

# **JUSTICE 2 COMMITTEE**

Wednesday 24 April 2002  
(*Morning*)

Session 1

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## JUSTICE 2 COMMITTEE

14<sup>th</sup> 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 QC (Lord Advocate)

Robert Gordon (Crown Office and Procurator Fiscal Service)

Norman McFadyen (Crown Office and Procurator Fiscal Service)

### CLERK TO THE COMMITTEE

Gillian Baxendine

### SENIOR ASSISTANT CLERK

Fiona Groves

### ASSISTANT CLERK

Richard Hough

### LOCATION

The Chamber



## Scottish Parliament

### Justice 2 Committee

*Wednesday 24 April 2002*

*(Morning)*

[THE CONVENER *opened the meeting in private at 10:19*]

10:55

*Meeting continued in public.*

### Items in Private

**The Convener (Pauline McNeill):** Good morning. Welcome to the 14<sup>th</sup> meeting of the Justice 2 Committee.

We dealt with item 1 in private and now move on to item 2. Do members agree to meet in private at our next meeting on 30 April, to discuss conclusions emerging from the Crown Office and Procurator Fiscal Service inquiry?

**Members indicated agreement.**

**The Convener:** I would also like the committee to consider stage 1 proceedings on the Criminal Justice (Scotland) Bill. We could meet in private to agree our lines of questioning. Is that agreed?

**Members indicated agreement.**

## Subordinate Legislation

### Police Act 1997 (Criminal Records) (Scotland) Regulations 2002 (SSI 2002/143)

**The Convener:** We move on to item 3, which is subordinate legislation. I refer members to paper J2/02/14/9 and there is some information supplementary to that paper.

Yesterday, the Subordinate Legislation Committee considered the Police Act 1997 (Criminal Records) (Scotland) Regulations 2002 for a second time, and considered the Executive's response to some of its concerns. The Executive's response has been circulated to members.

The Subordinate Legislation Committee wants to draw to the attention of the Justice 2 Committee—the lead committee—the fact that the regulations do not prescribe that volunteers will not be charged for the certificates. The equivalent instrument for England and Wales provides that

“no fee is payable in relation to an application made by a volunteer”.

The Executive has reiterated that there is no intention to charge volunteers. Volunteer Development Scotland will pay the fees for volunteers and will be reimbursed by the Executive.

Members will recall that, last week, we dealt with similar regulations in relation to vulnerable adults. The Deputy Minister for Justice came to the meeting because the instrument was subject to the affirmative procedure. The instrument we are considering today is subject to the negative procedure.

Last week, I asked the minister to clarify the issue of fees, particularly in relation to students. The Association of Scottish Colleges had written to me, as convener, about that. The association was concerned about whether students would be exempt. The minister said that the Executive is currently considering the matter.

We now have the regulations that deal with the question of fees. We have to report by 6 May. Is there anything that members want to comment on?

**Bill Aitken (Glasgow) (Con):** I am reasonably relaxed about the issue now. When the matter was first mooted, youth organisations in particular were concerned that if they were required to pay the charges that might be imposed, that would cause problems. The fact that those charges will be waived removes that difficulty.

Such situations are always difficult to balance. We would all prefer if this kind of documentation

were not required. Unfortunately, we have to operate in the real world and we would not wish to see children or young people being put at risk. That being the case, I am reasonably relaxed about the instrument.

**The Convener:** I ask the committee to agree that, as part of our report, we will mention the exemption for students. The Executive has said that it will consider that. There is no indication of where it intends to go on the issue. The worry is that, even if the charges are made to colleges for students on placement who are working with children or vulnerable adults, those charges might be passed on to students. There would be no accounting for that fee in either student loans or bursaries. Do members agree that we should raise the matter in our report?

**Members** *indicated agreement.*

## Criminal Justice (Scotland) Bill

**The Convener:** Item 4 is consideration of the Criminal Justice (Scotland) Bill. I refer members to paper J2/02/14/10. I am delighted to report that Professor Chris Gane has agreed to be the committee's adviser, which is extremely good news. The main decision, on the list of witnesses to give oral evidence, will be taken when the list of written submissions has been completed. If members are able to provide any initial suggestions for witnesses to give oral evidence, that would give us a bit of advance notice.

11:00

**Scott Barrie (Dunfermline West) (Lab):** For our first evidence session, we should consider people who represent organisations that have a wide remit. They would be able to comment on various parts of the bill. The bill is not about one specific subject; it covers many different subjects. To make maximum use of the witnesses' time and to take as much evidence as possible, we should invite organisations whose representatives can comment on various bits of the bill, rather than on one specific part of it. Some appropriate organisations have been suggested in the clerk's paper.

**The Convener:** Are there any other suggestions?

**Bill Aitken:** The witnesses whom the clerk has suggested for 15 May are all totally acceptable. At a later stage, we will have to consider organisations such as the Faculty of Advocates and the Procurators Fiscal Society, which are familiar to us from other inquiries. The Glasgow Bar Association would be the best source of information from that area.

**The Convener:** Those suggestions will allow us to do some preparatory work on potential witnesses. Members will be able to see the list of people who have submitted written evidence, which will give us another opportunity to select witnesses from a wider pool.

**George Lyon (Argyll and Bute) (LD):** I want to clarify the timetable. Do we have from 15 May until 14 June—when we start stage 2 of the Land Reform (Scotland) Bill—to take evidence on the Criminal Justice (Scotland) Bill? Will we complete stage 2 of the Land Reform (Scotland) Bill before the recess?

**Gillian Baxendine (Clerk):** We will start considering the Land Reform (Scotland) Bill at the second meeting in June. The aim will be to complete part 1 of the bill before the summer recess. We will do parts 2 and 3 after the recess.

**George Lyon:** So it will be September before we do parts 2 and 3.

**Gillian Baxendine:** Yes.

**The Convener:** The only other organisation that we might consider is Victim Support Scotland. I will let the committee see the list of those who have made submissions. Members can refine our selections at a later date. Are members happy with that?

**Members indicated agreement.**

**The Convener:** Do members agree to break for coffee until 11:15, when we will deal with item 5?

**Members indicated agreement.**

11:03

*Meeting suspended.*

11:21

*On resuming—*

## **Crown Office and Procurator Fiscal Service**

**The Convener:** Item 5 is the committee's inquiry into the Crown Office and Procurator Fiscal Service. I welcome the Lord Advocate, the Solicitor General for Scotland, the chief executive and the Crown Agent—they are out in force today. This is probably the last time that we will meet as part of the present inquiry. We are grateful that you have all devoted your time. The Lord Advocate will make an opening statement, a copy of which he has provided us with. Thank you for that.

**The Lord Advocate (Colin Boyd):** Thank you, convener.

Today's meeting comes almost a year after the setting up of the Justice 2 Committee's inquiry into the Crown Office and Procurator Fiscal Service. I am conscious of how hard the committee has worked during that period to investigate the issues and consider how the service can ensure that it provides an efficient prosecution service. I have no doubt that everyone who has an interest in the criminal justice system will be impressed by the care and thoroughness with which the committee has approached its task.

In the past 12 months, the Crown Office and Procurator Fiscal Service has been subject to an intense and almost continuous process of scrutiny and review. It is vital that, with the committee's help, we emerge from that process of review confident of the direction that we will take and possessed of a clear vision of a Scottish public prosecution service that is fit for the 21<sup>st</sup> century.

My vision is of a Crown Office and Procurator Fiscal Service that wins the confidence of the people of Scotland; that is committed to professional excellence; that pursues cases independently, fairly and consistently in the public interest; that is responsive to the public's needs; that provides a full, satisfying and rewarding career for staff; and that communicates openly and effectively.

It is clear that significant changes are necessary to achieve that vision. Lord Justice Campbell, Dr Jandoo and the Pryce-Dyer review have paved the way for significant structural, managerial and cultural change and the results of the reviews by Lord Bonyon, Janet Cameron and the Justice 2 Committee will give further detailed direction to our work.

The last time we met I said that I welcomed the broad thrust of the Pryce-Dyer management review. The review is based on evidence from a wide range of sources, the most significant of which is the staff of the Crown Office and Procurator Fiscal Service. As a result, the review addresses the issues that our front-line staff tell us affect their ability to do their job to the standard to which they would like to do it and which we would expect.

