

LORD ADVOCATE ✓

Copy to: Crown Agent

CS

12/10/01

OUTSTANDING ISSUES

The other outstanding issue is that of the Crown's attitude towards the four suspended officers. If they are dismissed or resign, then there is no problem. However, if they are reinstated and start doing operational work, we may have to indicate to SCRO whether we are content that these officers continue to submit reports to Procurators Fiscal for use in evidence. Although we are not prosecuting these officers, our position must be that they made serious mistakes in the Asbury/McKie cases. Ultimately, we are their customers and as such we are presumably entitled to indicate to SCRO that we do not wish these officers to undertake work on our behalf. If we adopted that position and SCRO therefore did not give these officers operational duties, they would be likely to claim constructive dismissal.

If these officers produce reports in future cases, then the defence are likely to attack their evidence. Of course, the correct way for the defence to approach their evidence would be to instruct their own experts to review the fingerprint evidence. If their experts agree with the SCRO officers, then there should be no live issue to be raised at the trial. Unfortunately, that is not what is likely to happen, with the defence in many cases simply taking the opportunity to "muddy the waters".

No decision need be taken in relation to this matter until SCRO has decided whether or not there are to be disciplinary proceedings. Meantime, I will explore with SCRO and Chief Constable Andrew Brown whether there is any material which can be properly passed to them at this stage.



W A Gilchrist

07 September 2001