

# **JUSTICE 2 COMMITTEE**

Tuesday 6 November 2001  
*(Morning)*

Session 1

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## JUSTICE 2 COMMITTEE 30<sup>th</sup> Meeting 2001, Session 1

### CONVENER

\*Pauline McNeill (Glasgow Kelvin) (Lab)

### DEPUTY CONVENER

\*Bill Aitken (Glasgow) (Con)

### COMMITTEE MEMBERS

\*Scott Barrie (Dunfermline West) (Lab)  
\*Mrs Margaret Ewing (Moray) (SNP)  
George Lyon (Argyll and Bute) (LD)  
Mrs Mary Mulligan (Linlithgow) (Lab)  
Stewart Stevenson (Banff and Buchan) (SNP)  
  
\*attended

### WITNESSES

Bernard Harkins (Public and Commercial Services Union)  
Allan Marshall (Public and Commercial Services Union)  
Helen Nisbet (Procurators Fiscal Society)  
Richard Stott (Procurators Fiscal Society)

### CLERK TO THE COMMITTEE

Gillian Baxendine

### SENIOR ASSISTANT CLERK

Claire Menzies

### ASSISTANT CLERK

Fiona Groves

### LOCATION

Committee Room 2



## Scottish Parliament

### Justice 2 Committee

Tuesday 6 November 2001

(Morning)

[THE CONVENER opened the meeting at 09:49]

**The Convener (Pauline McNeill):** I ask everyone to ensure that they have turned off their mobile phones and pagers. I have received apologies from George Lyon and Stewart Stevenson. Mary Mulligan will join us later. I have nothing to report under convener's report.

### Items in Private

**The Convener:** We did not agree last week to take lines of questioning in private, so I ask members to agree to take item 2 in private. Is that agreed?

**Members indicated agreement.**

**The Convener:** It would be helpful if members would also agree to take lines of questioning in private at the meetings on 14 November, 20 November and 28 November. Is that agreed?

**Members indicated agreement.**

09:50

*Meeting continued in private.*

10:06

*Meeting continued in public.*

### Crown Office and Procurator Fiscal Service

**The Convener:** Item 3 is our inquiry into the Crown Office and Procurator Fiscal Service. I welcome from the Procurators Fiscal Society Richard Stott, who is its president, and Helen Nisbet, who is its secretary. I thank you both for coming and for your thorough written submission, which has been helpful. We want to ask about a few points in your document. We will not ask you to make an opening statement, because we have numerous questions that will, I am sure, bring out most of the information.

**Scott Barrie (Dunfermline West) (Lab):** I, too, thank you for your written submission, which was useful. Have staffing, resources and your members' morale improved, stayed the same or worsened since you sent us your written submission?

**Richard Stott (Procurators Fiscal Society):** Little has changed in those areas since then. However, there has been a great deal of change on the management side. Management has announced that, to deal with some of the problems, it is setting up various evidence-gathering bodies, such as the resources review and the review of the High Court. Some things are changing, but our members are under the same pressures as before. We will have to see whether the reports from those reviews will be properly addressed and how the Justice 2 Committee report will be addressed.

**Scott Barrie:** When some of us visited procurator fiscal offices during the summer recess, the staff generally welcomed the Justice 2 Committee's inquiry. Have the initiatives that the Crown Office subsequently announced been welcomed?

**Richard Stott:** Yes. For many years the society has been pressing for a full review of resources in the Crown Office and Procurator Fiscal Service. The basic problem of resources requires to be solved before other problems can be addressed. If we do not have adequate resources, we cannot do our job as well as we would like. Because of the pressures that are exerted on our members—they were highlighted in Sir Anthony Campbell's report on the Chhokar inquiry—we are particularly concerned about their well-being.

**Scott Barrie:** Your submission highlights the significant rise in serious, complex and drug-related crime. Is the Procurator Fiscal Service

sufficiently geared up now in terms of experience to deal with that issue?

**Richard Stott:** No, I do not think so. The difficulty has arisen because of concern among the general public about drug crime. Resources have been provided to investigating agencies to deal with that and more drug dealers have been identified, investigated and reported to us for prosecution. During that time, the matter of our resources has not been dealt with adequately to cope with that. The resource effort seems to be on the investigation, and it seems that not much consideration has been given to the follow-through. If someone throws money at an investigation, there will be more arrests and more crimes will be reported. The prosecution service requires additional funds to deal with that.

There are problems elsewhere in the criminal justice system, including in court services, not just in the Crown Office and Procurator Fiscal Service.

**Mrs Margaret Ewing (Moray) (SNP):** On drug crime, is there an analysis of the allocation of resources to various parts of the country? There is a view that most drug crimes take place in urban centres, yet there is a clear indication that drug-related crimes take place in rural parts of Scotland. Should the allocation of resources in the system be redistributed?

**Richard Stott:** It is necessary to analyse where the greatest increases are. I can speak for Tayside, the Central Scotland police region and Fife, where there has been a 25 per cent increase in the reporting of drug-related crime over the past three months because of police initiatives. The police have allocated additional officers to local police offices to investigate drug offences. Rather than having a centralised drug squad working from a central office, there are now smaller teams working in rural areas detecting crimes. I do not think that drug crime is restricted to urban areas.

Our resources review will not focus solely on individual areas of work, but will cover the whole work load of all Crown Office and Procurator Fiscal Service offices, so that we are adequately resourced to deal with all crime. We do not do that on a basis of needing X for drugs and Y for murder; we instead consider the overall case load. At least, that is what I hope we will do in the future, although it is not what we have done in the past.

**Scott Barrie:** I will return to the work load later, but first I will pick up on what you said about a 25 per cent increase in the reporting of drug-related crime in the sheriffdom in which you work. Were the police initiatives communicated to the Procurator Fiscal Service prior to their implementation, or did they just happen? Have you had to pick up the resultant increase in reported crime?

**Richard Stott:** There was a great deal of publicity at the time about the urge to solve drug crime or to throw resources at it. I am not sure what communication there was between those at senior level in the police and those at senior level in the Crown Office and Procurator Fiscal Service. We have established the statistic by considering the number of actual cases reported. It has been a matter of consideration with hindsight, rather than with advance planning.