The first recommendation, for example, is for service level agreements with the police, which would formalise the division of responsibilities, the time scales for response and the quality of delivery. I consider that to be a priority for the service. Our action on that recommendation will be typical of the cross-cutting approach that we must take to fulfil our role in the delivery of an efficient, effective criminal justice system in Scotland.

The Pryce-Dyer report goes on to address key issues, such as management of High Court business, cover for sickness, maternity and holiday leave, management information, budgeting, media relations, people management, information technology, pay, performance appraisal, training, career development, recruitment and promotion. I am convinced that getting those areas right will take us a long way towards achieving the vision that I have just set out.

I am fortunate to be supported in the programme of modernisation and reform by an able and enthusiastic new team. You already know Elish Angiolini. I think that you know the chief executive, Robert Gordon, who was previously head of the finance and central services department in the Scottish Executive and, prior to that, head of the constitution group. He is the new full-time manager at the top of the Crown Office and Procurator Fiscal Service and is committed to modernising and equipping the service to meet the challenges that it faces.

Also with me is Norman McFadyen. He was formerly the regional procurator fiscal for the Lothian and Borders region and the procurator fiscal in overall charge of the Lockerbie investigation. He is now Crown Agent designate. Norman McFadyen has already taken on the legal and prosecution policy responsibilities of the previous Crown Agent's role. He will become Crown Agent in the new management structure that is being developed.

Before we move on to questions, I know that the committee is particularly interested in our plans and costings for the implementation of the Pryce-Dyer report. We are close to having a fully developed implementation programme, which picks up strands of reform from all the recent reviews of the service, including the Campbell

report, the Jandoo report and the pressure audit. I advise the committee that we have secured an increase of £10 million in the service's budget for the current financial year. That is a down payment for reform and will enable us to make a significant start on the investment and the structural, management and cultural changes that are needed. I am in detailed discussion with the Minister for Finance and Public Services on the elements of our implementation programme. I hope to agree further additional funding in the near future.

I believe that the Crown Office and Procurator Fiscal Service has found a new direction towards a clear vision of a modern, effective, responsive and accountable prosecution service. I am sure that the Justice 2 Committee will play a key part in our achieving that vision, not least by reporting on us as others see us. I am confident that, by taking steps to secure a properly resourced and managed service with an appropriate and clear structure, we can build a prosecution service that is fit for the 21<sup>st</sup> century.

**The Convener:** Thank you. I congratulate Robert Gordon and Norman McFadyen on their appointments. I wish them all the best on behalf of the committee.

I am sure that I speak for the committee when I say that the announcement of the £10 million increase in the Crown Office and Procurator Fiscal Service budget is very good news.

**George Lyon:** I would like the Lord Advocate to expand a little on three areas. The Executive summary of the Pryce-Dyer report highlights three areas in which there are real problems. First, it mentions

"poorly focused management information; inconsistencies in budgeting; a lack of resilience in the staffing of the organisation; and overall a lack of a corporate and united approach being taken to standards and processes across the service."

How has that situation come about and what will you do to address it?

We are all aware of the stress audit and the poor morale of staff, who believe that the system has left them stressed and undervalued. Will you explain what the reason behind that is? What led to the audit result? Was it management issues, for example, or poor pay or overwork? I would like you to address that in detail.

You spoke about cultural barriers. Those are also highlighted in the Pryce-Dyer report, which states:

"There are cultural barriers between legal and administrative staff across the organisation which impact on the morale of the staff and on their effectiveness."

How has that situation come about? How do you intend to break down the barriers that exist and



make the organisation work as a team?

11:30

**The Lord Advocate:** I will say a few words before I ask Robert Gordon to speak.

George Lyon asked first what caused the poor focus of management. In some ways, the service has been isolated from mainstream developments in other areas of the civil service. Prior to devolution, that was one of the features of the service. We take seriously our independence, which is at the core of everything that we do. However, sometimes independence can be turned into a barrier and can become isolation. That is one of the key developments that occurred.

For many years there has also been a culture of underfunding. The decisions that were taken about where scarce resources should be invested favoured spending on front-line services—recruiting more lawyers and so on. That was laudable and appropriate, as people on the front line who are under pressure regard it as helpful to have more bodies assisting them. However, the policy meant that we neglected the support side of things. We entered into a vicious circle of having too few support staff who were ground down by the pressures of work.

There are a number of reasons for the results that the stress audit produced. One factor is pressure of work. Also, many people who work in the service feel that what they do is not valued. That is related to management and communication issues in the service. No doubt pay issues are also involved. The pressures to which the service is perceived to be subject in the public mind have contributed to the feeling among staff that their work is not valued. They believe that the public does not appreciate what they do.

I am not sure that I can answer the member's question about cultural barriers, the effect that they have on morale and how they came about. We have not developed team working in quite the way that we should have developed it. In those areas where it has happened in the past, it seems to have disappeared over time. There are cultural barriers between the Crown Office and the Procurator Fiscal Service—between Crown counsel and the service. We need to break down the barriers that exist in various parts of the organisation. The key to that is communication.

Because of his management experience, and because he joined the service recently, Robert Gordon may have a different perspective on the issues that George Lyon raises.

**Robert Gordon (Crown Office and Procurator Fiscal Service):** Many able and committed lawyers are being asked to be both prosecutors

and general managers. Obviously, at the higher levels of the service people have to combine those skills and disciplines. What the organisation lacks compared with other Government departments and parts of the public sector in which I have worked is managers and fixers who can get things done.

As members will have seen on their visits to fiscal offices, there are many administrative staff around, but there do not seem to be enough people at the higher levels of administration, as are found in any other Government department. Such people could make things happen and allow prosecutors to concentrate on prosecution work.

I do not know the reason for the scores on the stress audit. We are wrapping up the overall implementation of the Pryce-Dyer report and the other reports to which the Lord Advocate referred. That involves action that the authors of the stress audit report recommended to us to deal with the stress issues that were identified. Beyond the action to appoint additional staff and change ways of working, much of that involves changing ways of communicating and of valuing people in the organisation, by providing opportunities for feedback from front-line staff to their managers.

We are introducing a range of measures that modern organisations put in place. In relation to George Lyon's third point, the response includes more effective team working to use the skills of lawyers and prosecutors to the full, and supporting that activity through administrative and clerical staff fulfilling their part in the process. Often, that can be done best by people working effectively in teams.

We are thinking a lot about how to bring that about, what the model for the whole service should be and how to roll that out and leave room for local discretion. We must have a view of the best way in which to do the business, much of which is volume, repetitive business, and some of which is important, high-level and serious High Court business. We need to work through the best ways of dealing with all the business.

**George Lyon:** You seem to suggest that your system lacks managerial skills. Does that mean that you will appoint a series of managers to manage the system better, or do such skills exist internally? What do you propose to do to resolve such issues?

**Robert Gordon:** Those questions raise two issues, one of which relates to senior legal managers. Adopting the area structure and having 11 or 12 area fiscals will mean that there will be more senior legal managers, who will have a narrower span. Instead of one senior legal manager covering Tayside, Central and Fife, each of those police forces will have an area fiscal, and

managers will be able to concentrate on a narrower command. The legal manager will give legal direction and will have overall managerial control. Within the structure, we intend to make a number of appointments, and we must consider the figure in more detail. The Pryce-Dyer report recommended appointing one person at around the C1 principal level, in Executive parlance—a fairly senior middle manager—who would lead a team in each area. That administrative management capacity will be at a much higher level than we have at the moment.

We need to strengthen the human resources, finance and IT capacities in the centre. Compared with similar organisations, such as other bits of the Scottish Executive, we are under-managed in human resources and personnel. At present, that means that people's careers are not being managed as effectively as they should be.

As the committee has found, it has been quite difficult to get some of the information on financial management and the arrangements for delegated budgeting and resourcing. We need to improve on that. Fundamental to the success of the business in future will be new IT systems that will allow a lot more joined-up work and which will facilitate the team working that I spoke about. We will need people to manage those IT systems.

I see the structure as a kind of Scandinavian inverted pyramid with front-line staff being supported by management both locally and centrally.

**George Lyon:** Are there enough front-line staff—that is, lawyers? Is it only the managerial side that needs to be strengthened? On one of our visits to Glasgow, I spoke to one of the senior people and was told that the reason so many temporary fiscals had been used in the past was that budgets were uncertain and retaining temporary staff without fixed-term contracts was a way of insuring the service against budget cuts, which tended to happen year on year. Will that change in future? Will the service move towards having full-time fiscals rather than making excessive use of temporary staff?

