

JUDICIAL STUDIES COMMITTEE

COMMITTEE MEMBERS

The Hon Lord Wheatley (*Chairman*)

The Hon Lord Philip

Sheriff Principal I D Macphail QC

Sheriff B Kearney

Sheriff A L Stewart, QC

Sheriff G C Warner

Mr Jim Gallagher, *Head of Department, Justice Department Secretariat*

Mr John Sturrock, QC

Sheriff N M P Morrison, QC, *ex officio*

OFFICE STAFF

Director of Judicial Studies: Sheriff N M P Morrison, QC

Legal Assistants: Mr Graeme Brown, Solicitor
Miss Erica Jones

Personal Assistant: Ms Aileen Shields

Clerk/typist: Miss Lauren Brownlee

Introduction

Preliminary

The Judicial Studies Committee for Scotland (“the JSC”) was established in 1997. It was created to promote training for the judiciary in the Supreme Courts (the Senators of the College of Justice) and the sheriff court (the sheriffs principal and the sheriffs), including the part-time judiciary (temporary judges in the Supreme Courts and part-time sheriffs).

In any true democracy, judges must enjoy a high degree of autonomy so that they can exercise their judicial powers independently without others, including organisations of the State such as the Executive and Parliament, being able to control their decision-making. Unless judges have such independence, the public will not be able to have confidence in the administration of justice.

Judicial training itself, in so far as it seeks to influence how judges carry out their duties, might be thought to compromise judicial independence. In order to ensure that it does not, it has to be recognised, in all democratic countries, that the overall control and direction of judicial training requires to be in the hands of the judges. This also ensures that judicial training has credibility among the judges. The composition of the JSC recognises the importance of these principles.

The JSC

Changes on the Committee

Sheriff A L Stewart QC stood down as a member of the Committee on 31 January 2004 having retired as a sheriff of Tayside, Central and Fife.

Changes in office staff

Miss Erica Jones was appointed to the post of legal assistant on 8 September 2003.

Miss Lauren Brownlee was appointed to the post of clerk/typist on 29 July 2003.

JSC Activities

1. Courses

(a) Induction courses

(i) New Senators and Temporary Judges

An induction course for two new Senators of the College of Justice and four new temporary judges in the Supreme Courts was held on 6 – 11 April 2003. This course had been postponed from February 2003.

The programme incorporated all the elements of a Skills course (see below) along with syndicate groups and plenary sessions on problems in court and sentencing exercises. Presentations on prevarication (Lord Wheatley) and drugs (DI Eric Knox of the Scottish Drug Enforcement Agency) were included. A visit to Perth Prison was also included in the programme.

(ii) New Sheriffs and Part-time Sheriffs

An induction course for four new permanent sheriffs and 21 newly appointed part-time sheriffs was held on 29 June – 4 July 2003. Sheriff R H Dickson and Sheriff B Kearney attended the course as facilitators. Presentations at this course included:

- **Duties and responsibilities** – Lord Wheatley
- **Sentencing options** – Sheriff J K Mitchell
- **Criminal appeals** – Lord Maclean
- **Summary causes and small claims** – Sheriff M J Fletcher
- **Drugs** – DS Gavin Smith, Scottish Drug Enforcement Agency
- **Jury trials** – Sheriff R J D Scott
- **Contempt and prevarication** – The Hon Lord Wheatley
- **Fatal accident inquiries** – Sheriff R H Dickson
- **Children's hearings** – Sheriff B Kearney
- **ECHR update** – Mr Stephen Tierney, Edinburgh University

- **Adults with incapacity** – Mr Tom Thomson, The Public Guardian
- **Administrative matters** – Mr David Stewart, Justice Department
- **Options hearings and the Ordinary Cause Rules** – Sheriff R H Dickson
- **Child welfare hearings and family actions** – Sheriff P M M Bowman
- **Cultural awareness** – Miss Catherine Palmer, Scottish Executive Legal Studies Research Branch
- **Domestic violence orders** – Sheriff P M M Bowman

Syndicate groups and plenary sessions on problems in court and sentencing exercises were included. Participants also visited either Perth Prison or Castle Huntly Prison.

(iii) Induction day seminar for new temporary judges

A day seminar for seven sheriffs appointed as temporary judges in the Supreme Courts was held on 19 January 2004. Talks were given by Lord Wheatley, the Deputy Principal Clerk of Justiciary and the Keeper of the Rolls.