**Scott Barrie:** Given that you have to deal with what you get, does a police crackdown in a particular area that results in a large number of complaints create a difficulty for your service if that crackdown is not communicated to you and you do not expect that large increase?

**Richard Stott:** That causes a difficulty. We always want to encourage initiatives that are driven by the public. In providing a service to the public, it is attractive for the police to deliver what the public want. I regularly meet the divisional commander in my area of jurisdiction. There are minor initiatives on things that cause particular concern to individuals in particular areas, for example vandalism, and the police will tell me in advance that they will be mounting a campaign. I cannot then relay that to the Crown Office and say, "The police are going to have a campaign, so I need more staff." That is simply not possible. I would be aware in such a situation that a number of cases would be coming into the office, but I would not get additional resources to deal with them.

**Scott Barrie:** I well know—given the constituency that I represent—that you work very close to the police's divisional headquarters. Is there a formal mechanism for liaison between the police and the Procurator Fiscal Service for the whole of Scotland?

**Richard Stott:** Yes, there is a formal liaison mechanism at various different levels. At the top are the Association of Chief Police Officers in Scotland—ACPOS—and the Crown Office senior management team. Various committees have been set up to deal with individual aspects. The liaison mechanism goes right down to local level—the majority of fiscals regularly meet the divisional commanders or officers of an equivalent rank who are concerned with their jurisdictions.

10:15

**The Convener:** I will follow on from that. Getting the resources right for police liaison has been a particular concern of mine. As you indicated, unless we have the right resources, we will not be successful with the campaigns that we initiate on the ground. Police officers repeatedly tell me that nowadays—unlike five or six years ago—they find

it difficult to speak to a fiscal when they need to.

You seemed to agree with that point of view when we questioned you on the matter as part of the budget process. Management says that that is not a problem, which seems to be at odds with your evidence. I do not think that management is receiving the proper feedback. Is management ignoring the issue?

**Richard Stott:** There are two levels of communication. The communication that I was speaking to Scott Barrie about is communication about policy issues and more general issues affecting a large area. If I picked you up correctly, you are talking about communication with police officers on day-to-day problems or specific cases. That is where there is a real communication difficulty—the resources are not available to allow adequate grass-roots communication. It is not uncommon for police officers who want to get in touch about particular cases to be told that—because of other commitments—nobody is available.

**Scott Barrie:** In your submission, you agree that the overall work load—the number of cases—may not have significantly increased over the years, but feel that the complexity of the cases certainly has. You suggest that there is no recognition of that and that cases are simply accounted for on a numerical basis. How could the procedure be improved? Could the department calculate things in a different way?

**Helen Nisbet (Procurators Fiscal Society):** Within the service, the weighting that is accorded to individual cases has been a long-running issue. A weighting cannot simply be fixed to a particular type of case. Even with murder—the most serious type, which typically commands most resources and attention—there can be a wide divergence in the input that is required to resolve a case. There has been a long-standing complaint among staff that to examine the statistical return alone—numbers of precognitions and cases reported—by no means gives a true flavour of the work load that is required of staff. To give a true flavour of the processes that we go through in meeting our demand, there must be closer assessment of how the unit output—so to speak—is measured.

**Scott Barrie:** Does the service have difficulty retaining appropriately qualified staff?

**Richard Stott:** There has not been a huge turnover of staff. We have lost a fairly small number of people. I am sure that the senior management team will have provided the committee with statistics on that. From the evidence-gathering process that has taken place so far, one thing is abundantly clear: people quite like doing the job. The job is interesting. The type of person who comes into the job does so

because they have some sort of commitment to public service. There are not too many attractive alternatives in that area of work. That is not to say that they are not being affected by the work load. One or two have left because of the difference in pay between, for example, Scottish Executive lawyers and lawyers in the Crown Office and Procurator Fiscal Service.

**Scott Barrie:** You make that point in your written evidence. The point has been made to us before and it is noted.

In the two offices that I visited, there was a general feeling among deputes that they were doing the work that they wanted to do and that they were very committed to their jobs. However, they felt that there was a lack of development opportunities in the service. Is that an issue for fiscals generally?

**Richard Stott:** The profile of the service is such that progression through pay bands is not good, opportunities for promotion are not tremendous and there is little scope for developing career satisfaction through straightforward prosecution. In other words, if fiscals prosecute well their promotion lines take them into management. We are pressing for options that would provide better career development and greater job satisfaction, such as allowing solicitor advocates to prosecute in the High Court.

**Scott Barrie:** We will return to that issue later in our questioning.

I am sorry for hogging the early part of this session, but I would like ask a final question. Three factors have had an impact on staff work load: the rise in the rate of serious crime and the number of complex cases; the incorporation of the European convention on human rights into our domestic law; and the introduction of new technology. Are those factors equally significant, or is one more significant than the others? What has been the main contributor to increased work load pressure?

**Richard Stott:** Greater expectation on the part of the public about how they will be dealt with in the criminal justice system has had most impact on fiscals' work load. There is no doubt that at present we do not deal appropriately in the system with victims and witnesses. We do not give as much attention as we would like to relatives when dealing with deaths investigations, which are another major area of our work. The resources are not available for us to do that.

We hope that in due course technology will assist us with some of our processes, but in the Crown Office and Procurator Fiscal Service we do not have a good history of using technology to assist us. The introduction of the standard office system caused more difficulties than it solved. Our

members expect that the same will be true of the future office system that is being developed at the moment but which is nowhere near being introduced. We will have to wait and see. We hope that that is not the case, but that is how our members feel at the moment.

**Bill Aitken (Glasgow) (Con):** Recently the Solicitor General suggested, fairly controversially, that the 110-day rule should be reviewed, as it was adding considerably to the pressure that prosecutors were experiencing. Do you think that such a review should be carried out? How significant is the pressure that the rule is causing?