**The Lord Advocate:** We are at present engaged in recruitment. Thirty more deputes have been offered posts and the interview process is continuing. In effect, we are taking as many lawyers into the business as we can cope with and as the system can deliver. Our aim is to increase the number of legal staff by about 60 over the next two years. To put that in perspective, the number of legal staff employed in the service is 355. That has increased from about 280 in 1998 and the total will go up to well over 400 in two years' time.

**George Lyon:** Is that fiscals and advocates or just fiscals?

**The Lord Advocate:** That is full-time fiscal staff. Advocate deputes or Crown counsel are a different issue—they are not members of the fiscal service. The figure for Crown counsel has gone up from about 13, I think, in 1997 to 18. I would need to check the figure of 13 for 1997 but it has certainly gone up to 18. We also use ad hocs, who are often people who have served as advocate deputes.

**The Convener:** The committee wants to be clear about the progress on staffing levels. We appreciate that there has been an increase in legal staff. You say that in 1998 the figure was around 280 and that now the figure is 355.

**The Lord Advocate:** As of the end of March 2002, the number of permanent legal staff is 355. That is the figure for full-time equivalents—some people may be on job share.

**The Convener:** It is the figure for full-time equivalents that we would be interested in.

**The Lord Advocate:** My understanding is that 355 is the figure for full-time equivalents. We also have 27 trainees, a figure that has gone up from 10 in 1998.

**The Convener:** So the increase of 60 is on top of the 355?

**The Lord Advocate:** Yes.

**Robert Gordon:** We are looking at the scope for increasing the number of trainees. As the Lord Advocate said, there is a limit to how many people we can take into the training grades in one go, because senior staff have to play a role in training them. We think that we can attract and cope with 30 plus trainees. As the Lord Advocate said, 30 people will be made offers of employment this week.

11:45

**George Lyon:** I want to move on to the recruitment, staff retention and sickness leave figures that you provided in your submission. Do you find any difficulty in recruiting people on the current salary scales? From an outside perspective, Mr Gordon, what is your view of the staff retention or churn rate figures? Are they below your expectations from your experience of the rest of the civil service? Can you answer the same question in relation to the sickness leave figures? If those figures are not out of kilter with the rest of the civil service, how do we explain the figures in the stress audit? I would have thought that the stress audit figures would have signified high sickness leave and a high churn rate. What is the real reason for the extremely poor figures in the stress audit?

**The Lord Advocate:** Perhaps Norman McFadyen will comment on the quality of the

people whom we recruit. As I understand it, our staff retention figures are very good. That is a bit of a conundrum when one considers the stress audit figures. It has to be said that we have a highly dedicated and professional staff who like the work that they do—they find it exciting and interesting and they are committed. However, they feel that some of the conditions in which they have to work are not conducive to the best working practices. I sometimes question surveys, although I am not questioning the stress audit and I accept the figures. However, the retention figures are good.

**Norman McFadyen (Crown Office and Procurator Fiscal Service):** The general position is that the response that we get to recruitment drives is fairly satisfactory when one considers the pool of lawyers that is available. We are interviewing about 55 in the course of the current recruitment round. If we are able to fill 30 plus jobs as a result of that, it will have been a successful round. However, there will be further recruitment rounds after that.

**George Lyon:** What level are you recruiting at?

**Norman McFadyen:** We recruit at a mixed level. Many of our recruits come straight from traineeships, but we have also recruited people from private practice and elsewhere in the public sector. The office in which I was based most recently in Edinburgh had a mixture of recruits who had broad experience and recruits who were new to the service. We are still attractive to others in the profession, some of whom have been qualified for many years and others who have taken career breaks to do other things.

We have built up our traineeship programme over the years. We are hoping to take on more than 17 in the programme this year—17 are already signed up and we will take on a few more if possible. We know from experience that the majority of those people will want to stay with us, at least for the initial part of their careers. In the second year of traineeship, they prosecute in the summary courts and get intensive experience there under guidance. By the end of that year, they are utterly familiar with criminal procedure and the courts.

Bear in mind that if we bring in 17 or 18 trainees this year, and if that number go into court next year and come out of their traineeships the following year, that gives us a very good basis for the recruitment of people who are not just fully trained but fully trained by us. We need to do a lot more in our provision of training, and we are trying to build up work in that area now. That is in response both to the Pryce-Dyer report, which laid stress on training, and to the obvious fact that if we are to have major recruitment of lawyers and administrative staff, we have to put in a lot more

resource to train them.

**George Lyon:** Would Mr Gordon or the Solicitor General care to comment on that conundrum? You both came to the situation from the outside.

**Robert Gordon:** I was thinking of the question about why people are not leaving in greater numbers if they are under so much stress.

**George Lyon:** Yes—that is the question.

**Robert Gordon:** As the Lord Advocate has said, people seem to be very committed to the job that they are doing, but they are deeply frustrated by having to work under such pressure in a system that is often chaotic. That is partly to do with the way in which we are organised—and we are doing something about that—and partly to do with the nature of the wider criminal justice system. Work is in hand to address issues of business churning around and not happening and so on.

We have launched a pay comparability study because the legal staff, particularly those at depute level, have been complaining bitterly that they are underpaid in comparison with other public sector lawyers. Even if people are not leaving us, it is not a sustainable way to run a business if they are staying with us while feeling undervalued and under huge pressure. The action that is in hand, including work on internal communication and the other matters that were highlighted by the stress audit report will, together with all the investment and change, turn around the issues of stress and of people feeling undervalued, I hope reasonably quickly.

**Mrs Elish Angiolini (Solicitor General for Scotland):** I was a procurator fiscal for 18 years, and a number of people in a similar position have stuck with the service for that period. Clearly, there must be something to keep people in the job other than complacency. It is an utterly fascinating career. Intellectually, it is very challenging and, at the same time, there are contrasts, sometimes with huge pressure and ferocity. The court environment is not a particularly pleasant one in which to work on a daily basis, because the people—the victims and the accused persons—who are there are naturally unhappy. A certain tension and a level of adrenaline go with the job.

With the recently increased level of accountability that has come with devolution, the Procurator Fiscal Service is, quite appropriately, under greater scrutiny. Procurators fiscal are aware of that and of the increased potential for inquiry about their decision making, which adds a further dimension. It is important for those working in the service to feel valued—that has been identified both in the stress audit and in internal reviews.

A combination of factors is at play. Staff in the Procurator Fiscal Service feel proud of what they

do, and they generally do a good and thorough job. They want to feel valued in terms of money—which is being addressed—and in how they are treated by their managers. There are examples in the service of very good managers. Having to say thank you and showing care in what is being done is a very important part of being a manager. No matter how senior a lawyer is, they like to be told if they are doing a good job.

Equally, support staff enjoy the nature and subject matter of what they are doing. When support staff work closely in teams with the lawyers, quite a contrast can be seen. When I was an assistant fiscal in Glasgow, we set up an open-plan team in the solemn proceedings unit. There was quite a contrast in the atmosphere. People were co-located and were working together, and administrative staff came over to court to see the end product of their work and, in doing so, felt part of the team. There should be more emphasis on such practices so that people feel that they are participating in the exercise more closely and appreciate their part in it.

There are a significant number of variables that make work in the Procurator Fiscal Service complex—it is a complex organisation. The privilege of being a procurator fiscal and being part of the organisation is immense, and people appreciate it.

**Stewart Stevenson (Banff and Buchan) (SNP):** My question is not meant to be hard and can be answered in 10 words. Could you say, using three headings, roughly how much it costs to bring a new entrant to the service up to fully capable standard? I am asking for an estimate—we are not looking for everything down to the last penny. The three headings that I would like you to take account of are direct training costs, indirect training costs—in other words, the costs of staff time for sitting-next-to-Nellie training with existing members of staff—and the costs of the salary and benefits of the new member of staff, from recruitment to the stage at which they are fully effective. An answer to the nearest £5,000 would do.

**The Lord Advocate:** Despite asking for a 10-word answer, you have stumped us. We will have to write to the committee with that information.

