and to ensure that the trainee gets the required in-bureau support, one or two trainees is all that we want going through the programme. It is essential that the training resource in the bureau has time to focus on taking the trainees through the programme, in alignment with the national training centre.

Mike Pringle: I understand that absenteeism has affected quite a number of senior fingerprint people. You talked about mentors. What effect has absenteeism among those people had on training? Secondly, what effect has all the publicity over the years had on your ability to recruit?

Deputy Chief Constable Mulhern: There was a recruitment advertisement recently in Glasgow and I understand that there were hundreds rather than tens of applicants. There seems to be no problem with recruitment. The point that you make about where our sickness problems lie—at what end of the business—raises a huge issue, which I think is fundamentally a management issue. Management has to sort out that issue, support those who need support and be robust with those with whom we perhaps need to be robust.

Mrs Mulligan: To take you back to the non-numeric standard, you mentioned that the Crown Office had put out a direction to procurators fiscal about productions for court. Has the Crown Office issued any other guidance in recognition of the introduction of the non-numeric standard?

Deputy Chief Constable Mulhern: Yes. I will ask Joanne Tierney to respond in a moment, but I should point out that she has been working with the Procurator Fiscal Service for some months on developing a standardised joint report to be used across Scotland for fingerprint experts' presentation of evidence to court. As of 4 September, for the first time in Scotland we have a single standard report for presenting evidence based on the non-numeric standard. I think that that is a landmark, and it is all down to Joanne and the people with whom she has worked in the Crown Office and Procurator Fiscal Service.

Joanne Tierney: With regard to the production of court enlargements, I should point out that they were only ever intended to help fingerprint experts provide an explanation of identifications based very much on the numeric standard. The experts would produce the enlargement and, as required, demonstrate the 16 points of identification. However, there is no requirement for that under the non-numeric standard because fingerprint experts are able to talk through the process of arriving at the identification. It is a significant move as far as stopping the production of enlargements is concerned.

Now that we have agreed the format of the joint report, the Crown Office has undertaken to issue guidance to fiscals. After all, the lack of consistent reporting was due to the different relationships at different levels involving fiscals and bureaux. Being able to show the Crown policy unit that we are holding up our end of the bargain on consistency is a huge step forward, and we hope that the Crown Office will communicate that to fiscals at a local level. It is great progress.

Mrs Mulligan: That sounds very positive.

This morning, Mr Taylor welcomed the introduction of the non-numeric standard in Scotland. Obviously, that was informed by his experience of what happened in England and Wales. Have either of you discussed the matter with him?

Deputy Chief Constable Mulhern: Our international expert from the Metropolitan police, Bruce Grant, has more than 40 years' fingerprint experience and, from 1996 onwards, was one of the members of the small group responsible for overseeing the inception and introduction of the non-numeric standard in England and Wales. Indeed, he remained a member of the group for two years after the standard was introduced. We relied very heavily on Bruce in the run-up to the introduction of the standard in Scotland and, at Monday's launch, he told those present about the English and Welsh experience in that respect.

Mrs Mulligan: Was Mr Grant able to flag up any challenges that you might face?

Deputy Chief Constable Mulhern: It sounds incredible, but I have to say no. Indeed, he was emphatic about that.

Mrs Mulligan: Well, if the non-numeric standard is the answer, so be it.

Mr Macintosh: The fingerprint bureau has faced a number of other allegations besides those relating to the McKie mark. Recently, one of the McKie campaign supporters, Allan Bayle, appeared before the committee to make more false allegations—and, I have to say, to apologise for some inaccurate statements that he had made. He said that he would write to you to highlight a range of inaccurate identifications by the bureau. Has he done so and have you been able to deal with and rebut each of those allegations? What progress has been made on the matter?

Deputy Chief Constable Mulhern: Despite contacting him personally several times for a letter, I did not receive anything from Mr Bayle until 20 August. Does this letter identify any other inaccuracies? No, it does nothing but address one particular mark. I asked for a report on the mark, but I received the report only yesterday, and I will take issue with the claims in Mr Bayle's letter. That

is not to say that Mr Bayle does not still apologise and accept that he was wrong to claim a misidentification in May. However, he is now making some simply inaccurate claims about how he reached his conclusions. I will take the matter up with him.

Mr Macintosh: Mr Bayle has admitted that he was wrong about the Sutherland case. Is he still claiming that he was right about the Mark Sinclair case?