**Richard Stott:** There is no real case for changing the 110-day rule. Quite rightly, Scotland has always been very proud of the 110-day rule and the Procurators Fiscal Society shares the commonly held view that it should stay. This is an issue of resources. The time limit exists and we should be given the resources that will enable us to cope within that limit. That might involve putting pressure on others, such as police forensic laboratories, to ensure that they produce the forensic reports that are needed in High Court cases in time to allow us to prepare those cases properly. The Crown Office and Procurator Fiscal Service is not solely responsible for delivering justice and criminal cases. We have partners on whom we rely very heavily and who generally provide us with a very good service.

**Bill Aitken:** The annual report of the Crown Office and Procurator Fiscal Service predicts that another 30 legal staff will be recruited over the next two years. Do you think that that level of recruitment is adequate?

**Richard Stott:** Our principal concern—which has been highlighted in Sir Anthony Campbell's report on the Chhokar case—relates to the experience of those dealing with cases. There is a question of numbers. Obviously, more people need to come into the service—that message came over clearly from all kinds of sources that provided evidence. The major issue is resources. However, as I have said, simply to throw new people into the Procurator Fiscal Service will not solve the problem overnight. There must be a long-term solution and adequate training and support for those members of staff. They must be developed to a stage where they can deal with the increasing number of serious and complex cases.

**The Convener:** Recently, the press reported that we have had no official correspondence with the Crown Office on a public airing for a review of the 110-day rule. Why has it become an issue now?

**Richard Stott:** For those who deal with resources, it is attractive to say that if individuals are given more time to deal with cases, it will

perhaps not be necessary to provide additional resources to cope with time-limit problems. That is a short-sighted view. If the 110-day rule were changed, the Crown Office and the Procurator Fiscal Service would have the same amount of work. To give us more time to deal with that work would simply mean that bigger backlogs would build up and the service provided to the public would not be as good.

**The Convener:** Some commentators think that the rule puts too much pressure on the service as a result not simply of the lack of resources but of the complexity of more serious crime. Is it not worth reviewing the rule to find out whether we have got things right?

**Richard Stott:** The feeling of our members is that the 110-day rule is correct and that we would be able to cope, except in exceptional cases, if adequate resources were provided to us. There are mechanisms for applications to be made for an extension of the 110-day rule, although the rules are fairly strict. In general, we cope with the 110-day rule—that is about the best that I can say. There would be no major difficulty if we were adequately resourced, although there would be the odd, exceptional case.

**The Convener:** I am interested in how the 110-day rule works. My information is that the indictment must be served within 80 days. Is that correct?

**Richard Stott:** Yes, the indictment must be served within 80 days. As the indictment will be for a sitting that may be a fortnight long, the 110<sup>th</sup> day cannot be picked as the day on which the case will go to trial. Twenty-eight clear days' notice of the charge and the witnesses, for example, must be given to the accused. The case must be prepared and considered at the Crown Office. The preparation time in the procurator fiscal's office is probably 50 to 60 days. The rest of the time is used in the Crown Office mechanism where advocate deputes and the High Court unit at the Crown Office consider cases. There is a month between serving the indictment and the trial. During that time, preparation continues.

There are always things that one can add to a criminal case and much work is carried out in procurator fiscal offices. The Crown Office provides instruction to us on additional work that is required. One can never say, "That is the end. There is nothing more that I can add to the case." That time is utilised, but the basic preparation time is about 50 days.

**The Convener:** You mentioned that the question is not just about the prosecution service preparing the case. Other factors, such as police forensic laboratories, must be taken into account. I am interested by that—it did not occur to us and



we have noted it. We may want to consider what you said. Do you have any more information on what the committee might usefully consider in that respect?

**Richard Stott:** Obviously, we rely on information from other agencies. We rely more and more on forensic investigation. Work such as DNA sampling must be done. Such evidence can be important. We may not know, for example, whether we have sufficient evidence against an accused until we receive results from forensic laboratories, which are coming under more pressure because, as the number of drugs cases increases, more drugs are being sent to them for analysis. As technology advances, laboratories can do more for us. I have the impression that they have not been adequately resourced to deal with major changes in the past few years.

**Bill Aitken:** One of the stories that we hear is that those who are being recruited into the service are getting paid more than those who are in post already. Can you enlighten us on that?

10:30

**Helen Nisbet:** Yes. One of the main complaints that we received from members during the pay negotiations of 2000—which to some extent are still not resolved—was, apart from the pay and salary bands, about the anomalies that have arisen in the service over recent years. A number of factors led to that. The central civil service delegated pay and grading in the mid-1990s, so it has been left to individual departments to take pay and grading forward as they see fit.

The manner in which the Crown Office and Procurator Fiscal Service has chosen to deal with that responsibility—and at times the way in which it has had to react to, for example, the perception of the recruitment problem—has meant that our members perceive that pay and grading have been developed almost on the hoof. There is wide discontent among members that, for instance, an individual who is training a new entrant on the job may be paid less than the individual whom they are training. Part of the difficulty has been a lack of frankness, which I suspect has caused speculation to run rife. One wonders whether the problem is as exaggerated as some of the stories we hear imply, but we have made repeated representations to the department that the way in which recruitment and salaries are determined has to be made more transparent.

The department has to do something to restore the faith of members and show that they are truly valued and that their experience and the time that they have committed to the service is recognised. The phrase that we are constantly confronted with is that people are being “parachuted in” to suit the

department’s recruitment agenda without no thought being given to where they are placed in the structure.

**Bill Aitken:** What is the latest position on the pay comparability study?

**Helen Nisbet:** We are hoping to move forward with that shortly. Members will be aware that the Advisory, Conciliation and Arbitration Service has become involved. The consensus is that that has been a positive experience. We hope to embark shortly on a consultation process with our members to allow the study to proceed fully. Time is very much of the essence; given that there are so many inquiries, it is highly desirable that we have the process under way so that it runs in tandem with the on-going review of resources.

**Bill Aitken:** Obviously, money is important in any job. Mr Stott dealt with career structures in the service. You raised an interesting point about the ability to prosecute in the supreme courts. Since the position of solicitor advocate was established, whereby some solicitors were granted rights of audience in the supreme courts, only one fiscal seems to have been given that accolade. Obviously, you feel that more should be given that opportunity. What effect would that have on morale?