**The Convener:** That information would be helpful.

I return to staffing levels. We want to be clear about the starting point and where we are likely to end up. We appreciate that staffing levels have improved, but we want to assess that improvement.

Paragraph 9 of your paper, which covers staff retention, states that

“the department recruited approximately 100 deposes”.

The table in paragraph 9 shows that there were 175 fiscals in post from April 1999 to March 2000 and that there were 8 resignations in the period April 2001 to March 2002, with 208 fiscals in post in March 2002. Could you explain to the committee how that figure of 208 relates to the full-time equivalent figure of 355 that the Lord Advocate gave earlier?

**Robert Gordon:** The figure of 208 relates to the number of depute fiscals but there are other grades of legal staff in the system. The difference is made up of principal deposes, senior principal deposes, assistant fiscals, area fiscals and senior management.

**The Lord Advocate:** I was given a helpful table this morning that shows the present grades. Offhand, I cannot see the figure of 208 and I am not entirely sure how that figure is made up, but I could make the table available to the committee. The table shows that there are 38 staff at senior civil service level, and they are included in the overall figure.

**The Convener:** We would be pleased to receive that information, which would be helpful.

I will move on to conditions for staff, which I want to examine in greater detail. The Solicitor General talked about the buzz of the job and about how it is seen as a good career by many people. However, I have witnessed the downside to that adrenaline rush, if you like. The fiscal is the one person in court at whom everyone shouts.

I was most shocked by the conditions under which the deposes must work in the solemn unit in the sheriff court. Scott Barrie and I were present when a depute was told to take on a case for the same afternoon, with about two hours' notice. I realise that that is probably commonplace, but she had only about an hour and a half to read the papers. The noise in the unit was incredible and I saw no support staff around. It seemed to me that she was left on her own to deal with the situation. As Robert Gordon said, support staff do not seem to be around the legal staff in order to make things happen. That struck me, and other members made similar comments when we first visited the Glasgow office.

I am interested in the conditions under which staff must work. I am sure that the conditions must affect the quality of work, particularly if there is no quiet space. The question also arises whether more support staff are required in order to assist legal staff and ensure that things are done to give legal staff more support in court. Would any of our witnesses like to address those issues?

12:00

**The Solicitor General for Scotland:** I remember the sheriff and jury unit in Glasgow from when I managed it some time back. The room that the convener mentioned is in the sheriff court. The accommodation is provided to the fiscal service by the Scottish Court Service. We have that room on a grace-and-favour basis. It is not a permanent office for staff to work in; it is somewhere for staff to put their handbag and have a sandwich if they do not go to the canteen.

There is often a scrum in the morning when all six deutes for the jury trials arrive, but thereafter that room empties out. That said, when I was there the conditions seemed somewhat cramped and I thought that they could have been improved. When people are in the court during the day, they need a quiet room. It is important that there should be an opportunity for deutes to go to a quiet room when they are preparing speeches, especially jury speeches. I am sure that the management in Glasgow will consider that matter.

Equally important for the depute who is doing a jury trial, or a summary trial, is the knowledge that support staff are around who can ensure that the executions of citation are with their papers and that missing sets of papers can be found. The Pryce-Dyer report addresses that. Support for front-line lawyers is crucial. It does not matter how good I am on the day in court; if I do not have my papers I will look like a clown. It is crucial that I have that back-up support. There must be management support to ensure that teams work flawlessly and seamlessly and that support staff feel that they are part of the team. If they see the predicament of the depute fiscals in court, it makes their tasks much more immediate and enjoyable and they feel that what they are doing is important. Again, the Pryce-Dyer report attacks that as one of the crucial areas where change is required in a number of our working practices.

**Norman McFadyen:** The Solicitor General has essentially said it all. We wish to give more active support to the lawyers. We have recruited lawyers in recent years, but we have not recruited administrative staff, so the balance has got out of kilter and we will have to address that.

There are space problems in various offices. In Glasgow, we have now acquired space in an adjacent building. I am sure that you would have been told that when you were there. That extra space will give us considerable scope for improvement in the physical accommodation for the deutes. The situation is more difficult in the courthouse; there are all sorts of competing demands for space in busy courthouses, particularly where there is expansion of business.

**The Convener:** We are aware that the Glasgow office has acquired additional space and is

expanding into the building next door, which is good news. Are there specific plans for an increase in the number of support staff?

**Robert Gordon:** Yes. Pryce-Dyer recommends additional support staff. We are working on establishing the right levels to put in.

With the development of the next generation of computer systems, we hope to release some staff from certain activities and redeploy them in others, which is a typical development in any organisation that invests in information technology.

**George Lyon:** The District Courts Association said that the more senior and experienced fiscals become managers, and that they rarely appear in court. Will the implementation of the Pryce-Dyer report change that? Currently, people with good legal skills are being put into the managerial side. That begs the question whether you should put in managers to run the organisation, or train lawyers who are currently in the organisation to ensure that they can run it properly.

**Norman McFadyen:** There are two aspects to that matter. One of the particular features in the busier courts, especially in Glasgow, is that we have had to rely considerably on temporary fiscals. The result of that has been that a much smaller proportion of cases have been prosecuted by the fiscal service's permanent staff. It is not necessarily a question about whether legal managers are prosecuting; it might be a question about whether experienced deutes are prosecuting. If we can improve the recruitment of permanent legal staff to an office such as the one in Glasgow, it will follow that more experienced deutes will prosecute trials in the district court than is the case now.

Another aspect that was touched on earlier is that, by default, legal managers have had to devote too much time to management and not enough time to law. We want to get that balance right, but we also want to give experienced deutes and our permanent deutes more chances to get into court and show what they can do for us.

**The Lord Advocate:** You will understand that the rapid expansion of the number of legal staff means that we have a disproportionately inexperienced team. I wish that it were otherwise, but that is a fact. People have to get into court and start somewhere, so I imagine that very often their starting point is the district court. Whether that is appropriate in a particular case is a matter for their managers, but I reiterate that people have to start somewhere. Just as a doctor has to do his first operation, lawyers also have to start somewhere.

**The Convener:** I would like to ask about the figures that you have given us on cases in which there are no proceedings. We thought that we

would examine such indicators as the number of time-barred cases to see what kind of stress the system is under. However, according to your figures, the vast majority of cases are not time barred because of staff shortage. I put it to you that the culture of the organisation until now has tended to mean that no fiscal would have declared that staff shortage was the reason for a time bar. I would have thought that the time-barred figures—which in some cases are quite high; for example, there were more than 1,000 in Glasgow—must involve an element of staff shortage.

**Norman McFadyen:** First, I will say that time-barred cases are expressed as a percentage of cases in which no proceedings are taken, so we are talking about a relatively small proportion of cases. I would be disappointed if fiscals were massaging the figures where the true reason was staff shortage. There is no reason for a fiscal to do that, because it is very much in fiscals' interests to tell us if that is what is causing the problem.

We have tight time bars for proceedings in the main range of summary offences that we prosecute in Scotland. They are actually tighter than the time bars that apply in many cases to proceedings in England and Wales. The vast majority of traffic offences are subject to time bars. Some cases might be time-barred because of late reporting by the police—that happens often, but might have been unavoidable because of the nature of the inquiries that the police have had to make. If a case is reported very late or at the time-bar stage, the fiscal has no choice. That decision is forced on the fiscal.

**The Solicitor General for Scotland:** I support Norman McFadyen on that point. If, as a regional procurator, I had found in the course of my inspections a procurator fiscal who was massaging or disguising figures, I would have been extremely concerned and would have considered it a disciplinary matter, but I do not believe that that happens. Time-barred cases come into an office perhaps because the victim has reported the matter late or because evidence has come to the attention of the police late in an investigation. It might also be that a junior police officer is unaware of an impending time bar and inadvertently puts in a report two weeks before going on holiday. By the time such a case comes into the fiscal's office, the time bar has passed.

**The Convener:** I make it clear that I am not suggesting that any fiscals massage the figures. What I am saying is that it seems to be incredible that, if there is a staff shortage, none of the time-barred cases are as a result of that shortage.

**The Solicitor General for Scotland:** No.

**The Convener:** I am suggesting that until recently, because there has been no discussion

about the service, the attitude might have been that some other reason was found for time-barred cases. In the past, no one complained about staff shortages in the organisation. The culture of the organisation was not to complain, so that when cases were marked "no proceedings" because of staff shortages, it was put down to another reason.

