JUSTICE 2 COMMITTEE

Wednesday 6 March 2002
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
† 9th Meeting 2002, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
*George Lyon (Argyll and Bute) (LD)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

WITNESSES

Mrs Elish Angiolini (Solicitor General for Scotland)
Colin Boyd (Lord Advocate)
Douglas Brown (Crown Office and Procurator Fiscal Service)
Janet Cameron (Crown Office and Procurator Fiscal Service)
Sir Anthony Campbell
Bill Gilchrist (Crown Office and Procurator Fiscal Service)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Fiona Groves

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 1

† 8th Meeting 2002, Session 1—joint meeting with the Justice 1 Committee.

Scottish Parliament

Justice 2 Committee

Wednesday 6 March 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:31*]

Item in Private

The Convener (Pauline McNeill): We are quorate, so I open the meeting briefly in public to ask the committee whether it agrees to take item 2 in private, which will allow us to decide our line of questioning for item 3. Is that agreed?

Members *indicated agreement.*

09:31

Meeting continued in private.

09:46

Meeting suspended.

09:49

Meeting continued in public.

Crown Office and Procurator Fiscal Service

The Convener: I welcome everyone to the ninth meeting in 2002 of the Justice 2 Committee.

Agenda item 3 concerns the Crown Office and Procurator Fiscal Service. The committee agreed that, in the context of its inquiry into the Procurator Fiscal Service, it was important to take evidence on the relevant recommendations of the Campbell and Jandoo reports into the murder of Surjit Singh Chhokar. I thank the Chhokar family for being in attendance at the committee today.

I welcome the right hon Lord Justice Campbell and Lindsey Anderson. I thank you both for attending the Justice 2 Committee today—we are very grateful that you could be here. Before we ask questions, I invite you to make any opening remarks that you may have.

Sir Anthony Campbell: Thank you for inviting me along. I am accompanied by Lindsey Anderson, who acted as secretary to the inquiry that I conducted and who is now a principal depute in the policy group of the Crown Office.

Most of what I have to say was included in the report that I made. The important thing to remember is that my remit was to consider one particular case, important though that case was. That meant that I was focused on the way in which the case was dealt with by the Procurator Fiscal Service. I believe that the experience of one particular case would not be a very suitable basis on which to consider wide-ranging changes to a long-established system. Where I made recommendations, at the end of my report, I tried to be sure that the matters that I thought required change applied generally, and not just to the circumstances of the particular case.

As an outsider looking at the Scottish legal system through fresh eyes, I was impressed very much by the 110-day rule, and I think that people in this jurisdiction should be very proud of it. Once people have been committed, they have to be tried within that time. From the point of view of the person in custody, I am sure that the 110 days seems a long time to wait for their trial. The pressure is enormous, however, for the people who have to prepare the case.

In the context of cases having become much more complicated, often involving fraud, the gathering of scientific evidence and so on, my impression was that things were having to be done at great speed, and perhaps without enough time

for the consideration that one would like to give. I know that lawyers are not famous for speed but, having said that, I think that there must be a happy medium between, on the one hand, what the law requires in the sense of people having to be speedy and, on the other hand, allowing for cases to be properly prepared.

I will refer quickly to the circumstances of the case. Members will remember that a three-day report had to be published. That report arrived at the Crown Office here in Edinburgh, and the decision had to be made in a morning. I believe that that influenced everything that followed. Very experienced people gave a first impression based on that three-day report. The fact that they produced their direction by 12:47, with the court sitting that afternoon, gives some idea of the speed at which people had to work and the pressure that they were under.

The precognition was very important. The person who had to do that work was engaged in other cases and I reckon that, in practice, he had about six days to prepare the case before it came before the Crown Office for consideration. That was a very important task, which was given to somebody who, as it happens in this case, had not had adequate training for it. Nevertheless, the task had to be done at great speed. His supervisor looked at the report on a Friday afternoon as it came in from the typist and read the report as it was produced. That does not reflect a situation in which someone had time to give careful consideration to a case that turned out to be one in which a detailed legal issue had to be decided.

In addition, I found that the advocate deputes were dealing with summaries because they did not have a great deal of time to deal with the case. None of the advocate deputes had time to read the case from beginning to end. When I examined the trial, I found that the trial advocate received the papers the week before the trial. As she had a number of trials that week, she had only the weekend to look at the case in detail.

That brief summary shows how a very important case was dealt with. As it happens, the case met its deadline, but that was done under such pressure of time that people did not have time to reflect on the issues that were raised. The case is an example of one that tested the virtues of the 110-day rule, which are great. I understand why the rule is so zealously guarded by the judges. However, the case shows that the system has to work under great pressure of time.

When I concluded the report, I felt that a broad review of the system was necessary. That was because the Procurator Fiscal Service was working under enormous pressure. The system would have broken down but for the dedication of the people who were working in it. That is a brief summary of the view of the case that I formed as an outsider. The weakness is that I was examining what happened in one case and perhaps trying to generalise from it—there is a risk in doing that.

The Convener: Thank you for that introduction. Your report was easy to read and made it easy to follow what happened in the case from beginning to end.

You describe a system that is stretched to its absolute limits. Why did you draw the conclusion that staff working in the one office that you examined, which was the Hamilton office, needed more time, experience and resources, rather than highlight management inadequacies or other issues in that office?

Sir Anthony Campbell: I hope that I will answer your question if I do so slightly indirectly. The solution is not to give the system more people and more money. What is needed is to make an examination of the whole system. I will give one example that relates to the Procurator Fiscal Service. Decisions are made on whether cases should go to the sheriff court or to the High Court. People feel that an advocate depute brings an independent mind to bear on such decisions. I was brought up with a system in which there was a Director of Public Prosecutions, so people like me view the Procurator Fiscal Service as very independent. People in the Procurator Fiscal Service may be perfectly capable of making many of the necessary decisions in cases that have to be referred to the Crown Office. Some people would view that statement as a heresy, but people in the Procurator Fiscal Service should be relied upon as people of an independent mind who can examine cases independently.

There was a real problem in the Hamilton office. People in that office were under great pressure of time, which meant that someone who would not otherwise have been asked to precognosce a case had to be asked to do so in the case in question. As you said, I did not look at staffing levels; I did not feel that that was within my remit. My remit was to consider the decision-making process in the Chhokar case.

I am not sure whether I have answered the question.

The Convener: I think that you have. The committee has read the report and is clear about the fact that, as you say, money cannot fix everything. However, there is a resource issue. In our inquiry we have heard from a number of fiscals and have no doubts about the dedication of people who work in the service. I wanted to establish whether you had the opportunity to look into whether there were problems of underresourcing—as a result of which people did not have enough time to take ownership of their

decisions—or whether you focused simply on inadequacies in the office.

10:00

You recommend that advocate deputes should have more time to read cases. It seems to me that everyone who is involved in the decision-making process needs more time. We know that the precognition officer in the Chhokar case had to get up at 5 o'clock in the morning—that alarmed me—and that he had to juggle the case with other sensitive cases. That is an impossible task. Do you think that it would be possible to fix the problem and to allow procurators fiscal and advocate deputes more time, without putting more resources into the system?

Sir Anthony Campbell: No, because the service was short at every level. As I recall, the report pointed out that fiscals in the High Court unit who consider cases in most detail—and who considered the Chhokar case in most detail—used to divide up on Friday evenings the work that had not been done during the week so that it could be done by them over the weekend. That was necessary to ensure that cases were ready for the following Monday. The units had deadlines to meet, so if those deadlines had not been met by Friday evening, staff divided up the work among themselves and did it at home over the weekend. My impression was that there was a shortage of resources not just in Hamilton, but in the High Court units. If people had not been willing to work extraordinarily long hours, the system would have failed sooner.

The Convener: Did you receive any indication of lack of continuity throughout the Procurator Fiscal Service, rather than just in the Hamilton office?

Sir Anthony Campbell: I have experience only of the Hamilton office. I cannot speak about what was happening elsewhere. I imagine that some offices have greater burdens than others have. However, I am not qualified to express a view about that.

Stewart Stevenson (Banff and Buchan) (SNP): I am sure that your support for the 110-day rule, which many people—including members of the committee—regard as the jewel in the crown of the Scottish justice system, will be widely welcomed. You have indicated that the rule appears to serve the interests of justice. I want to consider the issue from a slightly different angle and to develop some of the points that you have made. Is such a rule—whether it is based on the 110-day period or on some other number—useful as an objective and external measure of what has to be achieved? Does it allow the service to calculate the resources that it requires to do the job? Is that a fair characterisation of the 110-day rule?

Sir Anthony Campbell: The 110-day rule is a good guideline, but there are many cases in which, even with all the resources available, the 110-day deadline could not be met. The Crown may prepare its case within 110 days and at great public expense, but the defence may then simply not be ready. Something like 40 per cent of High Court cases are adjourned because the defence is not ready after 110 days have elapsed. Judges are concerned that cases are not being heard as rapidly as they would wish. It is useful to have a guideline, but there must be occasions when it is just not possible to prepare a case properly in 110 days. The interest of justice is also served by cases being properly prepared.

Stewart Stevenson: So I take it that the complexity of cases in the modern world may mean that the time scale should be, for the sake of argument, 150 days or some other number, but that the existence of a number is in itself useful.

Based on what you saw at Hamilton and the High Court unit, do you think that part of the problem was that work did not start early enough because there were insufficient resources in the system and the effort that had to be expended on this case had to be compressed into too short a time scale? Or was the problem in this case that—in your judgment—110 days was not long enough?

Sir Anthony Campbell: The deadline of 110 days was met in this case. If the case had been dealt with differently, there would have been sufficient time. Time was lost at the beginning with regard to the three-day report. I never quite understood this. We were told that the papers were needed because two other accused had been arrested in the meantime and work could not start on the case when the Crown Office and Procurator Fiscal Service wished, but the papers could have been copied and one set could have gone to court and one set could have been used to deal with the case.

Stewart Stevenson: Finally, did you see evidence of a scheduling system that showed the work load and how resources were being deployed against the timetable of the 110-day rule, or was the system ad hoc and done on the basis of divvying up the work when the pressure got too much?

Sir Anthony Campbell: I never asked that question, so I cannot answer. My impression was that somebody had to be found to do the work when circumstances required.

Stewart Stevenson: So it was ad hoc rather than systematic.

Sir Anthony Campbell: It may be that there was a system. I cannot really answer that, but my—

Stewart Stevenson: But you did not see a system.

Sir Anthony Campbell: I did not see a system, but there may well have been one.

Bill Aitken (Glasgow) (Con): You are aware that since you commenced and finished your inquiry a different system has been introduced with regard to the admission to bail of those who are charged on the most serious indictable offences.

Sir Anthony Campbell: Yes, under the Human Rights Act 1998.

Bill Aitken: That brings with it different problems, but it is possible that the 110-day rule, which many of us regard as sacrosanct, would not now impact to the same extent.