**Richard Stott:** For certain it would have a remarkable effect and increase morale in the service. Many people in the Crown Office and Procurator Fiscal Service feel that they are more than capable of dealing with the pressures of prosecuting in the High Court. After all, they have been prosecuting before juries in the sheriff and jury courts from day one in their careers. We wish to see progress. Given that the courts have recognised that solicitor advocates can appear in the High Court, it is an anomaly that they can appear on one side of the table, for the defence, but cannot appear on the other side of the table, for the prosecution. There is a feeling among some of our members that the professional prosecutors—if I may call us that—do not get the opportunity to prosecute in the High Court, but would be more than capable of doing so.

**Bill Aitken:** Do you agree that not all lawyers have the specialist art of prosecution? Would there be overall benefits in having full-time prosecutors, many of whom could come from the ranks of the Procurator Fiscal Service?

**Richard Stott:** I whole-heartedly believe that and have done for the 25 years that I have been in the Procurator Fiscal Service. I have no doubt that, as the person to whom you referred proved, members of the Procurator Fiscal Service could ably prosecute in the High Court. None of the fears that have been expressed about independence materialised during the time that he

prosecuted in the High Court.

**Bill Aitken:** We have evidence that there is a burn-out period of three years for advocate deputes. Do solicitor advocates who might become prosecutors feel that they could withstand that pressure?

**Richard Stott:** We are used to the pressure. By the time people have the desired experience, the pressure of prosecuting does not cause a problem. There are pressures on prosecutors and an advocate depute who has never prosecuted before would have to bear considerable pressure additional to the pressures already on him in dealing with a busy criminal justice system that is under strain. You are talking about a period that would not be applicable to prosecutors in the Procurator Fiscal Service.

There is no need for a prosecutor to be a solicitor advocate. The Lord Advocate can grant a commission to prosecute to a person who is not a solicitor advocate in the Procurator Fiscal Service; there is no bar on that.

**The Convener:** That is interesting; we did not know that. The whole issue is of particular interest to the committee. We have picked it up during the inquiry and we intend to pursue it vigorously.

We are, among ourselves and with the Crown Office, having a debate and doing some fact finding. We are trying to understand the different skills involved in prosecution and defence and the difference between criminal and civil cases. There is an interesting difference of opinion. However, the issue is important to our inquiry because, as you have said, we need to consider recommendations for the retention of staff and for career patterns. We do not see any particular reason why the Lord Advocate cannot promote the use of more solicitor advocates. We will add what you have just said about the Lord Advocate.

It has also been suggested to the committee that there is—I do not want to use the word “abuse”, as that might be too strong—use of a facility to allow other solicitors or advocates who wish to gain experience in the prosecution service to go on to the bench, for example. Would you say that that is the case?

**Richard Stott:** I am not quite sure—

**The Convener:** During our fact finding it was suggested that one of the uses of putting an advocate who might have a civil background into the prosecution service is that they need to get experience of the prosecution service in order to add to their curriculum vitae. If that does not happen, they might not be appointed as a judge. Is that true?

**Richard Stott:** Judges have been appointed who have not been advocate deputes.

**Bill Aitken:** Not many.

**Richard Stott:** Not many, no.

**Helen Nisbet:** Many of our members would recognise that argument, which is well touted around legal circles. However, it is difficult to evaluate what processes lead to an individual being appointed to the bench. If you are asking whether I have heard that argument before, I would reply that I have.

**Richard Stott:** As for the shrieval bench, more sheriffs have little or no experience of criminal cases before they come to the bench than High Court judges do. That is a fair comment. In my experience, however, that does not make those people worse sheriffs.

**The Convener:** The committee accepts that. Would you say, however, that a particular skill is required to be a prosecutor?

**Richard Stott:** Very much so.

**The Convener:** Given that a particular skill is involved, you can see that having someone in a prosecution role who has no previous experience of that work might be to the detriment of the service.

**Helen Nisbet:** Our members would argue that we bring a particular skill and experience to bear on the job and that we would continue to do so if we were invited to prosecute more regularly in the High Court.

**Richard Stott:** Prosecutors have to make an awful lot of decisions. A criminal defence lawyer has decisions forced on him. If there is a case to answer, he must decide whether the accused gives evidence. He reacts to the situation. However, the decisions that are made prior to a case proceeding, such as whether there is sufficient evidence, where the case should be prosecuted and what witnesses are to be used, must be made by the prosecutor during the investigation. We are also required to make decisions about the instructions that we give to the police in investigations. Specialist skills are involved in dealing with the investigation of crime, not just with the prosecution of crime. One should not just look at the person standing up in court and say that that is what a prosecutor is. There is an awful lot more to being a prosecutor than just presenting a case in court.

**The Convener:** That is an important point. If the Lord Advocate decided to give rights of audience for procurators fiscal to work in the High Court, would that boost your members' morale?

**Richard Stott:** Very much so.

**Mrs Ewing:** I wish to address a less contentious and fascinating issue. We have talked a lot about recruitment and retention and about the work load

and the stress. Is there an argument for electing paralegal members to the offices of procurators fiscal to relieve the work load? If so, how would that fit in with the role of precognition officers?

**Richard Stott:** Precognition officers carry out a specific and valuable function in the Procurator Fiscal Service. Bernard Harkins—the representative for the Public and Commercial Services Union—will no doubt be able to inform you further on that issue.

I presume that, by paralegal members, you mean non-legally qualified people appearing in court. I am not sure what the purpose of your question is or what you mean by paralegal.

**Mrs Ewing:** I mean people with knowledge of the legal system who are not necessarily qualified, but who could be of assistance in dealing with the work load in the procurator fiscal's office.

**Richard Stott:** We receive assistance from our support staff, and precognition officers build up an extensive knowledge of criminal law during their service in the Procurator Fiscal Service. Nevertheless, certain legal functions, such as the prosecution of cases in court, should be carried out by people who have a legal degree and are appropriately trained. The public should expect to have a proper lawyer prosecuting in a court.

**Mrs Ewing:** You said that there was going to be a four-stage stress audit throughout the offices. What has that achieved so far? What do you think will be the recommendation at the end of that audit?

