

Jim Brisbane
Deputy Crown Agent
27 March 2006

**LORD ADVOCATE
SOLICITOR GENERAL**

Copy to: **Crown Agent
Leanne Cross**

I consider that it would not be appropriate to use the SCRO personnel involved in the McKie case as witnesses in criminal trials in the future.

USE OF SCRO PERSONNEL AS WITNESSES

Purpose

for the reasons discussed today

CB

1. To seek your views on the use of the 4 SCRO officers, and two supervisors who were involved in the McKie case, as report writers and potential witnesses in future proceedings.

28/3/06

Timing

2. Immediate. This would assist SCRO's ongoing consideration of how to best deploy the individuals concerned.

Background

3. You are familiar with this. The officers concerned have not submitted reports, so far as I am aware, since the HMIC recommended suspension took effect in 2000. The decision as to whether or not to use them again had been left in abeyance pending the outcome of the civil proceedings which are now concluded.

Discussion

4. The position is perhaps now more complicated than ever following the leak of the Mackay/Robertson report. It is hard to envisage any circumstances in which these witnesses evidence would not run the risk of challenge on the basis of Mackay's allegation of criminality, notwithstanding how remote or irrelevant that may seem to be. It would, in effect, become a side issue and a distraction in any proceedings.

5. A further difficulty in this case would be the basis upon which it has been suggested the civil settlement has been made. The characterisation of the officers' conduct in the McKie case as "an honest mistake" would only serve to undermine the difficulty. That may prove to be more problematic than assertions by other individuals.

6. The availability of these officers to play a continuing role in SCRO is proving problematic for SCRO management. I understand that it would be of assistance to consideration of this issue if the Crown's position on the potential use of these officers as witnesses was intimated on a formal basis. My understanding is that four of the officers concerned are at a fairly advanced stage of their career and there would be some difficulty in justifying redeployment but that may be an appropriate option for the other two.

7. In all the circumstances it is difficult to see how any of the persons concerned could be used as part of the evidential process without the significant risk of the history of the McKie case being introduced. This is unfortunate as it could of course be placed alongside their own careers – which in the case of some of them are indeed distinguished – and the totality of the review exercises that were conducted on SCRO work in 2000.

8. It would be possible to take the view that if a report is genuinely challenged the defence can call their own experts but it is doubtful if the notoriety of the McKie case would allow that simple adversarial process to take place. The likelihood would be that the jury would be asked to consider their wishes.

Conclusion

9. You are invited to note the need for a decision on this issue and the matters that require to be taken into consideration. I would, of course, be happy to discuss the matter further.

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