Deputy Chief Constable Mulhern: I should qualify certain points about the Sinclair case. In my discussions with Mr Bayle, he did not claim that there had been a misidentification. Interestingly, he claimed that the ident did not satisfy the numeric standard's 16-point threshold. That is a very different point and, with the non-numeric standard, would not be an issue. He has never claimed that the mark did not belong to the person to whom we said it belonged. Instead, he said that it did not have 16 points of identification. For a few months now, I have been having dialogue on this matter with Northern Ireland and we are reflecting on the mark and on the Northern Irish position. I think that in the very near future I will receive clarification on the matter that will challenge the claim that the mark does not have 16 points of identification. That work is on-going.

13:45

Mr Macintosh: What about the long-standing issue with mark QD2 in the Asbury case? Danish experts viewed the mark and said that the bureau had got it wrong, but apparently this year they came back and said, "No, you were right; we got it wrong." I am interested in how you dealt with that information. Given that you face allegations in the press about the bureau's competence, when you receive hard evidence that you were right why do you not go public with that information and send the message to your officers that you believe in them and in the accuracy of their findings? It is clear that they are accurate all the time.

Deputy Chief Constable Mulhern: Rather than focus on the mark in the Asbury case, I will return to the claims of a misidentification that were made in May this year, when I was asked the same question. My view is that we are not there to punch the air—I have used the term before—when we get an identification right. We get them all right. We should maintain a dignified position, because we do our business properly. Equally, if someone claims that we got one wrong, we should not immediately state emphatically, "No, we did not," but should reflect on the matter. I have put arrangements in place that enable me to receive, relatively quickly, verification of the accuracy of an allegation or information that upholds our claim that we made a proper identification. That is what

a professional organisation should do. It is not our job to challenge everyone who challenges us; we should act in a more professional and dignified way.

Mr Macintosh: There is always an argument for rebutting inaccurate headlines.

How you deal even-handedly with officers in the bureaux is another issue. Currently, it is obviously tricky to get the bureaux to work together. The four SCRO officers who are at the heart of the McKie case were subject to a disciplinary inquiry and there was a criminal investigation. Not only were no charges levelled against the officers, but they were cleared. Indeed, I think that the Black report recommended that they be reinstated to full operational duties. Why has that not happened? Gary Dempster, who works in the Aberdeen bureau and supported Mr Bayle in his claim that a misidentification had been made in the Sutherland case, attacked your office on "Frontline Scotland" and attacked his bureau on "Panorama". Given that Gary Dempster is on the expert list of witnesses, why are the four SCRO officers, who have done nothing wrong and have been cleared by every inquiry, not fully operational and on the list?

Deputy Chief Constable Mulhern: I will deal with your point about Gary Dempster first. I have made it clear that Gary Dempster's conduct in May in relation to the Sutherland mark was utterly unacceptable. However, when Gary Dempster realised that he had made a mistake, he came forward very quickly—before we had disproved his findings—and apologised for his mistake. The action plan talks about creating a culture in which people are willing to admit their mistakes, so what Gary Dempster did is an example of what I am trying to achieve through the action plan. That in no way excuses his involvement in the matter in the first place, which was reprehensible. However, he came forward in the aftermath and behaved exactly as I want people to behave.

Why did Gary Dempster do what he did, whether we are talking about his involvement in "Frontline Scotland" and "Panorama" or his work on the mark with Mr Bayle in May? I think that I addressed the issue in the action plan. We do not have in place the mechanisms—the supportive management structures and the safety valves—that enable people to cry foul if they think that it is legitimate to do so. People perceived that their only safety valve was to go public, so they ran to the public every time. That is not right.

Supportive systems should be in place and there should be a culture in which people are willing to reflect on decisions and change them if they are wrong and in which they feel safe and confident about being supported if they whistleblow, for want of a better term. I do not sense that such a culture

exists yet, but we are trying to create it. I hope that what I have said deals with Mr Dempster.

I want to reflect on the action that was taken against—

The Convener: I am sorry to interrupt, but will you make your remarks as concise as possible? The meeting will be illegal in seven minutes and Alex Neil still has a question to ask.

Deputy Chief Constable Mulhern: Sure.

On the situation in 2000 and beyond, it would be wrong of me to judge what happened because I was not there. Would I have handled things in the same way? People say that hindsight is a wonderful thing, but I always try not to use it. I will be brief. It would be inappropriate for me to comment on what happened to people. Why the authorisation has not been returned is not necessarily a matter for me. The position within which we operate is that the Crown thinks that their evidence would be unacceptable in a court of law.