Sir Anthony Campbell: Yes, because more people are on bail. That is certainly our experience in the jurisdiction in which I sit. Many more people are now on bail who would not have been on bail before. I imagine that the situation is the same in Scotland.

Bill Aitken: So to some extent the difficulty that you quite correctly identify is historical.

Sir Anthony Campbell: I hope so. I cannot speak for the experience in this jurisdiction, but I imagine that there are fewer people in custody. However, in serious cases, not because of the seriousness of the case but because of the nature of the offence that it is alleged someone has committed might make them less suitable for bail, there might well be—

Bill Aitken: I did say that the change brings with it other problems. Do you accept—remember that we have been looking at this case, where a great injustice was done, in isolation—that under the existing system, and allowing for the fact that pressures may build up towards the end of the period for indictment some eight or nine months after the petition appearance, the immediate pressure in respect of the 110-day rule has been eased to some extent?

Sir Anthony Campbell: Yes, I suspect that that is so.

Mr Duncan Hamilton (Highlands and Islands) (SNP): Good morning. I would like to ask about the thorny issue of race.

The two reports came to slightly different conclusions, albeit that they had slightly different remits. Your report states:

"I have not found any evidence to suggest that racist behaviour or attitude influenced the decisions that were made. The system failed but this was not due to the fact that the victim belonged to a different ethnic group".

Dr Jandoo concluded that there is institutional racism in Strathclyde police, the Crown Office and the Procurator Fiscal Service. Have you had an opportunity to reflect on his report? Do you want to comment on it?

Sir Anthony Campbell: I understand how people might think that we came to different conclusions about the same matter—however, as you said, our remits were different. I wanted to find out whether race had influenced the decision on how the prosecution should be conducted. One must be careful when dealing with matters relating to race, as people are often totally unaware that race has influenced them. Having said that, there was such a sharp difference of legal opinion on the Her Majesty's Advocate v Brown case and its effects—to which I referred—that I think that the same difficulty would have arisen, irrespective of the race to which the victim belonged. It was my clear impression that people agonised about a legal rather than a racial issue.

Mr Hamilton: The well-worn definition of institutional racism, which is used in the Jandoo report, is that

"Institutional racism occurs wherever the service provided by an organisation fails - whether deliberately or not - to meet equally the needs of all the people whom it serves, having regard to their racial, ethnic or cultural background."

If you used that lower standard in your investigation, as opposed to asking whether there was any evidence of a deliberate racial motive, would you have come to a different conclusion?

Sir Anthony Campbell: I defined what I understand by racism in my report and applied that test. If I had applied Dr Jandoo's test, I do not believe that I would have come to a different conclusion. I simply did not find anything to suggest that race had come into the decision.

Mr Hamilton: I have a question on a completely different matter—precognition and the use of inexperienced staff. Your assessment was that there was a lack of resources and you said that the absence of more experienced staff was a serious problem. Is that correct?

Sir Anthony Campbell: Yes. I thought that experience and training were required to know what to ask the pathologists in particular—about, for example, where injuries were inflicted and whether a knife, if used, would have been obvious to people who were standing beside or in close proximity to the victim.

There was criticism of the precognitions when the case reached the High Court unit. The trial advocate, Miss McMenamin, was critical of the precognitions when she conducted the trial. I

would be wrong to say that criticism was made only of the pathologists' precognitions. The High Court unit was not happy with the precognitions.

Mr Hamilton: Although you focused on one example, did you form a view about how widespread the problem was?

Sir Anthony Campbell: No. I got the impression that staff were simply overstretched. A young man who was considered able and competent to precognosce, with sufficient supervision, embarked on the task. I have no doubt that he did his best, but that was not good enough in the circumstances.

The Convener: I want to take up the point about the criticism of precognitions. We know that the precognition officer was inexperienced, that he got up at 5 am and that he juggled other trials. What made you think that it was a question of inexperience rather than a question of a lack of time?

Sir Anthony Campbell: That is a fair question. The precognition officer was trying to conduct a very difficult case involving children at the same time so, to be fair, it might be that if he had had more time, he would have been able to do a better job. I was influenced by the fact that he had had no training. To precognosce is quite a skilled task and training is very important.

10:15

The Convener: To your knowledge, was management aware that he was under that kind of pressure, or did that come out only in the preparation of your report?

Sir Anthony Campbell: I think that his immediate superior must have been aware that he was conducting trials before the sheriff, but he may not have made her aware that he was getting up at 5 o'clock in the morning to try to complete the work. I do not know about that.

George Lyon (Argyll and Bute) (LD): In your report and in your evidence today, you have mentioned deadlines such as the 110-day rule and the three-day rule. It seems that severe time constraints run all the way through the system. Does the system need to be overhauled, or is the fundamental problem a lack of resources and manpower?

Sir Anthony Campbell: It is a combination of both. The system can be improved and I have no doubt that it will be improved. However, more people are needed. I do not think that addressing one of the issues that you raise will answer the problem. Addressing a combination of the two is required.

People should have it explained to them why a decision that they have made, at a lower level, has not been accepted. They should not simply be told, "This is the way it will be done." They have to be told why. Better communication between the advocates and the precognition officers is important so that people know why their views have not been accepted.

George Lyon: You recommended that an office be set up in Glasgow.

Sir Anthony Campbell: I am told that that was heresy.

George Lyon: I believe that the recommendation has now been accepted. On its own, will that make a significant difference?

Sir Anthony Campbell: It may be that, as an outsider, I do not appreciate all the niceties, but I wondered why, if 60 per cent of High Court cases are conducted in Glasgow, all the decisions about them are made in Edinburgh. I may have wondered that because I am more west-coast oriented.

George Lyon: We are straying into difficult territory here.

Sir Anthony Campbell: Yes, I know that I have to be careful about these things, but there is a serious issue. Advocate deputes come to Edinburgh and work for a week at a time marking cases. It was explained to me that many of them simply could not find the time to do that. I thought that, if they are going to be in Glasgow, why not get them to mark the cases in Glasgow in a satellite office of the Crown Office. That would mean that there was a better chance of those advocates conducting those cases.

I discovered from people who had been advocate deputes a long time ago, and from judges, that they were rather surprised that the person who marked the case did not conduct it. I was then told that the weight of business was such that that was impossible. However, I felt that there was no point in simply throwing our hands in the air and saying that it was impossible. Why not see whether it can be done in some cases? If advocate deputes are conducting 60 per cent of cases in Glasgow, why not use them after court to mark cases, in the hope that they might be there to conduct cases in Glasgow?

George Lyon: How do the time pressures and work loads that your investigation found various players to be under compare with those in your jurisdiction? You have come in with an unbiased view of how the system works, so you can compare one system with another and the work loads in the Scottish system with those in the Northern Ireland system. Were you surprised at the work loads that procurators fiscal and advocates were expected to carry?

Sir Anthony Campbell: Yes, I was.

George Lyon: Is there a significant difference between the Scottish system and your own jurisdiction?

Sir Anthony Campbell: I might not be forgiven by the Director of Public Prosecutions staff in Belfast for saying this, but I thought that the work load in Scotland was enormous and that the pressure on people working in the system was very high. I really admire the ability of those in the Scottish system to get so many cases ready in 110 days. It is quite remarkable.

George Lyon: Could you quantify the difference in percentage terms? Are Northern Ireland prosecutors working with 10 per cent, 20 per cent or 30 per cent more staff?

Sir Anthony Campbell: I am not familiar enough with the DPP staff in Belfast to know just how high the level is, but we certainly would not get cases ready with the speed that is achieved in Scotland. That is of fundamental importance. We do not have an official legal limit, but we have targets that we try to meet. That is how we operate. Statistics are published every year, but we would not meet the deadlines that are met in Scotland. One of our problems, which also arises in Scotland, is that the defence team is not ready. Time and again, a judge who is ready to start a trial is told that the defence is not ready to begin. It is difficult for a judge to force a case on if the defendant's advisers are not in a position to conduct the defence; he simply cannot do it.

George Lyon: We heard a leading Queen's counsel who sits in the Parliament say in a debate that, even if the 110-day limit were extended to 150 days, the time pressures would be just the same but they would be felt after 150 rather than 110 days. Do you agree with that point of view?

Sir Anthony Campbell: Human nature being as it is, that is how we all work. As somebody said to me in the course of my inquiry, we all work better under pressure, but there are limits to the pressure under which people should have to work. I gather that the system is being examined. I hope that some way can be found to pick those cases that can or ought to be done in 110 days, while recognising that there are other cases in which that simply cannot be done, perhaps because of scientific evidence or for some other reason. I hope that, in such cases, the time limit could be extended, if the Crown could show that such an extension were justified because of the nature of the evidence or the level of detail involved in, for example, a fraud case.

The Convener: When one sees the consequences of a failure to convict in a case such as the Chhokar case, one questions the system. The trial advocate was quite clear that she was not happy with precognition statements. She felt that the indictment was wrong and that all three men should have been charged together. She was prepared, even at that late stage, to change the indictment, which the trial advocate is entitled to do. It concerns me that the system makes that impossible.

I subscribe to everything that has been said so far about the 110-day rule as far as fairness and human rights are concerned, but I wonder whether there should be more flexibility. If the prosecution feels that they have many difficulties, should there be scope for them to ask the judge for a bit more time?

Sir Anthony Campbell: My recollection is that there were circumstances in which the trial advocate could ask for the trial to be adjourned. I cannot remember the technical phrase for what the advocate could have done at that time. However, there was another example of lack of communication. The advocate assumed that a law officer had seen the case, but my finding was that a law officer had not seen the case.

I gather that, when that stage of the case is reached, there is a tradition of standing by decisions that have been made and not starting to question what others have decided in the marking of proceedings. You are quite right that the trial advocate seemed to be very unhappy about the case. I saw the transcript of the trial and the advocate, at least twice, said in her address to the jury that the jury members might well wonder why there were not others in the dock beside the accused.

However, if the advocate had been aware of the way in which the decisions had been made in the case—had all that been on a list in front of her—she might have come to a different decision about whether to proceed when she was unhappy about the way in which the case was constituted. However, I have not asked her about that.

The Convener: You mentioned the advocate's speech to the jury. When she had to apologise to the judge for not being present for the conclusion of the trial, that underlined the point about the system being overstretched. That could have been perceived to be insulting to the victim's family and to the court. Do you think that that is another indication of the pressure that advocate deputes are under or is it just normal practice?

Sir Anthony Campbell: The judge certainly seemed to accept it. He was not at all critical of the fact that the advocate had to go to a trial in Paisley. My feeling is that it is better if the same person stays with the case from beginning to end, including making the decision on whether to move for sentence.

The Convener: You recommend that law officers should be involved in particular

circumstances. In your report, you mention that there was a dispute between the High Court unit and the duty advocate depute. As far as you could ascertain, that dispute did not reach the law officers. At what point do you think the law officers should see such matters?

Sir Anthony Campbell: Because murder is viewed by all of us as the most serious criminal offence, it is a law officer who should make the decision to mark no proceedings in a murder case. In essence, that was my recommendation. If a law officer is not there, it is the home advocate depute—the most senior officer in the Crown Office—who should make that decision in place of the law officer.