(b) Refresher courses

The JSC's rolling programme of refresher courses began in May 2002. Each member of the judiciary is expected to attend a refresher course every three years. The courses held this year are noted below. The courses are residential and three days in length. Approximately one third of the judiciary attend a course each year. The courses include talks on matters of topical and general interest and recent development in law and practice. Practical exercises and group discussions are also included in the programme.

i) 11 – 14 May 2003

The fifth of the rolling programme of refresher courses was held on 11-14 May 2003.

The course was attended by two Senators of the College of Justice, one sheriff principal, 10 permanent sheriffs and three part-time sheriffs. One High Court

Judge representing the Judicial Studies Board for Northern Ireland also attended as a guest. One sheriff was unable to attend due to illness and a further four sheriffs were unable to be released from court business. Two part-time sheriffs were unable to attend due to commitments elsewhere.

Presentations given included:

- **Cultural awareness** – Miss Catherine Palmer, Scottish Executive legal Studies Research Branch
- **Risk assessment** – Professor David Cooke, Department of Psychology, Glasgow Caledonian University
- **Current developments in criminal law and procedure** – Sheriff A M Bell
- **Domestic abuse** – Janette De Haan, Women’s Support Project
- **Interviewing and questioning children** – Professor Amina Memon, Department of Psychology, University of Aberdeen
- **Proceeds of Crime Act 2002** – Lesley Thomson, Head of Criminal Confiscation Unit, and Lorna Harris, Head of Civil Recovery Unit, Crown Office)
- **The work of the Scottish Prison Service** – Mr Alec Spencer, Director of Rehabilitation and Care, Scottish Prison Service
- **Prevarication** – Lord Wheatley

As with previous courses syndicate sessions on problems in court and sentencing exercises were held. The results and conclusions drawn from the exercises were discussed at plenary sessions.

ii) 28 September – 1 October 2003

The sixth refresher course in the JSC’s rolling programme took place on 28 September - 1 October 2003. The course was attended by two Senators of the College of Justice, one sheriff principal, 11 permanent sheriffs and five part-time sheriffs. A High Court judge representing the Judicial Studies Board for

Northern Ireland and a Supreme Court judge from the Republic of Ireland attended the course as guests. The Rt. Hon. Lord Gill, Lord Justice Clerk, attended the first day of the course as a guest.

The course programme followed that of the refresher course which took place on 11 – 14 May 2003. The only changes made to the course programme were as follows:

- Mr Alec Spencer's presentation on the work of the Scottish Prison Service was replaced with a presentation entitled *Rehabilitation and Inclusion* by Janice Hewitt, Head of Inclusion, Scottish Prison Service.
- The presentation on Prevarication was delivered by Lord Philip.

iii) 22 – 25 February 2004

The seventh refresher course in the JSC's rolling programme took place on 22-25 February 2004. The course was attended by two Senators of the College of Justice, one temporary judge, 15 permanent sheriffs and five part-time sheriffs.

The course programme was similar to that of the refresher course which took place on 28 September - 1 October. The following changes were made to the programme:

- The presentations by the Scottish Prison Service and by Professor Amina Memon on interviewing and questioning children were not included at this course.
- Those presentations were replaced by a presentation on the *Philosophy of Sentencing* by Professor Anthony Duff, Department of Philosophy, University of Stirling and by a presentation on *Mediation* by John Sturrock QC of Core Mediation.

(c) Judicial skills courses

Three Judicial Skills courses were held in the year to 31 March 2004. The programmes included sessions on the role of the judge, effective communication in the court room, simulated court hearings and video feedback, judicial writing and note taking. Sessions on charging the jury with video feedback and sentencing with video feedback were included in each course.

As part of the judgment writing exercise participants are provided with a video of submissions in an action for interdict. A new exercise was filmed at Edinburgh Sheriff Court on 20 September 2003. This may be used at future Skills courses.

The Director compiled a Skills course *aide-mémoire* in February 2004. The document comprised a set of notes and observations from previous Skills courses which will be distributed to members of the judiciary who have attended a Skills course.

i) 8 – 11 June 2003

The June course was attended by one Senator of the College of Justice and five sheriffs. One Senator was unable to attend due to commitments elsewhere and one sheriff was unable to be released from court business. A further sheriff attended as a course facilitator.

ii) 23 – 26 November 2003

The November course was attended by two Senators of the College of Justice and six sheriffs. A further sheriff attended as a course facilitator.

iii) 1 – 4 February 2004

This was the first course at which two workshops of simulated court hearings were run side by side. Participants attended the same discussion group and then attended one of two workshops for the simulated court hearing exercises. This allowed more participants to attend the course.