**The Solicitor General for Scotland:** I hope that the culture was such that if a case was marked "no proceedings" because of a lack of resources, it would be imperative for a staff member to go to their line manager to tell them about the difficulties and to inform the manager that, unless sufficient resources could be found, the case would have to be marked "no proceedings" because of lack of resources. The situation that the convener described was not my experience and I do not feel that it is the situation elsewhere.

**Bill Aitken:** I want to follow up on that point. The figures for time-barred cases are high. The figure for Glasgow is 5 per cent, which is not inconsistent with the figures elsewhere. Before a police report that is related not to common law but, for example, to a road traffic accident, is put in the pile to be processed, the date of the offence should be checked because there is a six-month limit. Is that done?

**The Solicitor General for Scotland:** Yes. Members will know from their visits that reports are e-mailed to the Glasgow office in large bundles and are then separated into district court and sheriff court marking. Custody cases come through in a separate slot, which is between 8 am and 8.30 am. A member of the administrative staff looks through the cases. The imperative is to consider cases based on the time bar. If a fiscal were slothful in doing the work—for example, if it took two weeks to mark a case—the delay would be attributed to the fiscal, not to a delay in reporting by the police.

**Bill Aitken:** We are opening a can of worms. When we visited the Glasgow office, the point was well made to us that there appear to be delays in reporting by the police. It is disturbing that if there is sufficient delay by the police in reporting a fairly straightforward road traffic accident that involves careless driving or speeding, the report can go into the system too late for the fiscal's office to be able to prosecute it properly.

**The Solicitor General for Scotland:** The police manage that situation as well as they can. Obviously, they prioritise their work, as do we. Delays have been a feature during my 19 years as a procurator fiscal. There have always been time-barred cases from the police but, to some extent, the situation is better managed now. The target for the police is to report within four weeks of the date of the offence. Police and fiscals attempt to measure the times. There is a better and stronger

interface, which was not measured previously.

**Bill Aitken:** I realise that you are not here to answer for failures in the police service. It seems to me that police officers should report cases, if not when they come off shift, then within two or three days. I do not understand the delay. Have the Crown Office or regional procurators fiscal raised the matter with chief constables?

**The Solicitor General for Scotland:** Perhaps the Crown Agent will answer that.

**Norman McFadyen:** I am sorry, I missed Bill Aitken's question because I was trying to draw attention to another point.

**Bill Aitken:** I cannot understand why when police officers charge someone, they do not report the matter before they come off shift. I realise that in some cases that might not be possible. Late reporting inhibits fiscals. I know that neither you nor the Solicitor General are here to answer for the police.

**Norman McFadyen:** I fully understand that. Straightforward cases are normally reported fairly quickly. It is ironic that cases that are relatively minor in the scheme of things often take longer to investigate. For example, cases of speeding or of ignoring red lights that are caught on camera often take longer because the police must go through various processes such as notifying the registered owners. Such delays are not a result of the complexity of the investigation—there are not 10 or 15 witnesses involved—but because various processes such as serving notices or approaching suspects must be gone through before the case is reported.

I was looking at the figures in annexe B. Although Bill Aitken is correct to say that 5 per cent of the no-pro cases in Glasgow were time barred, that is a very small proportion of the total number of reports that are received from the police. In Scotland as a whole, 0.7 per cent of reports that are received from the police are time barred. The number of cases that are time barred is relatively small. Even in Glasgow, it must be fewer than 700 cases a year. In a region that deals with almost 60,000 cases a year, that is a small number.

In response to the Pryce-Dyer report, we plan to work toward service level agreements with the police and other partners on reporting of offences. The Solicitor General mentioned the targets that already operate. It is clear that we need to do more work with the police on developing meaningful and useful targets. That should address the issue that the member raises. I do not want to give the impression that the cases referred to make up a significant proportion of the overall number of reports received.

12:15

**Bill Aitken:** As you have pointed out, the more serious cases are not usually time barred. Nevertheless, it is possible that people who should have been disqualified from driving are driving at the moment because cases were not concluded. Five per cent of 58,000 cases is quite a large number.

**Norman McFadyen:** It is not 5 per cent of 58,000, but 5 per cent of 12,000.

**Bill Aitken:** That is still more than 600 cases.

**Norman McFadyen:** Yes.

**The Convener:** I have one more question before we leave the subject of the police. We acknowledge what you have said about service level agreements. In the course of the inquiry, we have heard the police's view of the requirement that they include more detail in preliminary reports. The police suggested that, because of the added work that that would involve for them, it might be preferable for more detailed police reports to be produced after a plea of not guilty had been entered. How do you view that suggestion?

**Norman McFadyen:** We addressed it in our previous submission. The fiscal is under a clear legal and professional duty to satisfy herself or himself that there is sufficient evidence to justify criminal proceedings. The only way in which the fiscal can be properly satisfied of that is for the evidence to be set out clearly in the police report.

In the past, it was not uncommon for reporting police officers to attend with police reports, which might be relatively sketchy—particularly in the case of people who had been arrested overnight—and to talk the fiscal through the evidence. Once they had done that and the fiscal was satisfied that there was enough to be going on with, proceedings could commence. When I worked in Glasgow many moons ago, that happened all the time. However, in modern society such a system does not really work. The modern organised police force is not able to release officers to go to the fiscal's office with their reports. That style of reporting has died out. Consequently, it is vital that the written police report contains enough information to enable the fiscal to proceed. If it does not, that will lead to more work for the police, as the fiscal will write back to the police for more information. They may also call for full statements to be taken, which might not otherwise happen.

This is about balance—about getting enough information in the police report in summary form to enable the fiscal to make a proper judgment on whether criminal proceedings can be taken and whether they need to be taken in the public interest. Generally, the Association of Chief Police Officers in Scotland is very supportive of the

minimum standards that we need in police reports.

**The Convener:** The police are concerned that one third of cases are not proceeded with, despite all the work that has been put into them.

**Stewart Stevenson:** I want to explore how comfortable you feel with the statistics and whether they are accurate.

I note that, in 2000-01 in Glasgow and Strathclyde, 9.5 per cent of the no-pros—some 1,570 out of 16,500 cases—came about because the accused had died. That figure struck me as rather more than I would have expected. In the following year, the figure dropped to approximately 2.5 per cent of 8,000. Is that the correct figure, or might the statistics contain a flaw? The figure for 2000-01 seems awfully high.

**Norman McFadyen:** It seems odd.

**Stewart Stevenson:** It is 41 per cent of 23 per cent of 16,500 or thereabouts.

**Norman McFadyen:** It seems very odd and merits further examination. We will have a good look at that.

**Stewart Stevenson:** Perhaps the matter should be referred to the Health and Community Care Committee.

**The Convener:** Let us have a few more questions on the subject of the police, before we move on. Do you have any specific questions on that subject, George?

**George Lyon:** One or two issues came up with ACPOS and the Association of Scottish Police Superintendents. We have covered one or two of them. Fiscals are asking the police to include in their initial reports a breakdown of the evidence, indicating the detailed corroboration of some elements of the charge. Why is that required? Is that not more properly the job of the fiscal service?

**The Solicitor General for Scotland:** Norman McFadyen chaired a group with ACPOS to consider the standard police report and what it should contain. We are, after all, a customer of the police. What does a fiscal require? Some members of the committee, including Scott Barrie, have been present in the Aberdeen office. In the morning, procurators fiscal have to consider reports in a very short time, under considerable pressure, because of the time and the imperative of having someone appear in court that day. The report is of extreme importance, in relation to somebody's liberty as well as the significance of the offence.

If the report is detailed—for example, if it concerns 20 housebreaking crimes—it is important that there is a succinct analysis, not a detailed treatise, of what the evidence is at the end of it, to allow the procurator fiscal to look at the police

officer's assessment of that and check it against what he has seen in the report. The report is an important tool. It is not a police officer doing the job. It allows the police officer to focus on whether he has got a report that he should send to the procurator fiscal. Naturally, some police officers can be optimistic about the case. It is the job of the procurator fiscal to determine objectively whether there is sufficient evidence in the report. The report allows the officer to focus and is a helpful instrument for the police. ACPOS agrees with that.