When I was considering the matter, the decision that no proceedings would be marked in a murder case could have been made by the advocate depute. I felt that a law officer should consider such a matter. As Mr Aitken mentioned, at that time the law officers had to decide whether somebody could be released on bail in those circumstances. However, the question whether there should be proceedings was not a matter that a law officer had to consider.

Bill Aitken: In recommendation 5, you highlight the difficulties that arose with communication. One of my principal concerns is the way in which decisions were communicated between the Crown Office and the procurator fiscal's office in Hamilton, and among advocate deputes in the Crown Office itself. Did such ways in which to communicate decisions—sometimes by vague handwritten notes—impact on the decisions?

10:30

Sir Anthony Campbell: Yes. Mr Gilchrist, who was the last advocate depute to consider the case, did not realise which decision he was being called upon to make. Had there been a fuller note, that would have been quite apparent.

Bill Aitken: One of our principal concerns is the involvement of Mr Gilchrist, who thought that he was being asked informally about his view on a matter, whereas he was being asked to make a decision. Should the Crown Office institute procedures to ensure that instructions from advocate deputes are seen as such?

Sir Anthony Campbell: Yes. Instructions should be much fuller. The traditional style has always been a very terse note on the papers, which is no good. As I said, it would be better to ensure that people understand why their view has not been accepted. It should also be apparent that the person who makes the decision understands his duty and what he is being required to decide.

One other point has just occurred to me. When the papers went to the High Court unit of the Crown Office, they were sent back with what is known as a shopping list of everything that needed to be done. However, once everything on the list had been done, there seemed to be no system for sending the papers back to the Crown Office, which would have allowed the person in the High Court unit to find out whether the case had changed as a result of what they had asked to be done. That is another area in which communications could be improved.

Bill Aitken: I appreciate that, when we examine something in hindsight, we all have 20/20 vision. However, we should bear it in mind that there was sufficient evidence against at least two of the three people who are in the frame for the crime, even though the quality of that evidence was not good. Although we are dealing with matters that are to some extent historical, do you feel that, if the case of Howitt had been decided a few months earlier, the Crown Office would have been able to make a different decision about the terms of the indictments—or indictment, if there had been only one trial—and the persons that were named in them?

Sir Anthony Campbell: Yes. Although the advocate depute who conducted the second trial was confident about the argument that he advanced, I felt that it was difficult for the Crown to show that someone, not before that court, had not committed the offence. Things might have been different if the case of Howitt had been decided earlier. However, from my recollection, it was rather late in the day when the Crown came to consider the implications of that, after it was invited to do so by Lord Bonomy, who was the trial judge on the second occasion.

Bill Aitken: That is my principal concern. I repeat that I am asking my questions with the advantage of hindsight. When Lord Bonomy drew the matter to the depute's attention, that might have provided an opportunity for the depute in effect to pull the plug at that stage and revisit the issue in the light of the Howitt case.

Sir Anthony Campbell: Subject to correction, I think that the matter was considered overnight and it was decided that in the interests of justice the Crown could not alter its case at that stage. It was not the sort of hasty decision that one has to make on one's feet in court; it was a considered decision.

The Convener: In order to clear up any doubt, can you clarify whether the Crown relied too heavily on getting a conviction in the first trial? Everyone seems to agree that the first accused should have been charged, but there is confusion over whether all three accused should have been charged together, and over what should have been done with Montgomery and Andrew Coulter. Did the Crown rely too heavily on getting the first

conviction to sort out the other two accused?

Sir Anthony Campbell: That is a difficult question to answer. My impression from the evidence of the advocate who conducted the first trial is that, although she had reservations about the way in which the trial was constituted, she believed that there was sufficient evidence for a conviction. The die was cast once the decision had been made to proceed against only one of the accused.

In our jurisdiction, it is my experience of such cases that all three accused would usually be charged. The decision is left to the judge to sort out, not to those who direct the prosecution. However, that might sometimes mean that the prosecution abdicates responsibility. In the end, I came to the view that two of the accused should have been on trial together. I appreciate that others could legitimately hold a different view.

The Convener: Are you saying that you prefer your system, under which all three would have been charged? On balance, is it right that the system lets the Crown decide who is charged?

Sir Anthony Campbell: The Crown must be responsible for deciding whether people should be prosecuted. The Crown cannot avoid that responsibility by saying, "We'll just prosecute the lot and let the court sort it out." Getting down to the niceties of the difficult legal issue that arose in the case, I would have been inclined to have put two of the accused on trial and to have let the jury decide.

The Convener: I want to clarify one final issue. When you were asked about whether the advocate depute who marked the prosecution should also have conducted the trial, you said that you were told that such continuity would be impossible. The striking thing about the report is that it shows that continuity failed every time. Why is such continuity impossible?

Sir Anthony Campbell: It is impossible because trial advocates must move around the country to go to different trials. The trial advocate might be prosecuting in Forfar one day and in Paisley the next. It seems that it is impossible to organise things so that the person who marked the case would also conduct the trial. There are great demands on people's time and limitations on where they could be.

That struck me because, in our jurisdiction, it would be rare for the counsel who directed the prosecution not to be the person who conducted the trial. In Scotland, circumstances have meant that that is not unusual but, historically, it was not always so. I was told by at least one judge that, when he was an advocate depute, he conducted the cases that he marked.

George Lyon: You said that, in your jurisdiction, there would be continuity throughout the case. Is that because your people are not shifted round the country in the way that happens in Scotland? Will you explain the difference between the two systems?

Sir Anthony Campbell: When I say that there is continuity, if a trial goes on longer than expected, obviously somebody who was going to conduct the prosecution must hand over the brief to someone else. The way it works is that the Director of Public Prosecutions instructs counsel in a case. Counsel must prosecute in that case and he is retained for that case. It is his responsibility to conduct that prosecution.

George Lyon: Is it counsel's responsibility to manage his time to ensure that he is in the right place at the right time?

Sir Anthony Campbell: He is supposed to do that if possible—he does not always do so. If he does not conduct his work properly the DPP does not brief him in future. He is expected to be available, but the DPP will understand if he is caught in a case that goes on longer than expected.

Stewart Stevenson: Does the High Court sit at one location in your jurisdiction?

Sir Anthony Campbell: No, it sits in about six different places.

The Convener: Perhaps we could examine that question in future.

We are told that the marking advocate depute cannot be the same person who conducts the trial, so what would be the single most important issue that could be dealt with to ensure continuity?

Sir Anthony Campbell: That is quite a difficult question. As I said, it is something that should not just be ignored. It is not good enough to say that continuity is impossible—it must be possible in a number of cases. It is difficult to say what would be the most important way in which to ensure continuity, but I rate the example of Glasgow—which I mentioned earlier—quite high in my order of importance.

The Convener: That was helpful. Would you like to say anything in conclusion?

Sir Anthony Campbell: I have nothing to add—the committee has given a fair hearing to what I had to say. I hope that I have been of assistance. My experience of the system is limited, and I know that the committee hears from people who have much wider experience. I have been encouraged to read about the steps that are being taken. I repeat what I said about being impressed by the people who work in the system and their sense of duty and I hope that their morale will be

encouraged by the changes that have been made.

The Convener: I thank you and Lindsey Anderson for attending. It has been extremely helpful and your evidence has been very clear.

I welcome our second set of witnesses. Janet Cameron is head of the quality and practice review unit. Bill Gilchrist is the deputy Crown Agent and Douglas Brown is the regional procurator fiscal for south Strathclyde, Dumfries and Galloway. Good morning and welcome to the Justice 2 Committee. Thank you for coming along. I thank you for your extremely helpful submission.

Who would like to start with a question?

Stewart Stevenson: I will continue on the 110-day rule. Is it useful to have an objective standard that is externally imposed?

Bill Gilchrist (Crown Office and Procurator Fiscal Service): That is the Scottish system. The 110-day rule has been in place since 1701. The only major change in all that time was, I think, in 1980. Prior to that, we had to conclude a trial within 110 days. In 1980, a change was made whereby we have only to start the trial in that period.

Clearly, if an accused is remanded in custody, there must be a limit on the time that they spend in custody. That is essential and basic. We must operate within that requirement; it is the system. It is right that there are targets to which we should have to work. The 110-day rule is a target. If the accused is in custody, we must serve an indictment within 80 days and the trial must start within 110 days.

10:45

Stewart Stevenson: Is it useful, from the point of view of the management of the service, to have a clear deadline? I presume that you have some historical understanding of the work load that you have to process, albeit there will be less certainty about the work load in future, because recidivism is not under your control. Do you agree that the external standard of the 110-day rule ought to be of value to you in seeking the resources that you need to meet it?

Bill Gilchrist: As Sir Anthony Campbell said, it creates pressures, but one often works better under pressure.

We have a system of monitoring custody cases. If somebody is remanded in custody, we are aware of the time limit and our system will bring up warnings if cases are not being processed in time. We know what the targets are. We have to work to those targets, and our system will identify where we are at risk of not meeting them.

Our business is demand led. If seven murders take place over the weekend—I hope that that will not happen—there are likely to be seven custody cases. That means a sudden surge in work in a particular office or in several offices. We have simply to react to that increase in work load and deal with it within the strict time limits of the 110-day rule.

Stewart Stevenson: Do you have a formal system for managing the resources in the service? Do you use any project management systems—that would seem to be useful—or any other system throughout the service, or is the management of resources determined by local initiative?

Bill Gilchrist: Does your question relate to the preparation of a custody case?

Stewart Stevenson: No. I am asking a management question rather than a legal one. Steps must be taken in the preparation and conduct of a trial. Do you have a standard way to identify the resources that are required for those steps, match them to the people whom you have available and thereby manage the most effective deployment of the resources in the service?

Bill Gilchrist: We have systems in place. Those have been criticised in the recently published management review. We have systems for identifying trends and work loads and for anticipating increases. We have systems of identifying the resources that ought to be required to deal with certain types of work load and then identifying the additional resources that would be required.

The recent report criticises our systems as being inadequate. One of our difficulties is that we tend at the moment to record what new work comes in and to record the type of case, and then record what is disposed of. At the moment, we have inadequate management information to assist us in processing a significant area of work—the work that is in hand. We have acknowledged that and the management review acknowledged it. We know that we must make improvements in management information. That is partly to do with computerisation and implementing systems that will allow us to count and categorise the business with which we are dealing so that we can quantify it better.

Stewart Stevenson: Never computerise something that you have not organised first.

Bill Gilchrist: Apart from being regional procurator fiscal in Hamilton, Douglas Brown is also in charge of our future office system, which is our computerisation system.

We start by examining our processes and then re-engineering them to try to improve them. Once we have what we view as improved processes, we

then computerise the system.

Mr Hamilton: One of the recommendations of Dr Jandoo's report that has been taken up is the formation of a joint Crown Office and Association of Chief Police Officers in Scotland working group on racist crime. The recommendation talks about the need for greater communication and liaison between the fiscal service and the police in the early stages of dealing with such crimes. Can you give us an update on the work of that group?

