

Judicial Studies Committee



# ANNUAL REPORT

For Year to 31 March 2012

June 2012  
Judicial Studies Committee Scotland

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# JUDICIAL STUDIES COMMITTEE

## COMMITTEE MEMBERS AS AT 31 MARCH 2011

LORD PRESIDENT HAMILTON (PRESIDENT OF THE JSC)  
THE HON LORD BRODIE (CHAIRMAN)  
THE HON LORD MALCOLM (VICE CHAIRMAN)  
SHERIFF T WELSH QC (DIRECTOR)  
SHERIFF A G D THORNTON (DEPUTY DIRECTOR)  
SHERIFF PRINCIPAL R A DUNLOP QC  
SHERIFF J K MITCHELL  
SHERIFF M J FLETCHER  
REV R NEILSON, VICE-CHAIRMAN OF THE JUSTICES ASSOCIATION  
MR A CLASPER, JUSTICE OF THE PEACE  
MS B CAMPBELL, DIRECTOR OF CRIMINAL JUSTICE  
DR J McCLURE CBE, FORMER HEAD TEACHER OF ST GEORGE'S SCHOOL  
FOR GIRLS

## COMMITTEE MEMBERS AS AT 31 MARCH 2012

LORD PRESIDENT HAMILTON (PRESIDENT OF THE JSC) (UNTIL JUNE 2012)  
LORD PRESIDENT GILL (PRESIDENT OF THE JSC) (FROM JUNE 2012)  
THE HON LORD BRODIE (CHAIRMAN)  
THE HON LORD MALCOLM (VICE CHAIRMAN)  
SHERIFF T WELSH QC (DIRECTOR)  
SHERIFF A J M DUFF (DEPUTY DIRECTOR)  
SHERIFF PRINCIPAL M STEPHEN  
SHERIFF L D R FOULIS  
SHERIFF M J FLETCHER  
SHERIFF I FLEMING  
REV R NEILSON, VICE-CHAIRMAN OF THE JUSTICES ASSOCIATION  
MR A CLASPER, JUSTICE OF THE PEACE  
MS B CAMPBELL, DIRECTOR OF CRIMINAL JUSTICE  
DR J McCLURE CBE, FORMER HEAD TEACHER OF ST GEORGE'S SCHOOL  
FOR GIRLS

## OFFICE STAFF

DIRECTOR OF JUDICIAL STUDIES	SHERIFF T. WELSH QC
DEPUTY DIRECTOR	SHERIFF A G D THORNTON (UNTIL JUNE 2011) SHERIFF A J M DUFF (FROM AUGUST 2011)
HEAD OF EDUCATION	MS J HENDERSON (FROM SEPTEMBER 2011)
HEAD OF JUDICIAL STUDIES	MS A FISHER
SECRETARIAT	
LEGAL ASSISTANTS	MISS A BAREKAT (UNTIL JULY 2011) MISS E JOHNSTON (UNTIL JULY 2011) MR S BALMER MR O TIDMAN (UNTIL JANUARY 2012) MISS D BOVINGDON (FROM AUGUST 2011)
ADMINISTRATION MANAGER	MRS L MCINTOSH (FROM JULY 2011)
LAY JUSTICE CONSULTANT	MRS G MAWDSLEY
PERSONAL ASSISTANT TO THE DIRECTOR	MS A SHIELDS (UNTIL JUNE 2011) MS J KELLY (FROM JANUARY 2012)
CLERK/TYPIST	MS H STEVENSON
PORTER/MESSENGER	MR M ORTON (UNTIL JULY 2011)

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## FOREWORD TO THE ANNUAL REPORT OF THE JUDICIAL STUDIES COMMITTEE BY LORD BRODIE, CHAIRMAN<sup>1</sup>



This is the last occasion on which I will present the annual report of the Judicial Studies Committee for Scotland. I joined the Committee in 2004 and became chairman in March 2006. I demit office on 31 August 2012. It has been an enormous privilege and a constant pleasure to chair the committee and I am very grateful for having had the opportunity to do so during what has been a most interesting period for judicial education in Scotland. However, the time has come to hand on the baton. I have the great satisfaction of knowing that it will be taken forward with energy, enthusiasm and, I am confident, continuing success.

Inevitably, what JSC has been able to accomplish in the year to 31 March 2012 has depended on the work of previous years. The principal achievement of our first chairman, Lord Ross, and our first director, Sheriff Stoddart, was to have it accepted that initial and continuing education was essential for the effective operation of a modern judiciary. Their successors, Lord Wheatley, as chairman, Sheriffs Morrison and Crowe, as directors, and Sheriff Newall, as deputy director, showed what, with imagination and ingenuity, could be done to make the educational experience not only intellectually stimulating but enjoyable. More recently, informed by Dame Hazel Genn's *Learning Needs Analysis*, effort has been directed toward the adoption of more professional and institutional methods and structures. Without, I hope, losing any of our early dedication and flair, that is the direction in which we have continued over the last year.