Scott Barrie and the committee saw that in action. One depute was on the telephone to a police officer—who thought that there was sufficient evidence in the report—about the deficiencies in the report that made it difficult to identify the evidence that was missing, although there was an analysis in that case. It is not a question of the police doing the fiscal's job; it is about allowing the police officer to focus and giving a helpful steer to the fiscal.

**The Lord Advocate:** I would reinforce the point that Elish Angiolini has made. If the police officer cannot point to where he finds corroboration, unless it is particularly sensitive and there are specific issues involved, he should not report it. Asking the police officer to point to the corroboration does not seem to be more than asking him to do his job.

**George Lyon:** Another issue that arose was the policy on case marking. The police were concerned about the lack of information that they receive from the fiscal service, concerning why cases were marked "no proceedings". They have suggested that better information, especially regarding the types of cases that are likely to be marked "no proceedings", would allow them to give a suspect a warning and minimise unnecessary paperwork. What prevents such information from being shared with the police? Do you intend to change the policy of not giving any indication of the criteria for case marking policy?

**Norman McFadyen:** I do not think that there is such a negative policy. The precise arrangements for liaison and feedback in different parts of the country will depend on the local arrangements that are made between regional fiscals and chief constables. For many years in Glasgow there has been regular liaison and feedback with regard to categories of cases with which the fiscal has considered there to be problems.

It is not in our interest to hold information from the police and not to tell them what are the general problems, if problems exist, in reporting particular categories or types of case. It is in our interest to have that dialogue. We need to help the police and to discourage them from reporting cases that they do not need to report or that it would be inappropriate for them to report. It is important that



we maintain and develop that dialogue. We may need to do more in certain parts of the country in that respect. That is on our agenda.

**George Lyon:** Would you refute the complaint that was made by ACPOS?

**Norman McFadyen:** What was the specific claim?

**George Lyon:** That there is insufficient communication about case-marking policy between the police and fiscals.

**Norman McFadyen:** I am saying that it can, of course, be improved. However, it is up to the regional fiscals and, in due course, the area fiscals to work out with the chief constables what information the police would find it useful for chief constables and their divisional commanders to have. There is no policy that such information should not be provided. I accept that the police may not get enough information, but that does not happen as a result of a policy decision. We should work with our fiscals and the police to ensure that the police receive better information. To do so assists them in preparing their reports, and I am all for that.

**The Convener:** The committee is in no doubt that communication is an issue, although it might not be an issue at chief constable level. We heard evidence from the Procurator Fiscal Society that the police liaison arrangements were poor. In common with others, I will say openly that an improvement has been made to that situation in recent months. Speaking as an MSP, I have heard positive reports of that.

I am interested in the detail of what you mean by the service level agreement. It would seem that a commitment of proper and standard liaison with the police would have to be made. That has a relationship with staffing numbers. If we do not get the staffing numbers correct, it will not be possible to lift the phone and speak to a procurator fiscal. That is one of the big issues for us. We would be pleased to hear any positive response that you could give us on the matter.

**Norman McFadyen:** We have been too busy to address things that we could not afford not to address. Very often, the reason for poor liaison was that people felt, and felt quite reasonably, that they were too busy to devote the time to liaison. However, that is time that we cannot afford not to spend.

We are now considering how to make it easier for those who need to enter into liaison arrangements to do so. Robert Gordon has described what we intend to do with the area fiscals; he mentioned Tayside, Central and Fife. Those three area fiscals will no longer have responsibility for managing one large office, but

will have responsibility across their area. More to the point, they will operate on a direct relationship with the chief constable of a single police force. That has to be a starting point for much better liaison. We are aware that a lot of work has to be done on that subject and we know that resources will have to be put in to enable us to do that.

**The Convener:** I would like a yes or a no-ish answer to the next question. You would be happy to encourage liaison at all levels between the police and the Procurator Fiscal Service. Is that your position?

**Robert Gordon:** We want to work with ACPOS, which has said that it wants to work with us. So far, ACPOS has been very welcoming of what is in Pryce-Dyer and of what we are trying to do. There are also relationships at the area fiscal to chief constable level and at other levels within each force.

Another issue is the possibility of more fiscal involvement in the training of police officers. That would create closer engagement with the Scottish Police College at Tulliallan and allow us to explain what the fiscal is looking for in reports. It would also help people to understand why certain things in the police reports are important.

The short answer to your question is yes. There should be lots of engagement at every level.

**The Lord Advocate:** Could I just say—

**The Convener:** I just want a brief answer from the Crown Office. Are you encouraging police officers to telephone the Procurator Fiscal Service when they are putting together their reports? The committee has heard evidence that the police would like to do that but, until recently, they have been unable to do it because the resources have not been available.

**The Lord Advocate:** If I could just—

**Norman McFadyen:** If I may be rude and interrupt the Lord Advocate, we have a joint working group between the Procurator Fiscal Service and ACPOS, which is called the working group on reporting racist crime. That group has accepted the broader remit of addressing communication and liaison between the police service and the Procurator Fiscal Service on all types of case.

The group started as a response to one of the recommendations in the Jandoo report. We realise that it is valuable to talk about the way in which racist crime is reported, but the issues go right across the board. We are completely committed to improving liaison at every level of the police.

12:30

**The Solicitor General for Scotland:** On your point about police officers telephoning the

Procurator Fiscal Service, of course we want to encourage good relations, but those relations have to be managed. One of the difficulties that fiscals have is managing time when they face so many demands. It is also important that officers go through their supervising officer when appropriate, and that they should know when it is a fiscal they need to speak to. That is where interface with the police at a local level is crucial.

The Crown Agent designate has indicated that we want the joint working group to consider the nature of the interface and how it should work. That includes things like joint training, and fiscals and police working in teams on appropriate investigations.

**The Convener:** We appreciate that the relationship would have to be managed. My experience is that when there was a local initiative by the police, they could not find out from the Procurator Fiscal Service what had happened to all the cases that they had reported and whether they were going to proceed.

When I intervened as an MSP, it was as if I had asked a question that I was not allowed to ask. I realise that things have changed since then. However, it is important that we establish liaison as a legitimate part of the relationship between the Procurator Fiscal Service and police, albeit that the service is independent. We need to move away from the current culture and I appreciate that that will have to be managed.

**Bill Aitken:** I turn to the operation of the High Court, specifically to the satellite unit operating in Glasgow. We heard some disappointing evidence about that from Crown counsel; the operation of the unit is not what Lord Justice Campbell or I had envisaged. What will be the criteria for the success or failure of that project?

**The Lord Advocate:** The unit has just started up. I understand that it is working reasonably well, but it has been running for only a week or so.

You have to understand that there are a number of other issues going on at the moment, particularly Lord Bonyon's review of the management of High Court business, as well as our internal review of the way in which we prosecute High Court cases. That came out of one of Lord Justice Campbell's recommendations and is going ahead with Janet Cameron, the head of the quality and practice review unit, at the head and answerable to the steering group that is chaired by the Solicitor General.

We cannot answer the specific question about the success or failure of the Glasgow High Court unit. The criteria for deciding cannot be established until we have the results of the review of the way in which we prosecute High Court cases and we have finalised the role that the unit will fulfil.

There is a clear commitment to ensuring that, as far as High Court business and the way in which we conduct ourselves and manage the prosecution process is concerned, proper ownership of the cases should be managed at the centre with a tentacle out in various places.

One of the problems that we have had for some considerable time is that cases that have been precognosed and reported by the local office come to the Crown Office and then disappear into what some people have termed the black hole until they reappear for trial. That is not the proper way of doing business. The High Court unit west's function will be to take ownership of that situation. The question whether the case will be marked in Glasgow or elsewhere and the role of the High Court unit west have not yet been finalised. However, we know that the unit will manage the case, particularly when it is allocated to a sitting in Glasgow.

**Bill Aitken:** I accept that other things are going on in this respect, particularly Lord Bonyon's inquiry. Would there be any value in having intermediate diets in the High Court?

**The Lord Advocate:** I understand that Lord Bonyon is considering some form of the first diet system that they have in sheriff and jury cases. I would welcome a process that gave greater direction to the management of the business. However, it is up to Lord Bonyon to decide how that should be done. We will submit our own views on the matter and indeed have made contributions at various levels through discussions with Lord Bonyon.

**Bill Aitken:** This argument contains pluses and minuses. Do you know off the top of your head the percentage of High Court cases that plead?