Bill Gilchrist: The joint Crown Office and ACPOS working party is considering those of Dr Jandoo's recommendations that impact on both the Crown Office and the police. It is examining communication issues. There are two aspects to communication. First, there is communication between the fiscal and the prosecutor in relation to the investigation and the preparation of cases. Secondly, there is communication between the fiscal and the police in relation to liaison with victims. Dr Jandoo found that there is not sufficiently good communication in dealing with victims. In murder cases, the police have family liaison officers who deal with the victims. When the case is reported to the procurator fiscal, police communication stops to a large extent and the fiscal takes over. Dr Jandoo found that there is not enough joined-up working between the police and the fiscal in communicating with victims or next of kin. The joint working party is considering how we can improve that communication.

We have started by requiring—through the Lord Advocate's guidelines to the police—that the identity of the family liaison officer be disclosed in the police report so that we know from the beginning who has dealt with the family and whether there are communication problems, language difficulties and so on. In that way, we will start with good information about the family background.

Mr Hamilton: So, you accept that the situation must change and you are implementing that change.

Bill Gilchrist: Yes.

Mr Hamilton: What is the time scale for implementation?

Bill Gilchrist: The joint working party has numerous target dates. I cannot immediately recall the target date for that particular change. It might be May 2002. Some of the changes have been made. The Lord Advocate's guidelines deal with issues about information that ought to be given by the police to the fiscal. The joint working party is working towards target dates for other changes over the course of the year.

Mr Hamilton: My next question is similar to that which I asked Sir Anthony Campbell, on the quality of precognitions and the staff who undertake them. Can you say more about what you are doing to address that issue, particularly in relation to training? Will there be a uniform national standard? What plans do you have?

Bill Gilchrist: There are two national courses for precognition officers, which are not run in local offices or the regions. People in the service who are interested in becoming precognoscers can attend those courses before they apply for precognition posts. A precognition course is also run centrally, which someone who is appointed as a precognition officer should attend as soon as possible after his or her appointment.

Mr Hamilton: Is that course new, or has it always been run?

Bill Gilchrist: There has always been a precognition training course, but it has been expanded and more effort is being put into ensuring that new precognoscers attend the course as early as possible, so that they do not undertake precognition work without having attended the training course.

Mr Hamilton: Is that sufficient to combat the serious problems that have been identified?

Bill Gilchrist: There are three aspects to improvement of the quality of precognition. The first is the number of people who are available and the time that is available to them to undertake precognition. The second is the training that is provided to precognition officers to ensure that, when they undertake precognitions, they know what they are doing. The third is supervision, because even the training course is very much training on the job.

We got a new precognition officer in Paisley, where I was the fiscal before I went to the Crown Office in August last year. Although that officer attended the central training course, most of the training was in-house. One of the experienced precognition officers, who was based in the office next door, acted as a sort of mentor or supporter of the new precognition officer and was readily available to offer support, assistance and advice at all times.

The work of a new precognition officer is supervised by a principal depute, who in the first instance allocates appropriate cases to that officer. Therefore, new precognition officers ought not to get very serious or complex cases. They are started off on the more routine or straightforward cases. They are supervised—a higher level of supervision is offered to them than to an experienced precognoscer. Someone is on hand daily to provide advice, assistance and mentoring.

Mr Hamilton: Were not those measures meant to have been in place a long time ago? Clearly,

they did not work. Can we be assured that so much has changed that there has been a step change in your attitude to the matter?

Bill Gilchrist: The central training has been expanded and improved. I have just received a note to remind me that there is no backlog, which means that all new precognition officers have attended the training. The situation represents an improvement on what existed previously.

There is also the thorny issue of resources and numbers. If one is under pressure, one must—especially if they are custody cases—process cases, in a short time. The work must be allocated to those who are available. One would try to avoid giving serious or complex cases to inexperienced precognoscers and one would try to provide as much supervision as possible, but if one is under pressure, the work must be done. Getting the resources and the numbers right, which is the other part of the equation, is essential. If one has the right numbers, one is not faced with the problem of giving inexperienced precognoscers cases that are too sensitive or too complex.

Mr Hamilton: Until you have those resources and those numbers, you will not be in a position to say that the problem has been resolved.

Bill Gilchrist: There has been a strengthening of resources—they have increased during the past few years. We need more resources; the management review report, which has just been published, calculates that we need about 10 per cent more legal staff. Although strengthening has taken place, we recognise that additional strengthening is necessary.

Mr Hamilton: What new efforts have you made to retain or to accumulate experienced staff who perform a supervisory role?

Bill Gilchrist: Sorry, I did not catch that.

Mr Hamilton: What additional efforts are being made to retain experienced staff or to supplement your current numbers?

Bill Gilchrist: At present, we do not have a retention problem with principal deputes—we have not been losing them. There has been an expansion in numbers. Douglas Brown can speak about what has been happening in Hamilton. Previously, he had one principal depute to supervise the precognition work, but he now has two. The High Court unit, which is part of my area of responsibility, previously had five principal deputes indicting; now we have six.

George Lyon: We heard from Sir Anthony Campbell that one of the key issues that concerned him was the lack of continuity in advocates' taking cases right through to prosecution. Will you explain why it is impossible to have the same continuity in Scotland as appears to exist in Northern Ireland?

11:00

Bill Gilchrist: The system in Northern Ireland is fundamentally different. In Northern Ireland, as in England and Wales, the Crown Prosecution Service or the Director of Public Prosecutions instruct individual barristers on individual cases, whereas we have a cadre of 17 advocate deputes who do all that work. One must, therefore, distribute the work among those advocate deputes.

We have the continuity of one advocate depute taking a case all the way through to trial in some cases, but not in all and certainly not in the majority. In serious and complex cases, the practice is to identify early an advocate depute who will take the case through to trial. For example, the advocate depute who was involved in last week's decision about the Larkhall gas explosion will take the case to trial. He will be involved in the preparation for that trial. We have followed that procedure in other high-profile cases, such as the Beggs case. We try to have as much continuity as we can, from the marking stage onward.

If that continuity cannot be achieved from the marking stage on, we will seek subsequently to identify early whether a case is serious and complex. If so, we allocate it to an advocate depute who will take the case through to trial. The High Court unit currently compiles a constantly updated list of sensitive and complex cases that are outstanding. That list contains the names of the advocate deputes to whom the cases have been allocated. Deputes are given advance notice of the case to ensure that they get the papers to prepare for the case as early as possible. Depending on the complexity and size of the case, advocate deputes are taken out of the rota and given office time to prepare cases. That procedure does not happen in the majority of cases, but we try to do it in the most serious and complex cases.

We must, however, operate within our environment, which is the way in which our High Court is organised and operates. We identified as complex a recent big case that involved many accused persons and we assigned the case at an early stage to an advocate depute. That advocate depute was given time out of the rota to prepare for the case, which had been allocated a date and sitting. However, the case was postponed. An advocate depute does not have only one case. He is built into the rota to do other sittings. That advocate depute had to move on, therefore, because that slot was lost as a result of the case's being adjourned.

We allocated the case to a second advocate depute and gave him time out to prepare for the

case, which he did. However, the case was postponed again at the request of the defence. Either of those advocate deputes might come back into the case. We hope that they will, so that we do not have further duplication of effort. However, we must operate within our system and our High Court's operation makes it difficult to predict with certainty when a case will proceed. We heard from Sir Anthony Campbell that about 40 per cent of High Court cases are adjourned. The overwhelming majority of adjournments happen at the request of the defence.

In England and Wales—and, I presume, Northern Ireland—there is a date slot to which a case is allocated and people work towards that fixed date. That is not the system in Scotland, where we have sittings to which cases are allocated. Many of those cases are subsequently adjourned out of the sitting. In that environment, it is difficult to identify an advocate depute and ensure that that depute will stay with a case from beginning to end.

Lord Bonomy is examining the matter. I am on his reference group, as is the home advocate depute, who is the senior advocate depute. We are giving to Lord Bonomy our views on the difficulties that the High Court's operation causes us.

I do not know whether that answers the question. We are trying to achieve, within serious constraints, as much continuity as we can. It is clear that if we had more advocate deputes, that continuity would be easier to ensure. However, the problem is not only the number of advocate deputes, but the system in which we operate.

George Lyon: Have you figures on the number of trials in which the same advocate depute has seen a case all the way through? Are we talking about 5, 10, 15 or 20 per cent?

Bill Gilchrist: I cannot give a percentage. We have such figures for serious and complex cases. That is not to suggest that most High Court cases are routine, but many do not have peculiar complexities or sensitivities. An advocate depute who is well prepared should have no difficulty in conducting such a trial. We concentrate on achieving such continuity in complex, large or sensitive cases, but they are the minority. I cannot give a figure, but they do not represent the majority of cases.

George Lyon: Will you update us on progress with establishing a satellite office in Glasgow? What impact will that have on the quality and the quantity of cases that you process, and on continuity?

Bill Gilchrist: There are two aspects to continuity. The continuity of the advocate depute and continuity between the indicter—the principal depute in the High Court unit who indicts a case—and the support that is given to the advocate depute in court, which Sir Anthony Campbell acknowledged the benefit of. Sir Anthony suggested that if a case is indicted in Glasgow, the principal depute who did that and who would have read the case in detail, should be on hand in Glasgow to support the advocate depute at the trial. We are experimenting with that.

Janet Cameron is conducting the review of High Court business and will examine the satellite office. At present, that is only a pilot. We sent one of the six principal deputes from the Crown Office unit to Glasgow. She will indict cases in Glasgow and will be on hand to support advocate deputes when trials commence. Janet Cameron will examine how that works.

The principal depute in Glasgow is keeping records of the time that she spends on indicting and on providing support. We are trying to quantify the implications. If the principal depute is supporting, she is not indicting, so the system has implications for the resources of the High Court unit and the number of principal deputes that we will need to undertake indicting. Janet Cameron will review the arrangements and recommend whether we should expand the system; for example, by indicting all Glasgow cases in Glasgow.

Janet Cameron (Crown Office and Procurator Fiscal Service): Sir Anthony identified a further continuity issue that we will consider as part of the review. We will consider whether it is necessary in every case for the advocate depute who marked a case to continue with that case. For continuity, it might be sufficient that all those who deal with a case are made aware of the decisions that were made earlier and of the reasons for those decisions. That relates to the point that was made about minuting decisions and proper recording of reasons. That is an important element of continuity, which is not a matter only of the same individual taking a case all the way through the process.

The Convener: I accept that. It is clear from Sir Anthony Campbell's report that Susan Burns, who was the principal depute, was unaware of anything that had gone before. By that point, the means of proceeding with the case was quite controversial.

Bill Gilchrist talked about the environment of the Procurator Fiscal Service. The report confirmed what I had believed to be the case. Advocate deputes and procurators fiscal work on trains and take work home. They are under constant time pressure. Backlogs of cases exist, and the system is overstretched. Continuity will not be achieved unless staff numbers are right. How many staff have been added to the Hamilton office as a result of Anthony Campbell's findings?