The February course was attended by one Senator of the College of Justice, one sheriff principal and nine sheriffs. One Senator of the College of Justice was unable to attend. A further two sheriffs attended as course facilitators.

(d) Special Courses

In the Business Plan for the three years commencing 1 April 2003 it was indicated that the JSC proposed to increase substantially the number of special courses on different areas of law and practice. It was also proposed to repeat each special course at least twice per year. During the year the following courses were arranged.

(1) Intervention and Guardianship Seminars

The first of a series of courses on Intervention and Guardianship under the Adults with Incapacity (Scotland) Act 2000 was held last year on 14 March 2003. The courses continued to run this year and were chaired by Sheriff M J Fletcher. The purpose of the courses was to examine the scope of these orders as well as procedural and legal issues.

(1.1) 18 September 2003

Seventeen sheriffs and one part-time sheriff attended. Presentations were given by Dr Sandra Campbell, Senior Medical Officer, Health Department; Mr Adrian Ward MBE, Solicitor; Mr Tom Thomson, The Public Guardian; and Mr Alan Barr, Director, Legal Practice Unit, Edinburgh University. A bound volume of course papers was distributed to participants. Professor Juliet Cheetham of the Mental Welfare Commission attended the course as a guest.

(1.2) 29 January 2004

This course was attended by 10 sheriffs and one part-time sheriff. One sheriff was unable to be released from court duties and one other sheriff was unable to attend due to commitments elsewhere. Presentations were given by Dr Sandra Campbell, Senior Medical Officer, Health Department; Mr Adrian Ward MBE, Solicitor; Mr Alan Barr, Director, Legal Practice Unit, Edinburgh

University and Ms Julie Barr, Deputy Public Guardian. Professor Juliet Cheetham also attended the course and gave a short presentation on the work of the Mental Welfare Commission. A bound volume of course papers was distributed along with an information pack on the work of the Mental Welfare Commission provided by Professor Cheetham.

(2) Summary Cause and Small Claims Seminar

The first of a series of courses on summary causes and small claims was held on 14 November 2002. A further course was held this year on 22 April 2003. The course was chaired by Sheriff A L Stewart QC and was attended by 12 sheriffs and 2 part-time sheriffs. The seminar comprised an opening talk by Sheriff Principal Bruce Kerr QC, a discussion of problems which the new rules have raised and a talk on housing benefit by Mr Adrian Stalker of Shelter Housing Law Service. The afternoon session was entitled “How to seek to negotiate a settlement” and was led by John Sturrock QC. The session comprised an introductory talk, a demonstration and workshops.

(3) Sexual Offences Seminars

(3.1) 3 November 2003

The first of a series of courses on sexual offences was held on 3 November 2003. The course was chaired by Lord Wheatley. The seminar was attended by four Senators of the College of Justice, one temporary judge, two sheriffs principal and 19 sheriffs. The speakers were Professor Ray Bull, Department of Psychology, University of Portsmouth, and Sandy Brindley and Oona Hay of Rape Crisis Scotland. Presentations were given on questioning victims in court (Professor Bull) and the victim’s perspective (Ms Brindley and Ms Hay). A series of workshops and group discussion sessions were also included.

(3.2) 8 March 2004

The second course on sexual offences was held on 8 March 2004 and was chaired by Lord Philip. The seminar was attended by three Senators of the College of Justice, one temporary judge, 23 sheriffs and one part-time sheriff. The speakers, presentations and course programme remained unchanged from the first course in November 2003.

(4) Bankruptcy and Insolvency Seminar

The first of a series of courses on bankruptcy and insolvency was held on 17 March 2004. The course was chaired by Sheriff Principal I D Macphail QC and was attended by 22 sheriffs. Presentations were given by Professor William McBryde, Professor of Commercial Law, University of Edinburgh and Mr Alan Adie, insolvency practitioner. Workshop sessions and group discussion session were also included. Participants were issued with a bound volume of course materials.

2. Other activities

(a) Equal Treatment Bench Book

A consultation on the first update of the Equal Treatment Bench Book took place this year. Invitations to review the Bench Book (issued at the beginning of 2003) were issued to all consultees.