**The Lord Advocate:** I have seen the figure in the recent past, but cannot tell you what it is off the top of my head. However, I can get that information to the committee.

**Bill Aitken:** At the risk of introducing a little controversy into the discussion, it has been suggested, particularly by the Procurators Fiscal Society, that the career structure is not as fiscals would wish. It has also been suggested that more fiscals who have qualified as solicitor advocates might prosecute in the High Court. What is your view on that matter?

**The Lord Advocate:** My bottom line is that there must be quality of prosecution in the High Court. I believe that we already have that quality. For example, last year, 88 per cent of murder cases ended in a conviction that brought home the death of the victim to the accused. I have put it that way because I have included culpable homicide convictions and cases in which there have been hospital disposals.

As I said, I believe that we have a quality of product. That involves everyone in the process from the precognoscer to the High Court indicter to the person who presents the case in court. I also believe that there is a role for independent Crown counsel. That is particularly the case at the serious end, because it helps to underwrite the independence of the Crown Office and Procurator Fiscal Service itself. In the same way that we have the chief inspector of constabulary, such an independent element also helps to ensure that the system does not become corrupted.

I recognise, however, that there are excellent pleaders in the Procurator Fiscal Service. I also recognise that many of them want the opportunity of prosecuting in the High Court. I have said that we recognise that and will take that forward. I want fiscals to be able to prosecute in the High Court but also to retain the important element of Crown counsel, which is important in the process.

Elish Angiolini comes from another tradition, as it were, and might have a different perspective.

**The Convener:** Are you saying that you are giving serious consideration to the suggestion that fiscals should be able to prosecute in the High Court?

**The Lord Advocate:** Yes. On the issue of fiscals prosecuting in the High Court, the Pryce-Dyer report recognised the importance of independence and of bringing into the system people with various backgrounds in law. It also said that that was a difficult and sensitive issue that should be considered further. We have done some work on the matter and will discuss that work with Crown counsel, the Procurators Fiscal Society, the Faculty of Advocates and others. My intention is that we will be guided by their recommendations and by whatever recommendations this committee might make on the subject.

My bottom line is that we ensure that we have a quality product and that we maintain an independent element of Crown counsel. Perhaps it would be helpful to hear Elish Angiolini's perspective.

**The Solicitor General for Scotland:** My experience is that there are some procurators fiscal who are able advocates in the sheriff courts and in the jury context and who would be extremely able advocates in the context of the High Court, even though the systems have different disciplines. Having said that, some of the best prosecutors with whom I have worked have been members of the Faculty of Advocates.

If we were to deprive the system of the services of members of the Faculty of Advocates, that would be a huge loss. I am talking not only of the criminal pleaders, but of the civil practitioners

whose forensic and analytical skills have contributed greatly to the process of prosecution in court and also in chambers. I mention that because an important part of the role of Crown counsel is the work behind the scenes concerning the analytical side of matters and the negotiations that take place.

I agree with the Lord Advocate that it is important to get the best people in the system. We have to be open to considering ways in which we can satisfy the aspirations of prosecutors. One of the difficulties has been that good pleaders in court become managers. Some of them do not want to be managers, but will compromise if that is the only way to move up. The Lord Advocate would like to satisfy those aspirations while recognising the crucial independence of Crown counsel and the role that Crown counsel have played in the system.

**Mr Duncan Hamilton (Highlands and Islands) (SNP):** I am quite confused by what the Lord Advocate said about the direction that he wants to move in. On the one hand, he says that he is committed to the idea of institutional independence but, on the other hand, the Solicitor General says that she wants to extend the right of audience to other people. Is it not true that the independence comes from the fact that those who are pleading are not part of the system? I see a contradiction between the opening up of the rights of audience and independence.

**The Lord Advocate:** The crucial area is in the marking of cases, because that is where the independent element should be brought to bear. In other systems, there are committal processes or, as in the United States, one cannot get an indictment unless one can get a grand jury to pass it.

Scotland does not have that kind of check and balance. We need to ensure the integrity of the prosecution system as a whole, and we do that by bringing in outsiders who are excellent advocates, but who bring an independent mind to bear on the process. I recognise that there are excellent advocates in the Procurator Fiscal Service who wish to prosecute in the High Court and I would like to be able to give them the opportunity to do that.

12:45

**Mr Hamilton:** The argument would run that people could join the Faculty of Advocates if they wanted to prosecute in the High Court. What is wrong with the current arrangement? If it is simply the case that people get to a stage in their career when they do not want to take a step back, are there things that we can do to improve the system without changing it quite so radically? Why is it not

open to people who are good prosecutors and who want to be in the High Court to do that in the usual way and join the Faculty of Advocates?

**The Lord Advocate:** Of course, several prosecutors do that and many have come back up as advocate deputes. I can think of two or three procurators fiscal who have joined the faculty, gained experience of defending or of civil law and have come back later as advocate deputes. I welcome that, because it means that people have broader experience.

The number of cases in the High Court has expanded and we are beginning to see a division of business there. Some high-profile and complex cases take up an inordinate length of time and require extra resources. We have to ensure the very best at all levels of the service. Bluntly, there are many more cases that do not require quite the same level of intellectual intensity or resource. I take back the point about intellectual intensity—those cases demand intellectual intensity, but not quite the same commitment. I would like to be able to recognise that in some way. In doing so, we must ensure that we retain Crown counsel as an independent arbiter of what occurs in the High Court.

I recognise the argument that Duncan Hamilton makes; it has been made by many others. However, the time has come to recognise the desire of fiscals to prosecute in the High Court.

**Mr Hamilton:** Will you clarify whether you have taken that decision? Are you saying that that is the official position that you want to implement?

**The Lord Advocate:** I am certainly considering the options seriously. I would like to take a decision that would allow procurators fiscal to prosecute in the High Court in appropriate cases and perhaps to have a mixed economy, as Pryce-Dyer suggested. As long as I am Lord Advocate, I am committed to retaining Crown counsel as a concept.

**Mr Hamilton:** You said that the work that will inform your decision and go out to consultation is on-going. At what stage is that work? When can we expect to see the fruits of your labour?

**The Lord Advocate:** We are perhaps halfway through examining the options. We need to discuss various issues that have been thrown up by our first examination. We will do that. At the moment, the time scale is flexible.

**Mr Hamilton:** The committee would like to know when that will be completed so that we can feed it into our work.

**The Lord Advocate:** We would like to hear from the committee as well, depending on when the committee reports.

**Mr Hamilton:** Finally, is Lord Bonomy's review examining any aspect of the ability to appear in the High Court, because the review seems to have a fairly flexible remit?

**The Lord Advocate:** We do not think so.

**Mr Hamilton:** You do not think so?

**The Lord Advocate:** The review is not examining who should prosecute. Obviously, a lot of things that Lord Bonomy will have to say will have an impact on the way in which we conduct our business. For example, if one was to have fixed diets instead of circuits, that would make the kind of arrangements that I am talking about easier to work than the present system.

**Mr Hamilton:** If you are considering implementing such a fundamental change, should not that be included in Lord Bonomy's review, so that his report is not immediately out of date?

**The Lord Advocate:** We are in touch with Lord Bonomy, but in essence he is looking at the management of the system, rather than at the way in which we prosecute. I am not sure that it is part of Lord Bonomy's remit to examine, for example, who prosecutes in the High Court, but it is an issue for me.

**The Convener:** We are running out of time, but members still have a few questions. Do you have a brief question, Stewart?

**Stewart Stevenson:** I want to go back to Crown Office west, which I will call COW. I hope that the Lord Advocate would not wish to leave the committee with the impression that he is not going to measure the milk that comes from COW and, if there is none, that he is unprepared to send it to the knacker's yard. I take it that you have some basis on which to decide if COW has been a success or failure, but you have left us with the impression that you do not.

**The Lord Advocate:** I am sorry if I have done that. It was not my intention. Janet Cameron's review of the way in which we prepare for and conduct prosecutions will measure success and help to determine the way ahead. If, as I think is likely, there is a central role for a kind of devolved assistance in the management of the High Court, we will examine first that role and then the criteria for judging how the whole system works.

**Stewart Stevenson:** I am sorry to cut across you, but it is clear that you have a way of judging the criteria. I will let my colleagues ask some more questions, if I may.