**Richard Stott:** The audit will probably not recommend anything dramatic; it will indicate where the problems are. The evidence-gathering process is just about complete, but the compilation of the results has not yet been finalised. Many of our members are sitting on the reports that the group that carried out the exercise provided; the reports are confidential and indicate personal difficulties. We are aware that some members are in what is termed a high-risk situation regarding their well-being. Those issues will have to be addressed, but the process is not yet complete. We have received a commitment from the senior management team that it will ensure that the issues that are raised in the audit will be addressed. However, there is a feeling among our members that that commitment is not genuine.

**Mrs Ewing:** When do you expect the audit to be completed?

**Helen Nisbet:** Very shortly. We understand that the final report is to be communicated within days.

**Mrs Ewing:** Why do your members not have a great deal of confidence in the report?

**Richard Stott:** Our members have confidence

in the report, but they do not have confidence in the ability, or commitment, of the department to address and resolve the issues raised. The results of the audit will show a lack of faith in the organisation's ability to deliver.

**Mrs Ewing:** So the problem is more one of delivery than one of assessment.

**Richard Stott:** Yes.

**Scott Barrie:** Do you know what the completion rate among your members has been?

**Helen Nisbet:** Do you mean whether our members have complied with the audit?

**Scott Barrie:** Yes.

**Helen Nisbet:** The completion rate is upwards of 70 per cent, which is very high. The audit was carried out during the summer, when people were on holiday. It did not cover people who were off on sickness absence. The view taken by those who were involved in carrying out the survey was that the response rate was high.

10:45

**Scott Barrie:** I ask because the survey arrived during the week in which I visited one of the service's offices. I spoke to a depute fiscal who had placed it at the bottom of their in-tray—they were sceptical about whether they were going to complete it, as the service had not taken into account some of the issues that had been raised in the past. They wondered whether the survey was worth bothering with. Was that view prevalent?

**Helen Nisbet:** The depute's view was probably informed by the staff survey that was undertaken last year. As Mr Stott indicated, scepticism remains about the implementation of the results of the audit—that is, whether action will be taken. Staff in general held the survey in high regard. They accepted that a genuine assessment was being undertaken and were reassured on matters that worry them, such as confidentiality. I believe that the take-up was generally high.

**The Convener:** Do you have figures on how many of your members are off ill with stress?

**Helen Nisbet:** I cannot give you those figures.

**The Convener:** Is it possible for the committee to get those figures?

**Richard Stott:** The department should be able to provide you with figures on people who are on long-term sick leave; if it does, we can tell you which of those people are members of the society.

**The Convener:** Thank you for that guidance.

**Mrs Ewing:** Will a comparison with other professions be undertaken? We all hear about

stress in the education or the nursing professions—stress arises here, there and everywhere.

**Richard Stott:** There is a comparative aspect, as the company that conducted the survey has a database that contains information about stress in the civil service and the work force in general. From the indications that I have seen in my office, we do not compare favourably, as we have more stress than the civil service and the working population in general.

**Mrs Ewing:** In your reply to Scott Barrie, you touched on some of the other issues that I was going to raise in connection with the future office system. Has the introduction of that new system been a significant feature of the responses to the audit on stress?

**Richard Stott:** The department has not even tried to introduce the system yet. The system is being worked on, developed and tested in what I believe is now called a test office. When the survey questionnaires were being completed, the fact that a new system was likely to be coming in the future would have been at the back of our members' minds. The consultants advised us that they would be assessing the three-month period immediately prior to the completion of the questionnaires. Therefore, the issues that were being addressed in the survey were about what was going on in the service at the time that people were filling in the questionnaire; the survey was a snapshot of that period. I would not have thought that the new computer system will have had a great impact on how our members dealt with the stress survey.

**The Convener:** I am interested in the future office system. Although we have had demonstrations in the offices that we have visited of how cases are marked, our experience is limited. It struck me that the system is paper-based. You can only imagine what the new system will be like when you are marking cases on a computer screen. That could be a dramatic change in the working practices of your members. Do you think it will work? I have difficulty as a lay person seeing how the process can change from being paper-intensive to something that can be done on a computer screen.

**Richard Stott:** Other jurisdictions have changed from the paper process to the computer process. The shining example is Sweden, where, although there was initial resistance, lawyers found that the system assisted them in taking the kind of decisions that we will be required to take on computer rather than on paper. The difficulty that we face is the lack of faith among our members that there will be sufficient resources and training to enable us to cope with the new system or that the system will work. If we develop a working

system—and encouraging news is coming out of the test office—and our members are given adequate training and resources, they would welcome the process, as it would help and support them. One must also look to the future and think of the greater use of communications technology that will be involved in initiatives such as the integration of Scottish criminal justice information systems.

**The Convener:** Are you making demands of management in relation to your point about ensuring that there is training prior to the introduction of the system?

**Richard Stott:** We are in discussion with management on those issues.

**Mrs Ewing:** Are you encountering resistance from your more experienced personnel, who will probably find the changeover more difficult than will the people who are recruited in the early stages of the development of the system?

**Richard Stott:** There is no doubt that those with computer experience will have an advantage and that those of us who do not have computer skills will have to develop them. The system is not designed to require a lot of input via the keyboard; it is a mouse-oriented system with drop-down menus and so on. It is designed to support people who do not have full typing skills. There are a number of dinosaurs—

**Mrs Ewing:** Luddites?

**Richard Stott:** I might class myself as a Luddite. There are a number of people who are worried about the new system, but it is the way forward.

**The Convener:** Thank you for being so honest.

**Scott Barrie:** I noticed in your submission that, at your annual general meeting, your members passed a motion supporting the establishment of a victim liaison office. How might such an office operate?

**Helen Nisbet:** Members might be aware that the process to appoint the director of the victim liaison office is under way. Although pilot schemes have been run in some offices around the country, our members feel that there is a lack of hard information about how the office will work in practice. There is a general support for it, however. Our point has not changed substantially from what we said in the paper, which was that the measure enjoys the support of our membership in principle but that the critical aspect was that it should be properly resourced.