Douglas Brown (Crown Office and Procurator Fiscal Service): We started with the Chhokar case in November 1998. Since then, the number of staff at the Hamilton office has increased by 20 per cent. Staff increases in relation to solemn work—work for the High Court and the sheriff and jury courts—have been particularly significant. As Bill Gilchrist indicated, an additional principal depute has been appointed. Principal deputes are responsible for supervising the work of precognition staff, and they provide significant input into that exercise. At the time of the Chhokar case, one principal depute was supervising a very significant work load. Now we have two principal deputes, so there has been a 50 per cent increase in the amount of supervision of solemn work. That has led to a very significant increase in the quality of the work. There is far better supervision, far better guidance at the outset and throughout the process and far better reading of cases and checking of recommendations. A much better quality product is being submitted to the Crown Office. As a result of the Chhokar case, there has been a major improvement.

The Convener: What other staff members are included in the 20 per cent increase?

Douglas Brown: We now have 25 legal staff, whereas at the time of the Chhokar case we had 20.8. As I said, we have one additional principal depute. The other new members of staff are deputes.

Bill Gilchrist: As of 31 March 1998, there were 277.9 legal staff working in the department. By 1 February 2002, that figure had risen to 350.1. There has been a significant increase in the number of legal staff.

The Convener: Do you accept that the system as a whole is under-resourced when it comes to staffing?

Bill Gilchrist: Yes. We have been strengthened significantly, but we need that to continue. That is not just the party line—it is what I believe. In his report, Jonathan Pryce estimates that a further 10 per cent increase in the number of legal staff is needed. We need more staff, but when deciding which extra staff we need we must consider not only the number of cases that we deal with, but the way in which we work. We want to ensure that our working practices are as good as they ought to be. We do not want unnecessary duplication of work. That is where Janet Cameron's review comes in. She is examining the way in which we prepare and prosecute High Court cases. She is identifying best practice. Once her work is complete, we can identify what additional resources are required to implement that best practice.

The Convener: Did you have any indication that staff in the Hamilton office were under the kind of pressure that is described in the Campbell report, or were you shocked to read about that?

Bill Gilchrist: Was I shocked?

The Convener: Some of the things contained in the report are shocking. A precognition officer claimed that he had to rise at 5 am to do work, when his manager had allocated to him a very sensitive child abuse case. Everyone involved in the Chhokar case complained of being completely overworked. Was the Crown Office unaware of that and were you shocked to hear about it?

Bill Gilchrist: The circumstances that you describe are shocking and such things should not happen, but they are a symptom of unacceptable pressure. It is totally unacceptable that someone who is engaged in a serious and complex court case should have to get up at 5 o'clock in the morning. I was in Paisley at the time, so I can speak with first-hand knowledge of what was happening there. I understood that precognoscers—whether deputes or POs—were under considerable pressure. However, I would have been surprised to be told that they were getting up at 5 o'clock in the morning. I hope that the circumstances that the convener describes were exceptional. It is clear, however, that they were unacceptable.

Douglas Brown: I was working in Hamilton at the time to which the convener referred. The depute who got the Chhokar case was extremely dedicated and able and welcomed the allocation of the case to him. He was inexperienced in the Crown Office and Procurator Fiscal Service but he had experience in private practice. He had limited time to work on the case; there is no doubt that he had insufficient time to work on it. It is a reflection of his dedication and commitment that he was prepared to get up at that time in the morning.

11:15

The Convener: There is no doubt about that.

Douglas Brown: On supervision, the principal depute said to the depute at the outset that if he had any problems with his preparation of the case, he should tell the principal depute about them. Perhaps there was a lack of communication. Perhaps the supervisor should have been more proactive in finding out how the depute was getting on with the precognition and seeing the amount of work that the depute was doing, so that the problems could have been flagged up. There is no doubt that there ought to have been more supervision.

Bill Aitken: I will come back to that point.

The supervisor signed the precognoscer's report without having read it.

Douglas Brown: When the supervisor signed the precognoscer's report, she had certainly read some of it. She did not have time to go through the report in detail because of other operational work pressures. It was a fault in the system that there was such pressure on her as a supervisor. She was doing her level best and was as committed as the depute was but, owing to pressures of work, she was not able to read the case in the detail that she would have liked to have read it.

Bill Aitken: That is not a criticism of the individual but an expression of concern about the way in which the system operated at that time as it was putting unfair stresses on people. We are concerned that the Crown Office should have been aware that those stresses existed.

Douglas Brown: The Crown Office was aware that there were stresses within the system. Sir Anthony Campbell mentioned the High Court unit. I worked in that unit in the early 1990s. Sir Anthony referred to the work being divided up on a Friday night for the weekend. That was the practice when I worked in the unit. Sir Anthony also mentioned that pressure could be a good thing. Sometimes working under pressure is a good thing and one enjoys it. I thoroughly enjoyed my time in the High Court unit, despite the fact that I could probably count on the fingers of one hand the number of times that I had a free weekend and did not have to take work home. Sometimes working under pressure is a good thing, but at other times it is a bad thing and the pressure gets to people. I accept that in the Chhokar case the pressure in my office was unacceptable.

Bill Aitken: I will follow up points that you made in response to questions from Mr Stevenson. The 110-day rule imposes pressures on you. The fact that bail is more readily available has given you a respite, to some extent, but there must be a build-up of work in the pipeline. Can you assure the committee that that will not present any difficulties?

Bill Gilchrist: I do not think that there has been a respite. The incorporation of the European convention on human rights means that it is no longer legitimate to have an absolute prohibition on bail, so somebody cannot be remanded in custody simply because the case is a murder case. For all other cases, the Crown would oppose bail and the court would refuse it only when there was good cause and the incorporation of ECHR does not change that position. If there is a good reason, the person will still be remanded in custody. Bail is now possible in murder cases, but in most such cases the accused will still be remanded in custody. We oppose bail where there is fear of reoffending, absconding or interfering with witnesses. Those were always the reasons for opposing bail before the incorporation of the ECHR and they are still the reasons. We now have to apply those criteria to murder cases, but I do not think that there has been any decrease in the number of custody petition cases. I do not have the figures to hand—we will inquire about that and write to the committee—but I would be surprised to discover that there had been a significant change in the number of custody petition cases.

Bill Aitken: I, too, would find it surprising if that were the case. Although there may have been some relief for a very overburdened system, by the time it is coming up towards the end of the period when cases have to be indicted—within eight or nine months—there could be a block in that pipeline, which will put stresses on your department. That point concerns me.

Bill Gilchrist: If people are on bail, the trial has to be within 12 months. That is the next target that applies.

Bill Aitken: I hope that the experiment that is being carried out at the High Court in Glasgow will work. I am a little disappointed that we have not moved further. It seems that, with the existing system, you are putting pressures on yourselves. If you had people operating in Glasgow, there would be continuity. You could also do away with what seems to be a fairly archaic approach to the sitting system. If the High Court were permanently in Glasgow, it would be easier for you to fit cases in. I cannot see why we have not moved further down that road.

Bill Gilchrist: Lord Bonomy is examining the sitting system and the system of circuits. There may be a case for having more High Court centres elsewhere. At the moment, there are only two dedicated High Courts, in Glasgow and in Edinburgh, but there may be a case for having dedicated courts elsewhere. There may also be a case for changing the sitting system. At the moment, it is essentially a two-week sitting system. That has implications for us in relation to the 110-day rule, because the case has to be indicted for the first day of the sitting. If the 110th day is on the last day of the sitting, we have to take 11 days off that limit and bring the case forward by 11 days. The sitting system creates its own pressures, and I know that Lord Bonomy is considering that.

Bill Aitken: It is hardly rocket science to know that the system will inevitably create pressures for you. Why have you not embarked more enthusiastically on moving cases to the High Court in Glasgow? I hope that I am being neither territorial nor simplistic when I say this, but it seems clear to me that there would be significant savings on work loads, stress and pressure on your department if that were to happen.

Bill Gilchrist: I am not sure that doing that would necessarily affect the work load. The principal deputes who indict cases would still have to do what would have been done in the Crown Office. They would still have to read the case in detail, draft the indictment and prepare what Sir Anthony Campbell referred to as a shopping list of additional work that might still have to be done. None of that work would change, but we must improve our effectiveness by having the person who has that detailed knowledge of the case on hand to provide additional support. That would not reduce the work load—it might even create more work—but it should make us more effective.

We are doing that as a pilot, which Janet Cameron will evaluate. She is also looking at a range of other interrelated issues, such as the relationship between the High Court unit and the sitting managers. One suggestion is that sitting managers should be part of that unit. At the moment, they are part of the regional set-up. It is suggested that perhaps they should join the High Court unit and that that unit should effectively take over total responsibility for the case from the moment that it is reported to the Crown Office. At the moment, it is reported to the Crown Office, where the Crown counsel takes a decision and the principal depute executes that decision, but it is still the fiscal's case, and any additional work goes back to the fiscal. It is the fiscal's responsibility to complete that work and then report back to the Crown counsel. Janet Cameron will consider whether the role of the High Court unit ought to be expanded to take over the case, including managing the case once it is allocated to a sitting.

Bill Aitken: When will the pilot end and be assessed?

Bill Gilchrist: The pilot has no end date and will just continue. Janet Cameron's review is to be completed by June, with an interim report due at the end of March.

Janet Cameron: It is a question of ownership of the case after it has been indicted. Sir Anthony Campbell identified that as a weak area in the case that he examined. As he said, there is no system for the High Court unit to review whether the additional work that it has instructed the fiscal to carry out has actually been carried out or whether that additional work has changed the case or the decisions that should be made about it. Our review will examine the important area of ownership of a case, post-indictment and before trial.

Bill Aitken: Having that system operating in Glasgow would avoid the problems that you had of two deputes getting involved in one case, would it not?

Bill Gilchrist: It would probably help but I would not guarantee that there would be no problems.

Bill Aitken: That is very honest.

George Lyon: I have one point for you to answer. Sir Anthony Campbell gave a snapshot of the case and the severe pressures on the staff at the Hamilton office. Were there particular circumstances in the Hamilton office? For example, was the office under a lot of pressure because of the number of serious cases that were before it? Was there an unusual bulge in the work load? Is it possible to extrapolate from that snapshot for the rest of the service?

Douglas Brown: At that time, the Hamilton office had an unusually heavy work load of serious cases so, from that point of view, the case arrived at a bad time. There had been pressure on the Hamilton office for some time and I am sure that it would be possible to extrapolate from that for the rest of the service. There are pressures throughout the service. The pressures might not be the same and some offices are under more pressure than others.

George Lyon: You would therefore say that Sir Anthony Campbell gave a fair snapshot of the way that the system was working at that time in Scotland.

Douglas Brown: I am not going to say that it was a fair snapshot because there were particular pressures on the Hamilton office at that time and the case was particularly complex. I would not say that there is that amount of pressure throughout the service.