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<sup>1</sup> Photograph taken by Bill McBryde.

What I describe as a more professional and institutional approach has a number of aspects to it. First is the recruitment of specialised staff. Our valued clerk/typist, Helen Stevenson, has been joined by Laura McIntosh and Jennifer Kelly in a Judicial Studies Secretariat headed up by Anne Fisher. Importantly, Jessica Henderson took up post as Head of Education in September 2011. From May 2012 she will have the support of a newly appointed educational technologist. Secondly, we have succeeded in securing office accommodation and space for a purpose-designed teaching facility in Parliament House.

Planning is at an advanced stage and the move from Bearford House is scheduled to take place before the end of 2012. Our educational experts are already helping us to refine and develop course content and advising on the most effective methods of course delivery. The new teaching facility should allow us to put that advice into practice.

A glimpse of what I anticipate will be part of the shape of things to come, has been provided by the one-day module on dealing with court management problems associated with cases of alleged domestic abuse which was put on for the first time in May 2011 and repeated at other residential courses during the year. The module is tightly built around the DVD, the making of which we reported on last year. Due to generous Scottish Government funding and the equally generous advice of and participation by a variety of interested parties, the DVD's production values are high. In each of the court scenes the sheriff, the procurator fiscal and the defence solicitor are played by their real-life equivalents. Professional actors take the part of the accused and the complainer. The filming was done in Edinburgh Sheriff Court. The result is a series of realistically portrayed situations which might confront a sheriff in the course of proceedings arising from an allegation of violence in a domestic setting. These are interspersed with brief talks to camera by expert commentators. There is an interview with one of the sheriffs and, finally, a powerful description of her experience of the court process from a victim of extreme violence from her partner.

A DVD-based module offers a number of advantages. Perhaps the principal one is control. The DVD's content is carefully constructed and fixed. A variety of very particular courtroom situations can be presented to participants in real time and then frozen to permit reflection and discussion. The DVD is used in a small group of five or six participants led by

a judge-facilitator working in a planned way with a view to achieving a specific teaching outcome. It is a rich medium and, as in the case of this particular DVD, can be used to bring in issues relating to social context both by way of practical demonstrations of them emerging in the courtroom and by way of theoretical exposition by experts, as well as to address questions of substantive law and the development of bench skills. Issues relating to social context can of course be controversial. Raising them in small judge-only groups with the immediate stimulus of a recorded expert comment encourages discussion which is both frank and constructive, something that cannot always be achieved in response to a live lecture. Importantly, the use of DVD based modules makes for economy in resource application. A DVD can contain a number of scenarios, not all of which need be utilised in a particular module. It can therefore be used and reused until it has reached all of its target audience. On every occasion it is as fresh and as of as high a quality as it was on its first outing.

A pre-recorded DVD is, of course, only one teaching method among many. There will always be a place for the inspirational live speaker. If he is able to use technology to enhance his message, then so much the better. This was well illustrated on 31 October 2011, the first day of 5<sup>th</sup> International Conference on the Training of the Judiciary at the Ecole Nationale de la Magistrature in Bordeaux. Our director, Sheriff Tom Welsh QC, gave a presentation, controlled from his iPad, entitled “Addressing ethics while respecting judicial independence: the Scottish experience” which, by all accounts and in the language of the hosts, was nothing less than a *tour de force* which attracted the admiration of all who heard it. This was a reminder, if reminder were required, that in pushing forward the improvements that I have touched upon, JSC is most fortunate in having as our director a world-class judicial educator, recognised as such by his international peers.

Vital as the Director is to everything we do, the work of JSC over the course of the year is the work of many people. They are people of exceptional ability who show exceptional dedication, very often giving freely of their own time. I have already mentioned our current secretariat of Anne Fisher, Laura McIntosh, Jennifer Kelly and Helen Stevenson. Also members of our full-time staff are the legal assistants who generally stay with us for two years. Their role is to provide the Director with all necessary technical and administrative

support. They prepare the drafts of briefing papers and they support courses. Although they are all recent graduates, a great deal is expected of the legal assistants. We have not been disappointed. In the course of the year Afsi Barekat, Emma Johnston and Oliver Tidman have left to continue with their careers. Steven Balmer and Daisy Bovingdon remain with us. I am most grateful to all of them. I also gratefully acknowledge the contribution of our Lay Justice Consultant, Gillian Mawdsley. Since 2007 the Justices of the Peace have formed the largest group of judicial office-holders in respect of whom JSC discharges a training responsibility. It is Gillian, together with the Deputy Director, who does this work, in cooperation with the Sheriffdom Legal Advisers, the Justices' Legal Advisers and the members of the Justices' Training Committees.