There is a case for the development of professional expertise in relation to the victim liaison office. If the office is supposed to allow witnesses and victims to be properly informed about what is happening in their case, the people

in the office will need to have detailed knowledge of the criminal justice system, especially the practical aspects rather than the criminal procedure. They will need to know a lot about how particular kinds of cases tend to progress.

We would be able to cast an eye over a particular case and foresee the likely pitfalls—from a victim or witness's point of view—such as adjournments and hiccups that delay progress. Foreseeing those pitfalls requires specialist experience of the nuts and bolts of the criminal justice system.

**The Convener:** Before we move on, I would like to pick up on a few points in your paper. We note your points about smaller offices. We intend to visit as many offices in the system as we can between now and the end of our inquiry. Following your suggestion, we will try to see those offices at peak times as well as at quieter times.

You make several points about changes in the system, such as the creation of the Scottish Drug Enforcement Agency, the increasing work load because of changes to criminal procedure since 1994-95, and the intermediate first diet. Have we picked up the point correctly? Are you saying that, although changes have taken place to speed up the system, matching resources have not been provided?

**Richard Stott:** Yes—you have picked up that point very well.

**The Convener:** Thank you—we now have that on the record. You also say that, although early guilty pleas help the system, you need to have fiscals available to hear those pleas.

The committee felt that the most stunning part of your paper was where you described the conclusion of the pay round. The vote was to accept the pay, but your members seemed to be outnumbered by non-legal staff and you were required to accept the vote. What is being done about that? It seems extraordinary to us that you were carried by the vote when one group, for whom the issues were different, was satisfied with the offer but your members were not.

**Richard Stott:** The issues are different. As far as we are concerned, the 2000 pay negotiations are on-going. Elements of the pay deal have been put in place, but the Procurators Fiscal Society is still sitting on a no vote from its members and negotiations continue. We have been encouraged by the direction that those negotiations have taken. A key element, on which the whole deal hangs, is the compatibility study, which is nearly up and running and which we hope will resolve most of our difficulties.

**The Convener:** Is it the normal procedure each year when you negotiate pay to deal with one

block of staff?

**Helen Nisbet:** I do not think that the issue has ever arisen before. No one can recall it happening before, which is why we say in our paper that it was unprecedented for the Procurators Fiscal Society to reject a pay offer. What happened was contrary to our interpretation of the negotiating agreement that we thought was supposed to govern such matters.

We have remarked on the impact that these events have had on general industrial relations. Among the vast majority of our members, there was a crystallisation of the view that a cynical approach was being taken towards industrial relations. A consequence has been that the department has been involved, through ACAS, in discussions of the general tenor of industrial relations. That has come about almost as a by-product of the pay negotiations. We put a great deal of store on those discussions. Things must not be allowed to go on as they have gone on over the past couple of years. Without a genuine commitment from the department, which I think we are now getting, to resolve these matters, the problems that we want to tackle—to do with morale, trust and the other things that staff regard as important as they try to bring commitment to their job—will not improve.

**The Convener:** The last few lines of the paragraph on morale and stress in your submission state:

“there are significant issues of mistrust amongst staff and directed particularly towards senior management.”

We were quite surprised by the strong language in the submission.

**Richard Stott:** There are strong feelings out there. Some people do not trust the senior management team.

**The Convener:** Can you say in what way?

**Richard Stott:** They do not trust the senior management team to provide the necessary support or to provide them or others with the information and evidence that is necessary to obtain the resources that everyone in the fiscal service thinks we need. We are overstretched and undervalued.

11:00

**The Convener:** Thank you for your evidence this morning.

**Richard Stott:** Thank you for inviting us.

**The Convener:** I welcome our second set of witnesses, who are Bernard Harkins, Allan Marshall and Debbie Hilton, the branch secretary, treasurer and local representative respectively of the Public and Commercial Services Union. Thank

you for your submission and for attending today's meeting.

The committee is well aware that the non-legal staff might think that they are perhaps not the focus of our inquiry or as important to us as the legal staff. I reassure you that it is important for the Justice 2 Committee to hear what you have to say. In our visits, we have endeavoured to speak to as many non-legal staff as we can. When we visited Glasgow, Bill Aitken—the deputy convener—spent some time talking to non-legal staff and received some useful information.

We will not ask you to make an introductory statement, but will move straight to questions. If you think that we have not covered something you can come back to it at the end of members' questions.

**Scott Barrie:** I have a question that is similar to that which I asked the witnesses from the Procurators Fiscal Society. Since you submitted your paper in June, have your members seen any improvement in morale, staffing and resources?

**Bernard Harkins (Public and Commercial Services Union):** No. The position that we set out in our submission stands. There has been no great improvement. We welcome the survey that has been done on stress and we hope that that will allow us to focus the issues and move in the right direction.

**Scott Barrie:** Your submission raises your concern about the proposed reduction in the ratio of non-legal to legal staff from 2.5:1 to 1:1. Can you tell us about your concerns?

**Bernard Harkins:** We accept that the department needs to invest in new information technology systems. When the future office strategy was announced, one of its main features was a reduction in non-legal staff. We sought further clarification on that and in particular on whether precognition officers, whom we represent, were included in that ratio. They are not.

The discussion has focused on administration support staff, which includes messenger grade staff, production keepers, typing staff and general administration assistants. Since then we have not had much clarification on how the department would go about achieving the ratio. One of our concerns about the future office strategy is that there is no timetable for reaching that staff ratio. That causes uncertainty among our membership, particularly as we move into the next financial year, by when it seems that it was planned that some of the future office strategy would have been introduced.

One change that has been made is that from 1 August next year there will be a new amalgamated grade. We have yet to see job descriptions

indicating how that will operate. With the introduction of personal computers to offices, our typists are concerned about what will happen to their jobs as precognition officers become more involved in the generation of precognitions. Those are some of the concerns our members have about the future office strategy.