Bill Gilchrist: I will use Paisley as an example. It is unlikely that those circumstances would have been replicated in Paisley at that time because we had experienced precognoscers there. That is one difference—in Paisley, the case would have been allocated to an experienced precognoscer.

I do not think that the Chhokar case was typical. There were unusual features and coincidences. It was symptomatic of the pressure under which we were all operating, but there were unusual features in that case because of the pressures in the Hamilton office at that time.

The Convener: You are saying that the set of circumstances was unusual and did not happen everywhere else. However, Sir Anthony Campbell's report has 10 recommendations about how the whole system should be changed.

Bill Gilchrist: I was talking about the pressure on the precognoscer in Hamilton.

The Convener: To use George Lyon's phrase, it sounds as if you are trying to say that the report is a snapshot of something that happened at a particular time in the Hamilton office that was extremely unusual, does not happen anywhere

else in Scotland and does not usually happen in Hamilton. That is what is coming across to me.

Douglas Brown: I am sorry. I was certainly not trying to give that impression. We were trying to be very careful in what we said. We are certainly not saying that the circumstances were very unusual or that the case was one where we were under pressure although we are not usually under pressure. There were pressures throughout the service at the time. However, the case was an example of considerable pressure and it was a particularly difficult case. There were certainly other pressures throughout the service and there were also problems with a lack of resources throughout the service. I would not like to give any other impression.

Janet Cameron: A problem for the Procurator Fiscal Service is how to plan its resources and business. We have to react to everything that the police and other reporting agencies report to us.

I have experience of other systems. During my review of the Scottish system, I have been conducting research into some other criminal justice and prosecution systems. In some of those systems, prosecutors can decide not to accept cases because they do not have sufficient resources. Indeed, some of the investigative agencies, such as drug enforcement agencies, target a particular level of crime that they will investigate. They ensure that they have the resources to carry out those investigations.

We do not have the luxury of doing that. The Scottish public expects us to deal with all of the crime that is reported to us—from the lowest level, which would go to the district court, to the most serious crimes. That creates difficulties for the service in planning and managing resources.

George Lyon: Does that mean that you have to have a service that can cope with the maximum bulge in demand? Are you operating at 90 per cent in the hope that you can deal with the extra 10 per cent by working at weekends and at 5 o'clock in the morning?

Janet Cameron: It means that there has to be a provision for resilience, if I can use that term. There has to be some spare capacity because we cannot anticipate the level of demand.

Bill Gilchrist: In his report, Sir Anthony Campbell points out that we will sometimes have to respond to certain pressures and peaks of business by working weekends, evenings or even mornings. However, if our staff are working every weekend, we are taking advantage of them. Although we want flexibility and resilience to deal with peaks of business that require extra effort, it must not be the norm for deputes to work every weekend.

11:30

George Lyon: Can you honestly say that the service is resilient enough to cope with demand?

Bill Gilchrist: The honest answer is the one that I gave earlier. Although the position has improved, there is still room for significant improvement. We need additional resources.

Douglas Brown: From their announcements this week, which are very welcome, I see that the First Minister and the Lord Advocate accept that we currently need additional resources, and that they will be provided.

The Convener: I want to change the subject slightly. Your paper outlines the national programme of training on race issues that you have implemented. What assurances can you give us that the programme is not just a reaction to Chhokar and that it will be permanent?

Furthermore, provided that the resource question is sorted out, I am in favour of procurators fiscal having more contact with the community, particularly with ethnic communities. Have you given any thought to more such contact to balance the question of training and to ensure that procurators fiscal are engaging with society?

Bill Gilchrist: I think that, in his report, Dr Jandoo recognised that there have been significant improvements in liaison and communication with bodies such as the Commission for Racial Equality and the local racial equality councils. Those improvements and that level of contact are permanent and will continue. The management review report, which I have read only quickly, highlighted a need that we acknowledge for more liaison with other community bodies.

There have been tremendous strides forward in communication with ethnic minority groups, and we intend to build on and maintain that. Racial and cultural awareness training has been mainstreamed. We made a special effort to ensure that everyone received that training and we have produced written guidelines. That training has now been mainstreamed and is included in all our training programmes. As it forms part of the induction process and features in other training courses, it is not just a one-off effort. It will continue.

The Convener: Thank you very much. We have no further questions. Would you like to make a brief comment about any issues that might not have been covered?

Bill Gilchrist: No. As Sir Anthony Campbell said, you have given us a fair hearing. We will write to the committee with information on the number of custody cases and whether the European convention on human rights has had a

significant effect on that figure.

The Convener: That would be helpful. I thank the three witnesses for their evidence, which will be helpful to our inquiry.

We will now have a five-minute break.

11:33

Meeting suspended.

11:43

On resuming—

The Convener: I welcome the Lord Advocate and the Solicitor General to the meeting and congratulate the Solicitor General on her appointment.

I want to ask about resources. I do not know whether you heard the previous evidence, but the gist of what we heard and discussed, in relation to Lord Justice Campbell's report in particular, concerned a series of seeming disasters in the Hamilton office. A lack of continuity, deputes who are adequate but do not seem to have enough time to read papers, and inexperienced precognition officers were mentioned. The system seems to be at breaking point.

A recent report on the management review suggested that there is at least a 10 per cent shortage in staff. Will you act on that? What steps will you take in respect of staffing?

The Lord Advocate (Colin Boyd): First, I thank the committee for inviting us. It is important that we have the opportunity to explain the background to Lord Justice Campbell's report and start to explore wider issues.

On Jonathan Pryce's report, members will recall that, in September 2001, I told the committee at the regular briefing that, in the light of the pressures that were building up, I wanted a review of the management and allocation of resources in the Crown Office and Procurator Fiscal Service. I and others in the office have been kept up to date with the emerging conclusions, which enabled me to make the announcement about the appointment of a chief executive on Monday. However, much further work requires to be done in considering and properly costing the report's precise recommendations. I assure members that we will proceed with that as fast as we can.

Some recommendations will not require a lot of further consideration, but I want to consult on other recommendations, particularly with our staff, who have been involved through Jonathan Pryce and the review team and focus groups in developing proposals, as have both the main trade unions. Nevertheless, now that the report has been published, it would be right to discuss at least some recommendations with our staff.

The convener mentioned the number of staff and the 10 per cent shortage. Jonathan Pryce did not try to analyse whether there was a shortage of lawyers in the organisation—that was not his task. However, he suggested that we should seek to increase the number of lawyers by a further 10 per cent over two years. He made that suggestion rather cautiously and said that we would have to assess whether that was the right overall figure. As there are 350 qualified lawyers and 27 trainees, there would be around 35 to 40 extra lawyers if we accepted the recommendation. I could continue, but I do not want to hog the discussion.

The Convener: How much can you tell the committee about whether you will act on that recommendation? When will a decision be made?

The Lord Advocate: There is no doubt that we will certainly have more lawyers, but the precise number and the phasing will depend on our considerations. We will make a decision as quickly as we can.

Bill Aitken: A number of aspects of the operation of the High Court unit have been criticised. I was chiefly concerned by the breakdown in communications in a seemingly anachronistic system of communicating decisions between departments and individuals. What steps have you taken to correct that?

The Lord Advocate: There are precise recommendations about the recording of Crown counsel decisions—those recommendations are being implemented—and there are wider considerations about communication between offices and the High Court unit and about the black hole that Lord Justice Campbell, I think, recognised in his report. I anticipate that Janet Cameron, in her review of how we prosecute High Court cases, will address that issue. Our new technology will assist communications.

The crucial factor is to ensure that we put in place a system that gives us as much time as we require to investigate and precognosce a case properly and then as much time as Crown counsel requires to determine properly the correct course of action for the case. One thing that comes across to me when I read Lord Justice Campbell's report is that the problem related not just to the number of people and the activities that they had to undertake, although that was crucial, but to the fact that we were working towards tight deadlines at every point.

Bill Aitken: I accept that, with the benefit of hindsight, it is easy to be critical and to define in fairly trenchant terms what went wrong. However, things went wrong in the Chhokar case. Are you satisfied that all the lessons have been learned on

communication with victims and their families and that the communication issues and resource implications, particularly at the sharp end in the regional and district offices of the Procurator Fiscal Service, have all been addressed?

The Lord Advocate: I am satisfied that we are addressing every issue that we can think of. I suspect that we are now the most reviewed system or department in Scotland. I am concerned not only to find out what went wrong or where the pressures are, but to move forward. Jonathan Pryce's report gives the Crown Office and Procurator Fiscal Service an opportunity to do that.

Bill Aitken: On moving forward, do you agree that all of us, whatever the sphere of life in which we operate, have different strengths and weaknesses and that a prosecutor has certain characteristics that the rest of us do not have? Should the Crown Office have full-time prosecutors?

The Lord Advocate: We have full-time prosecutors in the Crown Office. I take it that you are referring to Crown counsel.

Bill Aitken: Yes.

The Lord Advocate: I understand that the committee will hear from Crown counsel next week. Members will find that, of the 17—or 18 as it will be—advocate deputes, a large proportion have backgrounds in criminal law. I am a great believer in and supporter of Crown counsel. It is important to have a body of people who are independent of the Crown Office and Procurator Fiscal Service, as they underwrite the service's independence. They ensure that the decisions that we take in serious cases to put people on trial for some of the most awful crimes are taken independently. That is vital.

I want to continue to bring people who have experience of other walks of life and other specialisms into the prosecution system as a whole. For example, we have recently had in Crown counsel the chair of the Scottish partnership on domestic abuse, who was not a prosecutor but had chaired that important body and was able to contribute to Crown counsel. We have brought in specialists in company law and tax law. We have had a former commissioner of the Mental Welfare Commission. Such a person is vital in a body that regularly deals with mental health problems, particularly in serious cases.

We must have a high calibre of advocacy. It is invidious to pick out individuals, but let us consider the way in which the Lockerbie case was prosecuted by Crown counsel. Everyone recognises that that was advocacy of the highest order. I can go through a number of recent cases where such a high calibre of advocacy has been shown. I accept that, within a body of 18, people will have strengths and weaknesses and some will be better than others. Nevertheless, it is a resource that will not be given up so long as I am Lord Advocate.

I have said, because I know that people are interested in the matter, that I recognise that many people in the Crown Office and Procurator Fiscal Service want to have experience in prosecuting in the High Court. I recognise that there is a resource that can be tapped into and I am willing to consider ways in which we can do that. As Jonathan Pryce's report has suggested, we will develop work on that. Key principles are retaining the independence of Crown counsel and ensuring high-quality prosecution.

George Lyon: You have explained the increases in staff resources that you expect to be put in place as a result of your announcement on Monday. We also heard in the evidence that, even since 1998 and the Chhokar case, the number of advocates has increased from 277 to 350. Taken with your announcement, that is an increase of about 35 per cent. Can you explain how on earth the service got to such a stage that it was creaking at the seams? We heard in evidence from Douglas Brown that the service was under that kind of pressure even earlier in the 1990s. Can you explain how the service got to such a stage that people had to work weekends and get up at 5 am just to try to cope with the normal, day-to-day work pressures?