(b) Charging the Jury Manual

In response to a request from the Lord Justice Clerk that the Jury Manual be updated more frequently, Sheriff J M S Horsburgh QC was given leave of absence to bring the existing manual further up to date and to simplify the language used in the possible

forms of directions to juries. The sub-committee responsible for making revisions continued to meet as required. The first part of this task resulted in the release of a substantial update. The second part of the task is now being undertaken. This will result in a re-issue of the whole manual in a revised form.

(c) Developments in law, practice and procedure

The JSC has continued to ensure that briefing material and information on recent developments in law, practice and procedure are available to the judiciary. Summaries of important decisions of the Appeal Court and the Court of Session have been posted to the JSC's intranet system together with briefing notes on procedure and legislation. During the course of the past year JSC has received increasing numbers of requests from sheriffs and part-time sheriffs for assistance in researching areas of law. Cases and statutory material have been sent to sheriffs and part-time sheriffs on a number of occasions.

The following briefing papers were issued to the judiciary:

- (i) An updated briefing paper on prevarication by Lord Wheatley and Lord Philip
- (ii) A briefing paper on victim statements by Sheriff R J D Scott
- (iii) A briefing note on consecutive life sentences.

(d) Provision of starter packs to part-time sheriffs and temporary High Court judges

The part-time sheriffs appointed in 2003 attended at the JSC's offices to receive starter packs. The starter packs contained a copy of the Charging the Jury Manual, the Equal Treatment Bench Book and the Sheriff Court Bench Book along with briefing papers and other material issued by the JSC. All newly appointed part-time sheriffs were offered laptop computers and a demonstration took place on how to use

the JSC intranet to access material online. Meetings with the newly appointed part-time sheriffs took place throughout the spring and summer of 2003.

Seven sheriffs were appointed as temporary judges in the Supreme Courts in November 2003. These sheriffs attended at the JSC offices to receive starter packs.

(e) Checklists

A series of checklists for use by sheriffs in civil and criminal matters were posted to the JSC's intranet. Checklists relating to applications for intervention orders and guardianship orders under the Adults with Incapacity (Scotland) Act 2000 were issued. Checklists for use in intermediate diets, in relation to victim statements under section 14 of the Criminal Justice (Scotland) Act 2003, and in relation to sexual offences, were also issued.

(f) Publication of *The Work of the JSC*

A booklet entitled *The Work of the JSC* was sent for design and printing at the end of February 2004. This brochure will be published in order to make the activities of the JSC more widely known.

(g) European Judicial Training Network

The JSC continues to play an active part in the European Judicial Training Network (EJTN). The Director of Judicial Studies attends meetings of both the General Assembly and Programmes Working Group. The Director attended the meeting of the EJTN Working Group on 13 – 14 October 2003 and December 2003 and the General Assembly in Rome on 10 – 13 December 2003.

The Programmes Working Group, of which Scotland is a member, is involved in preparations for a seminar on judicial training in October 2004 for members of the

EJTN responsible for training. The judicial training bodies for Spain and Finland are organising the event and the Group has been discussing topics which will include objectives of training, training needs and methodologies. With this seminar members will be able to learn from each other and develop training ideas.

(h) Meeting of the UK judicial training bodies

The UK Judicial Studies Council consists of the Chairmen and Directors of the judicial training bodies of Scotland, England and Wales and Northern Ireland. The Council discusses training matters of mutual interest. The Council met on 1 December 2003 at Langanside, Belfast. This meeting had been postponed from 7 October 2003.

(i) Tea-time seminars for senators

Two tea-time seminars for Senators of the College of Justice were held in the year to 31 March 2004. All senators were invited to attend.

i) The work of the Judicial Appointment Board

A talk on the work of the Judicial Appointments Board took place on 12 November 2003. Sir Neil Mackintosh CBE DL, Chairman of the Board, delivered the presentation. A discussion followed.

ii) The work of the Office of the Advocate General

Mr Charles Mullin, Legal Secretary to the Advocate General for Scotland, delivered this talk to Senators on 18 February 2004. A discussion followed.

(j) Psychology and Law Conference – 7 – 12 July 2003

The Director chaired one of the satellite seminars at the conference on Problem Courts on 8 July 2003.

3. Business Plan for three years commencing 1 April 2003

A number of objectives in the Business Plan have been achieved: -

- The number of training events organised by the JSC increased from 13 last year to 17 in this year.
- The number of Skills courses has been increased from three to four in the calendar year 2004 *and* the number of judges attending has been increased.
- The number of special courses, one day seminars on particular topics, increased from five last year to eight in this year.
- Each of the special courses was offered at least twice.
- The *aide-mémoire* on judicial skills was issued.