**Scott Barrie:** Are concerns about the strategy having a major impact on the morale of non-legal staff?

**Bernard Harkins:** It does not help that there is uncertainty. In Glasgow, a training programme has been developed that suggests that precognition officers could be more involved in generating their own work. That programme is causing uncertainty among those of our members who are aware of it. We have been assured that precognition officers will not initially type their precognitions, but we are concerned about what lies behind those assurances. The department has been very open with us about how it is developing the future office strategy. I do not believe that it is hiding something from us, but I believe that it does not know how it intends to reach its targets.

**Scott Barrie:** Based on what you have said in the past few minutes, do you think that a 1:1 ratio of legal to non-legal staff is achievable? Is that ratio something that someone has thought up based on relatively little evidence?

**Bernard Harkins:** As Richard Stott said, Sweden is the model for the attempt to achieve a 1:1 ratio of legal to non-legal staff. We are sceptical about whether the department will achieve its target. Some of our members who have expressed an interest in early retirement packages might not welcome that. However, until we see that the department has a plan for achieving its target, we will be sceptical about whether achievement of it is possible, certainly over the next few years.

**Scott Barrie:** When questioning the previous set of witnesses, Bill Aitken touched on the Executive's draft budget plans, which indicated that additional legal staff would be recruited. I presume that your members are concerned that there might be a reduction in the number of staff in the areas that you represent.

**Bernard Harkins:** A recruitment exercise for precognition officers took place recently. That is welcome, because it will ease the pressure on existing precognition officers. Because of the nature of their work, those officers are involved in the more serious cases with which the department deals. However, promises have been made in many parts of the civil service, such as the UK Passport Agency, about what IT can deliver. Earlier this year the *Financial Times* reported that an IT scheme in the Lord Chancellor's Department

had had to be scrapped. IT might be able to deliver certain things, but we believe that any increase in staffing in other areas will have to be supported by increases in the number of support staff.

**Scott Barrie:** On the basis of my experience in local government, I can confirm that IT does not deliver everything that it is supposed to.

In your written submission you say a good deal about the use of agency staff in the service and the difficulties that that causes. Has the service lost experienced staff because of the need to use agency staff, particularly because of the difference between the pay levels of permanent and agency staff?

**Bernard Harkins:** The agency staff do typing. Staff members have not automatically rushed from the organisation because of the use of agency staff. There is, however, a sense of unease and disquiet among our members that that was done. The Glasgow office is seeking additional permanent typing staff. We welcome that, but we have been advised that the new typing staff will have flexible starting pay, possibly up to a salary of £12,500. That has caused concern among our members. In the past few weeks I have made representations to the department about the matter, saying that the sense of wanting to be valued that the staff expressed in last year's staff survey would have an impact on the matter of salary.

**Scott Barrie:** I think that I read in your submission that overtime is being paid, which it was not previously. Has there been a large uptake of overtime?

**Bernard Harkins:** Yes. I worked previously in the Edinburgh procurator fiscal's office, where overtime was not generally worked. However, we estimate that, for the past three years, overtime has increasingly played a part in Edinburgh. In Glasgow, it has done so for the past 18 months to two years. Overtime started being offered in mid-week, then it went on to weekends. In the Edinburgh office recently, one could work seven days a week.

One problem is that the solemn work is increasing, but we lack the typing skills for bulk text production. That is having an impact on the amount of work that existing staff can get through. Our traditional attitude to overtime is that more staff are needed to do the work. When raising the overtime issue with local managers I was initially caught off guard by their reply to the effect that they wanted to recruit more staff, but were having problems recruiting to the organisation staff who had those skills.

**Mrs Ewing:** I return to the issue of recruitment and retention. We touched on the FOS in the

Procurators Fiscal Society's evidence. You are the representatives of the work force. What have been the implications of the FOS for them? Have their lives been made more stressful?

**Bernard Harkins:** In a nutshell, yes. We received figures from the department on recruitment and retention that suggested that there was no overall problem. However, we managed to break down the figures region by region and saw that the recruitment and retention problems in some offices would cause difficulties in relation to the levels of experience of remaining staff members in the organisation. That has an impact in areas such as Lothian and Borders, which includes the Edinburgh office, where we deduced that there was a high turnover of staff. I recently received overall figures that suggest that staff resignations have increased by approximately 5 per cent. Overall, that might not amount to much, but we would like a more accurate picture for each region.

**Mrs Ewing:** In the context of the stress audit, the figures in your written submission are interesting. Sixty-three per cent of the staff claim to have occasionally experienced work-related stress, 55 per cent have experienced stress regularly, and 75 per cent do not feel that the department values them. Is that your overall assessment of the situation?

Do you think that the audit has been helpful? When do you think it should be concluded or reach a resolution?

**Bernard Harkins:** Those figures were taken from the staff survey that was completed last year. One of its recommendations was to carry out a stress survey in the department. As previous witnesses said, we are gathering information about stress, but the indications are that matters have not moved on much. We received an invitation from the department to become involved in the debate about how issues of stress are to be addressed, which we welcome. We hope that we can deal with those issues as soon as possible.

11:15

**Mrs Ewing:** How important will money be in that matter?

**Bernard Harkins:** I do not doubt that resourcing of the department will be a factor. If we receive additional resources, we will have to consider how they will be managed. We hope that the management review that has been set up will allow the department to make the best use of additional resources.

**Mrs Ewing:** Do you want the management review and the stress audit to make firm recommendations in concert?

**Bernard Harkins:** That would be useful, but the practicalities of the timetable are that the management review is to report in February and we hope to have clear information on stress before then. However, it would be useful to know the timing.

**Scott Barrie:** How will the setting up of the victim liaison office affect non-legal members in the service?

**Bernard Harkins:** When the future office system was announced, we were concerned about the proposed ratio of legal to non-legal staff. We were assured that there would be no compulsory redundancies so we made a calculation about where that would leave staff. It was felt that staff could develop and have a role in the victim liaison office. That system has been established in Hamilton and although the person that was appointed as the victim liaison officer came from another civil service department, a member of the support staff has gone in to assist. The indications are that our members seek to apply for those posts when they arise and are keen to be involved in such roles. They see the area as one in which there can be progression in what they do in the service.

**Bill Aitken:** I have a question about career prospects in the service. Have development opportunities for non-legal grades increased or decreased in recent times? What steps should be taken to increase them?