Sheriff Alastair Thornton resigned as Deputy Director in June 2011 in order to take up a full-time shrieval appointment. His were not easy shoes to fill. Since his appointment in September 2008, Alastair had involved himself in every aspect of the planning and delivery of training, not only in relation to his particular constituency, the Justices of the Peace, but also in relation to the other judicial office-holders. He proved himself a meticulous administrator and a talented course leader.

Difficult as it was to find a successor of the quality of Sheriff Thornton, we are confident that we succeeded when Sheriff Alistair Duff was persuaded to take on the post of Deputy Director. Sheriff Duff has been a member of both the Council of the Law Society of Scotland and the Parole Board. He was appointed a full-time resident sheriff in Dundee in July 2004 after a distinguished career as a criminal practitioner. Our previous Deputy Directors have been part-time sheriffs. Sheriff Duff remains a full-time sheriff resident in Dundee but with about half of his time available for the work of JSC.

Probably the most important single aspect of the work of JSC is preparation of the *Jury Manual*. It is to this publication, whether in paper or digital form, that every judge or sheriff turns for a reminder of the appropriate terms in which to direct a jury on the applicable law. This vital work is the responsibility of a sub-committee chaired by Lord Uist. While the *Manual* is the responsibility of the whole of the sub-committee and each member contributes to the final text, it is necessary that an initial draft be prepared from which all can work. It is Sheriff



Lindsay Foulis who performs this demanding task. The importance of the *Jury Manual* is such that we have begun a review as to how changes in the law can be incorporated more quickly with a view to bringing forward a specific proposal. The current reliance on print means that at any given time the *Manual* is many months out of date. Addressing this will require the allocation of significant additional resources, both human and technical, but the investment is likely to be worthwhile.

I conclude this foreword by expressing my profound thanks to the Vice-Chairman and to all the other members of the Judicial Studies Committee for their wise advice, unfailing support and warm friendship over the past year. I wish the Committee continuing success. Its work is demanding. It is also, as the first chairman of JSC so convincingly argued, essential. A year or two ago, the Director of the Judicial Training Institute in Brussels distributed specially commissioned book bags to her students. On them was printed the observation which, as translated, read: “You think education is expensive? Try ignorance!”

**PHILIP H BRODIE**

## INTRODUCTION

The JSC is directly responsible for providing varied and stimulating training for the whole spectrum of Scottish judicial officer holders from the lay justices, most of whom will not have been legally trained, to the full-time Senators of the College of Justice. Over the last year, the JSC provided 35 training courses to 694 delegates. The JSC also prepares and publishes the Jury Manual in addition to JP Bench Books and briefing papers.

At 31 March 2012, there were 32 Court of Session/High Court judges, 17 Temporary Court of Session/High Court judges, 6 Sheriffs Principal, 142 Sheriffs, 72 part-time Sheriffs, 5 Stipendiary Magistrates, 5 relief Stipendiary Magistrates and 440 Justices of the Peace. The judiciary thus comprised 719 serving judicial officers in the reported year.

JSC has been in existence since 1997 and, over the years, the training output has developed from lectures and prison visits, through improving elementary skills in judicial communication, to the current approach of addressing a much wider range of educational and training needs of the judiciary. To improve the quality and scope of the training offered in order that courses fully meet the needs of the modern judiciary for continuing professional education and training, there is now a greater demand to deliver effective bench specific training. This is best achieved through training that is delivered by judges, for judges.

On 1 April 2010, under the new provisions of the Judiciary and Courts (Scotland) Act 2008, the statutory responsibility for “making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders” in Scotland passed to the Public Office of the Lord President, as Head of the Judiciary in Scotland.