**The Convener:** I want to be clear on this before we move on. Are you saying that there will be consultation?

**The Lord Advocate:** Are we talking about High Court unit west or—

**The Convener:** No, I am talking about prosecutors in the High Court.

**The Lord Advocate:** We will talk to the key players: first to Crown counsel, but also to the Procurators Fiscal Society and the Faculty of Advocates.

**Mr Hamilton:** Begging your pardon, convener.

**The Convener:** Can you make your question brief, Duncan? Is it on this point?

**Mr Hamilton:** It is about something that I meant to pick up on earlier. Lord Advocate, you said that you were halfway through the report, but you did not tell us when you started. Do you have a rough estimate of when you will be finished?

**The Lord Advocate:** The short answer is no.

**Mr Hamilton:** You do not have a date to within three months.

**The Lord Advocate:** I hope that the process will be completed within that period, but we have not set an end-date.

**The Convener:** It would be helpful if you kept the committee updated.

**The Lord Advocate:** I will do that.

**The Convener:** The committee is interested in two particular areas. One relates to an issue that has proved to be controversial—the commission for district fiscals. I know that the Procurators Fiscal Society was concerned about that. Is it your intention to proceed with it?

**The Lord Advocate:** The position is that we spoke to all the commission holders at Kinross about a month ago and asked for their input. Our concern has been to ensure that we move to a rational area status that allows for management of fiscals of whatever grade within each area. We believe that we now have a way forward, which, we hope, will meet some of the concerns about the status of the district fiscals—they will retain their commission—but will give the area fiscals the proper management and operational control that both we and Pryce-Dyer believe is necessary.

**The Convener:** So district fiscals will retain their commission.

**The Lord Advocate:** Yes. They will do so subject to a direction from the Lord Advocate on the way in which they operate in the new system.

**George Lyon:** Will you clarify that a little further? What you meant is not clear. What will that direction mean? Do you mean that status will be given to the senior area manager's post?

**The Lord Advocate:** Norman McFadyen has worked closely on the issue, so I will ask him to flesh this out.

**Norman McFadyen:** The approach is still somewhat at the drawing-board stage and we have yet to discuss it in detail with our senior people, so we have given you only a foretaste of it. To some extent, the approach emerged from our discussions with all the commission holders at Kinross. Indeed, what is quite interesting is that the approach was suggested to us by one of our experienced fiscals, who, I think, had been able to discuss it with some others.

Under the approach, the local fiscal would continue to hold a commission at the local level but the new-style area fiscal would, in all likelihood, hold commissions for the districts within his or her area. Both types of fiscal would hold commissions directly from the Lord Advocate but, as far as the Lord Advocate is concerned, the local procurator fiscal would largely be accountable through the area procurator fiscal.

With such a model, we hope to get the best of both worlds. We hope to retain a clear status for the local fiscal and recognise the importance of local service delivery. The model spells out the relationship between the local fiscal and the area fiscal while recognising the fact that the area fiscal is ultimately responsible for—or directly responsible for—the budget and management of the offices within his or her area.

Using such a model, we also hope to ensure that the area fiscal is not just, say, the fiscal at Edinburgh who also has other offices, which formerly happened in my case. That was never intended to be the position, but if one is within one large office within an area or region, it is tempting to go into that mode. The area fiscal would be responsible for looking after the interests of all the offices in the area. The area fiscal would also be responsible for the relationship between all the offices and the other players in the criminal justice system.

That is the sort of model that we are trying to develop, but the idea is still very much on the drawing board. Later this week, we will discuss the details with the senior fiscals and we will share the fruits of those discussions with all fiscals at an early date.

**The Convener:** I want to conclude by asking about victim liaison, on which there has been significant development by the Crown Office in recent months. I think that all who have considered what information should be given to victims have taken the view that victims must be more involved in the system. That might mean that more information should be provided at court or that more information should be provided when an accused person is given bail.

I am concerned that we should have a systematic approach towards the provision of such

information to victims, because I appreciate that the Crown Office is a big organisation. It is important that victims are provided with information in a regular and systematic way. We have already discussed that with Victim Support Scotland and have asked it to consider how that could be done properly. Does the Crown Office have any thoughts on how we might develop that issue further?

13:00

**The Solicitor General for Scotland:** The specification for the victim liaison office was dependent on the existence of other agencies that also have a role with victims. The particular needs of victims as they come into the prosecution part of the system had to be established. There is not a one-size-fits-all answer to that—the needs of victims vary from case to case. Some victims do not want to know anything about a prosecution and object to interference through a prosecutor's contacting them, if that is not desired. That is why we hope that there will be a custom-made service that will consider the particular needs of different types of victims and will clearly prioritise particular types of cases.

Sue Moody, the new director, is setting out a protocol and service-level agreements with the various agencies in the system so that there is an holistic approach to the needs of victims as they go through each part of the system. Considerations include information on bail within 48 hours of the accused's appearing in custody; who will give information about where a case is in the system and whether a person wants such information; whether referral to another support agency, such as Rape Crisis Scotland or Women's Aid, is required; whether there are housing difficulties because of the nature of the crime; and passing people on to the appropriate agency. The service should be a pointer and provide and facilitate communication with the prosecutor at first hand. A range of tasks is involved in the victim liaison office to meet a range of needs.

**The Convener:** In the protocol that Sue Moody is drawing up, will it be clear who has responsibility to a victim who goes to the High Court, for instance, and has a question about a court case in which they are interested? Will it have such detail?

**The Solicitor General for Scotland:** I was fortunate to pilot the first victim liaison office in Aberdeen at the request of the Lord Advocate and that was precisely what we considered. The service is in its infancy and is ground breaking. It is an innovative development in the prosecution service and we therefore had to consider the crucial stages.

Members will be aware that cases are not uniform. Petition cases and solemn cases follow a different pattern and time scale from those in summary cases and fatal accident inquiries. There is a protracted period while inquiries are made and sometimes there is no certainty. People will want to know when something is not happening or that there will be a gap. We have attempted to build that into the system; Sue Moody has taken on that task. Certain stages will kick in when information is given out and the victim responds to it. An identified individual in an office will be responsible for liaison. The victim will know that that individual knows about the case and the stage that it has reached.

**The Convener:** I thank the Lord Advocate, the Solicitor General, the chief executive and the Crown Agent designate for giving evidence and, on the committee's behalf, I thank them for all the high-quality information that they have provided to date. I also thank them for co-operating with the committee during the inquiry. In the coming month, we will attempt to put together a constructive report on the Crown Office and Procurator Fiscal Service. I also thank Alastair Brown and Alison Di Rollo, who have worked in the background and liaised with our clerks.

Lord Advocate, do you want to say anything in closing?

**The Lord Advocate:** I would like to say something personal. I have been a law officer since 1997 and, during that time, I have seen devolution and human rights legislation and have been privileged to lead the prosecution in the Lockerbie case. However, the modernisation and reform project on which we have embarked is as important to me as any of those other aspects of my work.

I believe that many people in the world envy our system. We have the best opportunity that we have had in many generations to make our system the best in the world. We will do that by building on the commitment, dedication and professionalism of our staff. I am committed to that process. I emphasise that, when reforming the system, we must ensure not only that we keep the best of what we have, but that we are ready for the challenges of the 21<sup>st</sup> century.

I thank you, convener, and committee members for paying attention to us. Having spoken to people on office visits to the Crown Office and Procurator Fiscal Service, I know that they have enjoyed the process, despite their initial hesitations. They have welcomed the opportunity to put a case to you.

**The Convener:** Thank you.

That ends the formal business, but I have a few reminders for members before we go. The next

meeting of the Justice 2 Committee will be on Tuesday 30 April. That will allow us to put together the first draft of the report. Our adviser, Pamela Ferguson, will be present. The next public meeting of the committee will be on Wednesday 1 May. We will have a joint meeting with the Justice 1 Committee to take evidence on the budget.

The clerks have received queries about the starting date for the consideration of the Land Reform (Scotland) Bill at stage 2. It might be helpful for me to clarify that amendments for stage 2 can be lodged now, as was indicated in the business bulletin of 28 March. Amendments will not be considered at a committee meeting prior to June. That is the agreed timetable so far.

A further announcement, which will be placed in the business bulletin in mid-May, will detail the relevant meeting dates and the deadline for amendments. Members can look out for that. Thank you for your time this morning.

*Meeting closed at 13:06.*





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