The Lord Advocate: The service has been almost a cinderella organisation for many years. It has been chronically underfunded for a long time. As a result of that, I think, more effort has been put into the front line at all levels. For example, there has been a vast increase in the number of lawyers over a three-year period. To achieve that is quite phenomenal. However, that is at the expense of management, administrative support and the kind of modern information systems that we want. The service becomes more difficult to manage, which increases the pressure on the lawyers.

The service has also come up against a number of external factors. For example—and in no particular order—there is no doubt that the ECHR has increased pressure, while the growth of serious crime continues to be worrying, and there has been an increase in the efficiency of the police. Those factors have come together and produced severe strains. There is not one thing that we can point to, other than the fact that, for many years, the organisation has not been given the resources that it should have been given.

George Lyon: That leads me to my next question. Clearly, steps were taken in 1998-99 to deal with the front-line staff issue; there has been a significant increase. Will you explain in more

detail the announcement that you made on Monday about the changes in management and back-up and what that will mean in terms of delivering a better service, which we hope will not make mistakes such as were made in the Chhokar case?

12:00

The Lord Advocate: As Lord Justice Campbell points out in his report, the way in which we do things is outdated. I am thinking, for example, about the communication problem that Bill Aitken talked about. With modern technology and modern management systems, we ought to be able to do things a lot better. However, we need to have proper management information systems, which frankly we do not have at this stage.

Bill Aitken asked how much more time is spent on ECHR issues. I cannot answer that, because we do not have a management information system that tells us, for example, "In 1996, the average time to deal with a breach of the peace in summary court, if it went to trial, was an hour or an hour and a half, and now the average time is one and three quarter hours, and the only thing that we can put that down to is ECHR issues." I am not suggesting that that is correct; I am just illustrating the point. We do not have that kind of management information system. One of the things that good management must have is access to that kind of system.

We do not have a director of finance; we have a director of resources, who is a senior civil servant with responsibility for finance, estates, information technology, human resources and one or two other bits and pieces, such as training. He has few civil servants to back him up. That has to change. We have to have a proper management board that has at its heart people who can manage a modern information technology system and can deal with human resources and finance. The changes that have come out of the report deal with all those kinds of issues. The report also talks about restructuring the organisation into 12 areas, each with an area business manager, who will be a senior non-lawyer with responsibility for the budget, human resources, personnel issues and IT in that area. The idea is to free up the lawyers from what others might describe as the bureaucratic issues and allow them to play a more active part in the legal issues. That is what people expect of us.

The Convener: I would not want to give you the impression that I do not think that changes in the management system can affect the way in which you do things, because I think that they can. However, I would be concerned about this week's announcement if the investment went only to restructure the system and there was no investment in front-line staff, either in pay or in an increase in staff numbers. How confident are you that additional money will be available for the service, which you described as "chronically underfunded", to address the other issues that the committee is examining—staff numbers and pay?

The Lord Advocate: There are two issues. I will deal with pay first. There was a pay settlement with the unions last year. It was widely regarded by outsiders as a good settlement. Unfortunately, that was not how our legal staff perceived it, although the non-legal staff accepted it. The members of the Procurators Fiscal Society voted against accepting the settlement, but one of the strands in the settlement was the undertaking of a pay comparability exercise, particularly between procurator fiscal deputes and equivalent grades in the rest of the Scottish Executive. Procurators fiscal feel that they are poorly paid for the work that they do.

That exercise has been held up by the fact that we do not know where we are going with it; it was a key part of the pay settlement that was voted down. However, we have agreed that we will move ahead with the comparability study, which is progressing. I have said publicly that, if the study shows that extra resources are required to fund a settlement, I will use my best endeavours to secure those resources. That is as far as I can go. We are, of course, entering the next comprehensive spending review period.

Your first question was about ensuring that front-line services are maintained. I am conscious of the need to do that. I would not like it to be thought that either the department or I were losing sight of the need to increase staff numbers. However, I would like to sound a note of caution. We have increased staff numbers by 25 per cent over three years and there has been criticism of the appointment of inexperienced people. The service now includes a large number of people on low grades. Bringing in increasing numbers of people at that level can put greater pressure on those who are already working in the service, because they have to spend a great deal of time conducting training and so on. There is an issue about how quickly one can expand.

There are also questions relating to the size of the pool of people from which we can draw—we are a small jurisdiction. We must be sensible about appointing more lawyers; we should take people in at a rate that allows the organisation to absorb them. The committee has asked me not to lose sight of front-line services. I ask the committee not to lose sight of the fact that Jonathan Pryce was concerned partly with ensuring that we free up as many of the people who are working in the service at the moment as we can and make it easier for them to do their jobs

as well as they can.

The Convener: I am confident that the committee will put that question to the Scottish Executive as well as to you. We would be concerned about any additional money that is made available as a result of Jonathan Pryce's report being used to review management structures. I suggest that attracting the right people for the job is more important than such a review.

Mr Hamilton: You talk about bringing more lawyers into the system. I am not the man to argue against that at this point in my career. Two things have been made clear to us in both written and oral evidence. First, it has been shown that the system was under such strain that, if the problems within the service had not been exposed by the Chhokar case, they would have surfaced in some other way. Secondly, it has been made clear that, despite what has happened since the Chhokar case, there is no guarantee that something similar could not happen in future.

The situation is serious and there is a lack of funding. In answer to a question from George Lyon, you said that you are listening more and arguing for more resources, but what has changed in the system? For years, lack of funding did not come on to the radar, or if it did, no one paid much attention to it. What change in the system will flag up the issue in a different way?

The Lord Advocate: I am sorry, but I must disagree about the issue coming on to the radar—it did come on to the radar. That is why the Executive put more money into the service, which enabled us to expand in the way that we did. I repeat that the expansion has been phenomenal. We have invested in new technology and have established the victim liaison office, which is very important.

Jonathan Pryce's report is not the result of our thinking, "Oh gosh, we have to do something; we had better have a report." It comes against a background. I agree that there came a point when I realised that the issue was not just about putting in more resources. Something more fundamental was wrong. We needed to address the structural issues and administrative back-up.

You asked what has changed so far. Sir Anthony Campbell's report contains several recommendations. The recommendations deal with, among other things, the High Court unit west, the way in which advocate deputes record instructions and the need to identify advocate deputes to take trials, although I am sure that you have heard about the difficulties that arise from that.

Mr Hamilton: Although all the changes are welcome, we do not want to impose additional burdens without being able to provide the resources to realise the changes. I understand the rush to move matters on as quickly as possible, but I was amazed at Monday's announcement, which I thought was a kind of flirtation. Measures that would be included were announced, but there was no mention of the amount of money that would be available. Today, you have said that you will do your best to ensure that the money comes through. I suppose that that is all you can say—

The Lord Advocate: I am sorry to interrupt you, but I want to make sure that that point is understood. I was speaking specifically about pay and what I told the trade unions last year.

Mr Hamilton: I might be wrong, but I assume from what you have said in the press that on the negotiations for resources you are in no position to offer anything other than your best endeavours. Is that correct?

The Lord Advocate: With respect, that is all that any minister can do. However, we have gone further—Jack McConnell and I have said that significant resources will be made available. Mr McConnell was asked on Monday what sort of figure we were talking about. The ballpark figure was an uplift in the budget of about 25 per cent. That is serious money. I am not in a position to say whether that will be the figure or whether the figure will be 20 per cent, 30 per cent or whatever. We must consider the Pryce recommendations and cost them properly. We must ensure that we obtain value for money.

Mr Hamilton: That is understood, but if the situation is as dire as everyone in the room would accept that it has been, will you argue for the system that you want to put in place and for an increase in the budget of, say, 30 per cent? How can the committee in its inquiry and its examination of the potential changes be confident that that will make an appreciable difference?

The Lord Advocate: I have said—and I repeat—that the Pryce report will be resourced. How can you be sure that it will make a difference? I have suggested several ways in which it will make a difference.

Mr Hamilton: Are you saying that if you as Lord Advocate recommend a measure that should be adopted as a result of some of the reports and that would be advantageous to the system, the Executive will not rule that out on the basis of cost?

The Lord Advocate: I am saying that the recommendations in the Pryce report will be resourced. I will return to my position on Pryce. I have accepted straight off one recommendation on a chief executive and head of department and the consequences that flow from that. I have also said that I welcome the broad thrust of Jonathan

Pryce's report. I expect that we will implement many, if not most or perhaps all, of the recommendations. However, we will have to consider details and consequences that may not have been thought about. We will cost them and ensure that we have value for money and that we know the output.

12:15

Mr Hamilton: You will understand my unease with the fluidity of the situation. I may have missed something—I apologise for being late. When will you give us those details?

The Lord Advocate: We will give you them when we can announce them.

Mr Hamilton: By definition, that is when we will receive them.

The Lord Advocate: I will not give a date when the committee will have the details. All that I can say is that they will be provided as soon as possible and that we are talking about weeks rather than months.

The Convener: It will help the committee to have that information. You will see that I have lodged a parliamentary question because I am interested in the level of investment. I return to my theme. You said that the uplift in the budget could be as much as 25 per cent. I presume that that is not only for implementing Pryce's recommendations.

The Lord Advocate: The Pryce report deals with a raft of issues. We will talk about issues such as expanding the victim liaison office and ensuring that we have sufficient people to do front-line work. We are also talking about managing a cultural change. We have not touched on that, but changing the way in which we interact with the wider community raises issues.

The Convener: We would be keen to go into that detail, because until we are clear about it, we may continue to have concerns. I would be concerned if the uplift in the budget addressed only the general issues in the Pryce report. I ask the Executive in the strongest terms to reconsider that, because in that situation, there would be no chance of a further uplift if the committee felt that additional money was required to address the conditions and pay of procurators fiscal and to increase their number.

The Lord Advocate: My concern has been that we go as far down the process as possible for the comprehensive spending review and the decisions that must be taken on that. That was one reason why I moved swiftly to appoint a chief executive on Monday. I want the chief executive to work with the Crown Agent designate to ensure that we talk about a business plan or something akin to that, so that we work through to the CSR and have the CSR settlements and we can fund projects.

The Convener: You mentioned the victim liaison office, which the committee overwhelmingly welcomed. That results primarily from the lessons from Chhokar about liaison with families, and particularly ethnic minority families. Does the budget need to be uplifted to deliver those arrangements, or are they funded from an existing budget?

The Lord Advocate: We are committed to establishing one victim liaison office in each of the six regions by summer this year. It is clear from the pilots that we can broaden the range of crimes for which the victim liaison office provides a service. Raj Jandoo's report discussed a helpline or something of that nature. If we are to fund that, it will require more money. If we are to increase the number of VLO offices to the number of places where the High Court sits, for example, that will require more money. I am keen for the office to be expanded beyond the extent that I have already announced, but that depends on money.