Mr Macintosh: My understanding is that the evidence of Gary Dempster—who has admitted that he was wrong—is acceptable in a court of law, whereas that of the four SCRO officers, whose evidence has never been proven to be wrong, is not acceptable.

Deputy Chief Constable Mulhern: Gary Dempster has been off sick since the misidentification. We are trying to get him back to work. Last week, I asked what our quality assurance manuals say would happen to someone who had made a misidentification. I want what those manuals say to be applied to Gary Dempster.

Mr Macintosh: You said that—

The Convener: I am sorry, Ken, but there is not enough time for you to ask another question.

Mr Macintosh: It will be my final question.

I think that Mr McFee asked about the 50 officers who work for the Glasgow bureau. You said that only six of those officers had seen the mark and that people should not have signed the document if they had not seen the original mark. I think that Mr McFee mentioned 14 officers in the Lothians and the Aberdeen bureau. Did any of them see the mark? I would welcome your comments on their position. You singled out the Glasgow bureau for expressing a view and writing an open letter to the Lord President, Lord Cullen. Not all of them saw the mark—

The Convener: We must leave the matter there.

Mr Macintosh: The officers in the Lothians—

The Convener: I am not trying to be difficult, but

I must stop you there, Ken. Two decisions must be made before 2 o'clock.

Deputy Chief Constable Mulhern: Writing open letters is not the way for anybody to do business, but the Scottish fingerprint service's culture and management have made people think that there is no other option. We are trying to change that culture.

Alex Neil: I will be quick, as we are running out of time. Is the crucial difference between, on the one hand, Gary Dempster, Allan Bayle and the people in the States who made a misidentification and to whom you referred the other night on "Newsnight Scotland" and, on the other hand, the SCRO officers who were involved in the McKie case the fact that the first lot have openly admitted their mistake, whereas the SCRO officers still do not accept that there was a misidentification and will not apologise, despite all the evidence and the fact that the Crown Office, Willie Rae, who was the executive chairman of the SCRO at the time, and you have said that there was a misidentification?

Deputy Chief Constable Mulhern: The situation is unfortunate, but that is the situation.

Alex Neil: Is it the case that the officers will never have domestic or international credibility and that the credibility of the whole fingerprint service and the SCRO fingerprint bureau in Glasgow will remain in doubt as long as the six people in question refuse to admit their mistake?

Deputy Chief Constable Mulhern: It would be inappropriate for me as an employer to comment on that.

Alex Neil: Finally, the 40-odd people in the Glasgow bureau who signed the letter to Lord Cullen, which made many allegations about the First Minister, the Lord Advocate and a range of other people, have said that the McKie case did not involve a misidentification, although they had not seen the mark. How can they therefore have any professional credibility whatsoever?

Deputy Chief Constable Mulhern: I do not think that credibility is the issue. The decision to sign the letter was misguided and unfortunate. I would like to think that they will reflect on that in the future and that such things will not happen again.

Mr Macintosh: On a point of order, convener. Mr Neil has the chance now to apologise for remarks that he has made. He was quoted in *The Herald* as calling for the closure—

Mr McFee: Could you—

The Convener: Hold it. Will everyone calm down? There is no such thing as a point of order in the committee. There is not enough time to resolve that matter because it is nearly 5 minutes

to 2. If it is all right with members, I will wind up the discussion before we go into private session.

I want to ensure that everything is above board and therefore put on record the fact that the committee has previously met Deputy Chief Constable Mulhern. It is important for us to drill down on the issues that have been discussed today. It is important for us to have a detailed understanding of decisions as he makes them about the future of the SCRO and its employees, and I would like to think that that understanding will continue at least for the duration of the inquiry. Am I right in thinking that you have no difficulty with that, Deputy Chief Constable Mulhern?

Deputy Chief Constable Mulhern: I have no difficulty with that.

The Convener: Okay.

I am sorry to have to draw the discussion to a close before everyone has had the time that they think is appropriate to discuss the matter, but the meeting will be illegal at 2 o'clock and cannot continue beyond then.

I thank David Mulhern and Joanne Tierney, with whom we will want to have more dialogue, for coming to the committee again. I certainly have more questions about the process that must be resolved.

We will now go into private session. I promise members that the session will not take long.

13:56

Meeting continued in private until 13:59.

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