**Bernard Harkins:** As you can probably gather from our submission, our view is that non-legal staff who want to develop toward senior management roles in the organisation have difficulties. The senior management in the department consists of about 10 people, only one of whom has a non-legal background. The senior management team reflects only one part of the service. It is interesting that in the past there were non-legal managerial roles, for instance the higher precognition officer, which was a post that was sidelined because the principal deputies became involved in the management and training of precognition officers. There have been steps in the wrong direction on staff development.

Our submission also asks whether non-legal staff will have the opportunity to be involved in more complex work; indeed, in the past various recommendations have been made on that issue. For example, a review in 1984, a National Audit Office-commissioned report in 1989 and another review in the mid-1990s suggested that non-legal staff could be involved in work that was undertaken by legal staff. However, I have discussed the matter with the Procurators Fiscal Society and, as I am sure the committee will understand, the society holds a contrary view.

We as a union would be failing our members if we did not look after their interests and find out whether there were opportunities for them within the future office system. That has been a threat before now. There has been a theoretical discussion about whether non-legal staff can be involved in other roles, and the Crown Prosecution Service has recently developed the position of designated case worker. The designated case worker considers very straightforward cases that involve only adults and in which it is expected that a plea of guilty will be entered. We would like a similar role to be developed in the Procurator Fiscal Service.

**Bill Aitken:** You make an interesting point. That initiative has been fairly successful down south. Do you think that the same approach would be successful here?

**Bernard Harkins:** The issue is worth further investigation, if you will pardon the pun. However, we would want it to be included in the debate about the future office system. It is a pity that those discussions have not progressed further. We thought, for example, that we would be discussing our members' career and development prospects.

**Bill Aitken:** You dealt with the question of the valuable contribution that is made by precognition officers. Is that contribution recognised in pay and grading?

**Bernard Harkins:** We feel that the issue of pay for the general post of precognition officer has been addressed. During negotiations, the post was placed in a higher pay band, which has made it more attractive to staff in the organisation. We are certainly moving in the right direction on that issue.

**Bill Aitken:** Although you have already said that the figures for staff wastage are not available, clearly the matter is a cause for concern. What are the principal reasons for non-legal staff leaving the service?

**Bernard Harkins:** The recent pay deal improved the system of progression through the pay scales. The new system consists of various pay bands. From 2002, a member of staff in the lowest band will take five years to move from the minimum of the scale to the maximum. In the next three grades, it will take seven years to move from the minimum to the maximum; and in the very top pay grades, progression from the minimum to the maximum will take five years.

However, although that development is welcome, we really need a progression system that more adequately reflects the work that people are doing. For example, the Scottish Executive has a more logical system in which it takes five, seven and then eight years to progress through



the various pay grades. We will raise the issue of pay progression with the department again.

**Bill Aitken:** There must surely be opportunities to move from grade to grade. I take your point about the minimum and maximum—

**Bernard Harkins:** Some of our members would debate whether there is an opportunity to move from grade to grade, but one aspect would be promotion to another grade.

**Bill Aitken:** Is a formalised job appraisal system in operation?

**Bernard Harkins:** Yes.

**Bill Aitken:** Surely that would give the opportunity either to move or to find out why one is not moving.

**Bernard Harkins:** Changes to the appraisal system mean that there is a discussion about training and development. There is an opportunity to discuss moving, but the problem is the practicality of moving from grade to grade.

**The Convener:** I have one question to ask before we finish. You said that there has been an increase in solemn cases, and you imply that non-legal staff need more experience. Can you specify what experience is needed for solemn cases?

**Bernard Harkins:** Precognition officers form the main group of our members who are involved in solemn cases. Allan Marshall is a precognition officer, so he might be able to provide information.

**Allan Marshall (Public and Commercial Services Union):** We deal with solemn cases on petition under the supervision of a depute fiscal. We can investigate serious cases, such as murders and rapes. That is the main area in which our members are involved in solemn work. Each part of our work is checked by a member of the legal staff, but we are in charge of investigating cases.

**Bernard Harkins:** So the skills that are needed are analytical skills and investigative skills.

**The Convener:** You are saying that we need more people because of the increase in the number of solemn cases.

**Allan Marshall:** More members of staff are being recruited, and we will continue to need more.

**The Convener:** So we might get there.

**Bernard Harkins:** We might get there, but there will be a knock-on effect if we have more precognition officers and deposes on serious crime cases, because we will need more people with typing skills and more support staff to get indictments and so on.

**The Convener:** I want to ask about typing skills. Bill Aitken and I had a long discussion with your typists. In my past life as a union official, I represented many people who had proficiency certificates. That system seems to be being phased out in favour of acquired skills; that is, skills that we acquire because more often than not we have personal computers in front of us. Is your union worried that we might be losing traditional typists?

**Bernard Harkins:** The issue relates back to the mid-1990s, just prior to pay delegation to departments. Central negotiations seemed to indicate that typing proficiencies and other proficiencies were going to be phased out because typists would not be required in future. Our department developed that theme by relying on new technology to deliver more and more for us. Although other organisations might not require such typing skills, there is still a requirement in our organisation for people who can generate bulk text. Typists used to be able to sit proficiencies, of which there were three—A, B and C—and as they progressed, they were thought of as being more skilled and more able to get through work quickly. That system was taken away and replaced by a recruitment and retention allowance.

**The Convener:** Is there still a need for people—albeit a smaller number—whose skill is fast typing of block text, rather than typing of the general stuff that one does when typing and inputting information, for which one does not have to be so fast?

**Bernard Harkins:** There is a need for such people. People from schools and colleges do not have those skills, which leaves a gap in what we need, so the department must address that.

**The Convener:** That is probably a wider industry problem, but it is worth mentioning in the context of the skill requirements of the service.

We must conclude on that. The meeting has been useful. Thank you for your evidence, and for coming to the Justice 2 Committee this morning.

**Bernard Harkins:** Thank you for the opportunity to do so.

**The Convener:** We move now into private session to agree the report on the Sexual Offences (Procedures and Evidence) (Scotland) Bill.

11:30

*Meeting continued in private until 11:58.*



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