There are also issues, in which I know the committee is interested, around the giving of reasons to victims. I have indicated a cautious move forward on that, in giving victims some of the reasons privately, although we cannot do that in every case. That is resource intensive; it is an added burden on the procurator fiscal or on the lawyer. There are also training issues involved, and we have considered the way in which the Crown Prosecution Service did the same thing.

On the giving of reasons, I have a degree of sympathy with the idea but, in all conscience, I could not, at present, ask already over-pressed procurator fiscal staff to give such an undertaking on a routine basis.

George Lyon: Sir Anthony Campbell said that some of the problems that arose in the Hamilton office concerned not just people and resources but the system. He said that it was not possible to abide by the 110-day rule in some instances. Do you accept that premise?

The Lord Advocate: There is a school of thought that believes that lengthening the 110-day provision only moves the pressure point from about 80 days to 100 or 120 days, depending on the other figure that is chosen. On the other hand, it is clear from Sir Anthony Campbell's report that the manner in which information was reaching the depute in Hamilton, particularly in late December 1998 and early January 1999, after the Chhokar case had been reported to the Crown Office—as it had to be—meant that there was always some catching up to do.

A period of 110 days is extremely challenging for any criminal justice system. I read in the paper

that the Solicitor General told Parliament that the only two places that have a quicker time scale are Macedonia and China—I do not know whether that is right, but I assume that it is. That would accord with all my experience of other criminal justice systems, none of which have such a requirement.

I am bound to say that, both in Parliament and among the broader public, there is a feeling of ownership of the 110-day rule, and that that is the great thing that the criminal justice system in Scotland provides. No matter what else there is, at least we have the 110 days. As Sir Anthony Campbell pointed out, we in fact do not have 110 days at the moment, because of the requirements for the defence to investigate properly.

There are issues about ensuring that we have sufficient time for the prosecution properly to prepare cases, particularly taking into account modern methods of investigation. That time is also important for the defence. I will be interested to find out what, if anything, Lord Bonomy has to say about that. I suspect that he will have a few words to say about it.

George Lyon: That line was put back to Sir Anthony and he accepted that that was a genuine point of view, no matter where the line was set. However, he said specifically that there were some difficult cases for which he believed that the prosecution could not be expected to be ready in 110 days. Do you reject that point of view?

The Lord Advocate: In some cases it would be difficult. For example, in the Lockerbie case, the two accused were handed over to us on 5 or 6 April 1999 and were in our custody from then on. The 110 days started running from that point. If necessary, we would have served an indictment and called the first witness. As it happened, the defence needed more time and was able to ask the court for more time. Had we started trial proceedings within 110 days, the international view of the criminal justice system in Scotland would have been very different. We would not have had a proper courthouse, the Crown would not have been as well prepared as it was and the defence would not have been well prepared. I hesitate to use the word laughing-stock, but people would have said, "What on earth is this system about, when it forces people to go to trial within 110 days?"

The Convener: I am afraid that we are running out of time. There are several procedural issues that the committee would like to discuss with you, particularly in relation to the Campbell report. Members may also have further questions on the time limit of 110 days. I ask members to be brief.

George Lyon: The issue of the 110-day rule has been highlighted. Do you believe that there are other pressure points in the system where the system must be altered in response to some of the criticisms in the Campbell report? Sir Anthony said earlier that a balance must be struck between allocating funding for extra lawyers and resources for the prosecution and modernising the system, to ensure that the mistakes that were made in the Chhokar case are not made again. Are there any other key pressure points in the system that you are considering with a view to changing it?

The Lord Advocate: Yes. One of the key pressure points is the management of High Court business. One of the recommendations of Lord Justice Campbell's report is to identify advocate deputes to take the trial and to give them time to consider the papers, mark them and, subsequently, undertake the trial. We are doing our best to do that. Under the new head of the High Court unit, Jim Brisbane, lists of serious cases are prepared and the way in which they are to be prosecuted is considered.

However, there are serious difficulties in identifying somebody whom we know will be able to do the trial—it is almost impossible. The defence often asks for an adjournment when we have somebody primed and ready to go. When the case recommences and we try to get hold of that person again, he or she may be on holiday or busy with some other case and we have to do the same again. In a recent case, two advocate deputes took a week to prepare for a case that was subsequently adjourned. That was two weeks of Crown counsel's time wasted, and we will have to go through the same exercise again. That is nonsense.

George Lyon: Have you any thoughts about how that situation could be resolved? There are clearly huge resource implications.

The Lord Advocate: We must consider that when we receive Lord Bonomy's report. One solution might be to have fixed trial diets or something of that nature; another might be to give the defence longer from the start. If in the High Court 29 days is not sufficient for the defence, we should think about giving the defence more time, for example, 50 days instead of 29. However, I am bound to say that that should not eat into the prosecution time. That might be an option for a change to the 110-day system.

12:30

The Convener: As I said, we would like to continue the discussion on some of the issues at a later date. The area is complex and has more to it than we have heard so far.

Will the witnesses address the issue of race? They provided a thorough submission on prosecution policy, which contains some welcome information. For example, the submission states:

"the Lord Advocate directed that fiscal fines should not be issued for any offence which is racially aggravated".

The submission makes a number of interesting and welcome points. My question is on recruitment, which is the most difficult question on the topic of race. I am pleased that the Crown Office and Procurator Fiscal Service has acknowledged that it is an all-white organisation and that something must be done to change that and to create a more mixed environment. Are the witnesses confident that they can make changes in the foreseeable future?

The Lord Advocate: As it happens, the Solicitor General for Scotland took over from her predecessor, Neil Davidson, as the chair of the race strategy group. She has taken the lead on racial issues, so I ask her to answer the question.

The Solicitor General for Scotland (Mrs Elish Angiolini): We cannot allow ourselves to fail. If the prosecution system does not reflect the diversity of the society that it serves, people from ethnic minorities or with a disability will feel that the system does not understand or have empathy with them. It is crucial that the system reflects society.

One of the difficulties is the percentage of people from ethnic minorities in particular areas of Scotland. For example, in Aberdeen—the region for which I was procurator fiscal—there is a large Chinese population, but otherwise the population is low on permanent members of ethnic minorities. Many such people are there temporarily to work in the oil industry or to study.

We have undertaken to examine the distribution of ethnic minorities, to target schools, colleges and communities and to get out there. The difficulty is that most people from ethnic minorities still see the Crown Office and Procurator Fiscal Service as an all-white organisation. Fortunately, that is increasingly not the case. I am pleased to say that another two trainee solicitors from ethnic minority communities will join us in September. That will help.

It is important that there is openness and that there is not a perception that applications from members of ethnic minority communities are not welcome. We are the only people who can change that perception, which means that we must go to schools and to other places where perceptions are formed to show that such applications are welcome. In Aberdeen, a number of university students from ethnic minority communities were invited to come to the office for coffee. We do not intend to positively discriminate, but we must take positive action. If people think that they are not welcome, it takes a great deal of courage for them to break the mould and to apply to an organisation.

Our personnel director and the race strategy group are setting out a strategy to encourage applications, which involves going to careers fairs and to where we are likely to be heard and being more open. That strategy has already started.

The Convener: The Lord Advocate talked about the cultural change that was needed in the Crown Office and Procurator Fiscal Service and you talked about getting out there. Might part of the culture change be for the service to engage more with community groups and other groups in society? That might bring about a change in the number of people from ethnic minorities who envisage being part of the service.

The Solicitor General for Scotland: We are already doing that work with racial equality councils. We are reaching out more than we have ever done—perhaps even more so than a number of other organisations. However, that work should not involve only one part of the community. If the whole community is to uphold and have faith in the justice system, people must know who their prosecutors are.

I would not like prosecutors to stand flourishing on the steps of the courts after every case has been decided or to display a triumphalist approach. However, in order to allow the community to see what a good job is being done, day in, day out, people must be able to understand us and the only way in which that will happen is if we go out to community groups and neighbourhood watch forums. For example, the chief constable and I had a public meeting in an area of Aberdeen that was suffering particular difficulties with housebreaking. In the circumstances, that would not have been an easy experience for anyone, but the public must know that we are listening to them. We are independent, but that does not mean that we have to be insular. There are resource implications with that approach and the difficulty for fiscals is that they are trying to get on with the cases. We must allow them headroom to go out and do that work, which is what we hope to achieve.

The Convener: We have taken a lot of evidence, and many of your recommendations seem to be a response to the tragic circumstances of the Chhokar case. How can you ensure that, in future, we constantly examine the system to make sure that we are getting it right?

The Solicitor General for Scotland: I am sorry—I missed your question.

The Convener: In many ways, the Pryce report's recommendations are a response to the tragic circumstances of the Chhokar case. We have examined the service and have done a lot of soul-searching about what is wrong with it. How can we ensure that there is a constant

examination of the system, to make sure that we do not racially discriminate against individuals and that we build a permanent awareness into the system over the next 10 years?

The Solicitor General for Scotland: The first step is a show of determination from the top. I give the committee my undertaking that, for as long as I am the Solicitor General for Scotland, I will have that determination. Indeed, the Lord Advocate has already signalled that that is a clear message for his leadership.

We consider that issue to be a major priority for our department and have regular meetings to ensure that we are driving the agenda forward. The work is being mainstreamed, but we must constantly evaluate and monitor it. Those of us who are at the centre cannot simply use fine words; we must make sure that the message is taken on board at the coalface. From the end of the year, we will also have an independent inspectorate. That will be another vehicle for ensuring that we are putting our money where our mouth is, that we are delivering and that we are ensuring that there is no discrimination in what we do.

The Convener: I thank the Lord Advocate and the Solicitor General for their helpful evidence. We look forward to further discussions with you on these issues. Do you wish to make any concluding comments?

The Lord Advocate: I thank members of the committee for their time, which we appreciate.

Subordinate Legislation

Damages (Personal Injury) (Scotland) Order 2002 (SSI 2002/46)

The Convener: Moving on to item 4, I refer members to paper number J2/02/9/3, which is a detailed note that sets out the background to the order. Do members wish to comment on this important set of regulations? Are you fully conversant with the regulations?

The regulations deal with how the court assesses solatium, which is the part of the compensation package that determines future loss. The courts must agree the percentage that applies. The regulations suggest that the Scottish position should be brought into line with that in England and Wales and are not controversial. Do members agree to my proposal that we simply note the regulations?

Members *indicated agreement*.

The Convener: Before we move into private session to discuss item 5, which is our draft report on the Land Reform (Scotland) Bill, I note for the record that the Justice 2 Committee will meet on Wednesday 13 March. We will hear evidence for our inquiry into the Crown Office and Procurator Fiscal Service from the Procurators Fiscal Society. Representatives of Crown counsel have also asked if they may give evidence to the committee. Given today's discussion on the role of Crown counsel, I ask members to accept that request. Do members agree?

Bill Aitken: Their evidence would be valuable.

The Convener: Are members happy to hear that evidence?

Members *indicated agreement*.

12:39

Meeting continued in private until 13:16.

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