Under the statutory powers conferred on him by the 2008 Act, the Lord President approved the “Governance Framework for the Judicial Studies Committee” on 1 April 2010. The Lord President also issued in January 2011 the first “Judicial Training Determination No.1 of 2011 on Judicial Induction Training”. The determination provides for compulsory induction training for all newly appointed judicial office holders within one year of their appointment. JSC is responsible for the delivery of this training, which includes the following topics:

- Judicial ethics and conduct
- Court management, including jury trial management
- Procedural and evidential issues
- Assessment of witnesses
- Judgment writing and *ex tempore* decisions
- Sentencing
- Contempt of court
- Social context, equal treatment and diversity issues
- Unrepresented litigants and vulnerable persons in courts
- Use of information technology

## **JUDICIAL OFFICERS IN SCOTLAND**

SENATORS	TEMPORARY JUDGES	SHERIFFS PRINCIPAL	SHERIFFS	PART-TIME SHERIFFS	JUSTICES	STIPENDIARY MAGISTRATES
<b>32</b>	<b>17</b>	<b>6</b>	<b>142</b>	<b>72</b>	<b>440</b>	<b>10</b>

# **1. JSC**

## **1.1 Changes to the Committee in 2011**

In July 2011 Sheriff Principal Mhairi Stephen joined the Committee in place of Sheriff Principal Alastair Dunlop QC. Sheriff Principal Mhairi Stephen was appointed as the Sheriff Principal of Lothian and Borders in May of this 2011 having previously been a resident sheriff in Edinburgh where she has sat since her appointment to the bench in 1997. In August the Committee also welcomed Sheriff Lindsay Foulis and Sheriff Ian Fleming, in succession to Sheriff Kenneth Mitchell and Sheriff Alastair Thornton (in his capacity as part-time sheriff). Sheriff Foulis already fills the very important role of member of the Jury Manual Sub-Committee with particular responsibility for producing the first drafts of proposed new forms of judicial direction. Sheriff Alistair Duff joined the Committee in September 2011 in his capacity as Deputy Director, and Mr Allan Clasper succeeded Mr Graeme Coe in representing Justices of the Peace.

## **1.2 Changes in Office Staff**

Laura McIntosh joined JSC in July 2011 from Hamilton Sheriff Court to take up her role as Administration Manager. Jessica Henderson joined in September as the Head of Education from her previous employer at Heriot-Watt University. Daisy Bovingdon joined current Legal Assistants Steven Balmer and Oliver Tidman in August. Jennifer Kelly took up her role as Personal Secretary to the Director having joined JSC in January 2012 from Judiciary Office where she worked as an Administrative Officer in Solemn Appeals.

Sheriff Thornton demitted office as Deputy Director to take up his appointment as a full time Sheriff at Kirkcaldy on 6 June 2011. A number of office staff left over the last year. Aileen Shields, PA to the Director, retired in June 2011. She had been with JSC since its inception and had worked for the wider Scottish Courts Service for 26 years. Matthew Orton, Porter/Messenger, left in July to become a Macer at the Court of Session. Legal Assistant, Afsi Barekat left to work at the Scottish Law Commission and Emma Johnston left to undertake her Postgraduate Diploma in Legal Practice at the University of Edinburgh before starting a traineeship at DLA Piper. Oliver Tidman also left his post as Legal Assistant in December to take up a job in private practice. A number of temporary staff, were appointed to assist with administrative tasks throughout the year.

## **1.3 The Committee**

The Committee meets on a quarterly basis. The Chairman, Lord Brodie, and the Vice-Chairman, Lord Malcolm, are engaged in full-time duties as Senators of the College of Justice sitting in the Supreme Courts. The Director of Judicial Studies is committed only to a limited number of days sitting as a Sheriff each year. Sheriff Principal Stephen, Sheriff Fletcher and Sheriff Foulis are full time judicial office holders. The Deputy Director is a full time sheriff based in Dundee who splits his time between court duties and working at Judicial Studies. Bridget Campbell is the Director of Criminal Justice Division of the Scottish Government. Rev Roger Neilson and Mr Allan Clasper are lay Justices of the Peace. Dr. Judith McClure is the former Head Teacher of St George's School for Girls and is the lay representative on the Committee.

## **1.4 Judicial Training**

The judicial training landscape has become much more sophisticated and complex since the JSC was formed in 1997. The course curricula now focus more on bench specific skills, in addition to substantive law and court procedure, legal research, communication and case management skills. The emphasis at training is approaching problems from the perspective of the judge in the courtroom.

Jessica Henderson, Head of Education joined in September 2011 with the key objective to help develop training modules and to apply the principles of adult education and training to the work of the judiciary. Ms Henderson will oversee educational content, working closely with the Director of Judicial Studies to continually evaluate the training needs of the judiciary, including the initiation of a “training for trainers” programme. In the forthcoming year, a Learning Technologist and an additional administrative officer will also begin to develop remote learning programmes and a distance learning strategy for the JSC, the benefits of which will be accessible online by judges.

## **1.5 JSC Relocation to Parliament House**

A proposal was presented to the Scottish Court Service Board at its meeting on 19 March 2012 in relation to the relocation of JSC from its present office accommodation in Bearford House to Parliament House and to the establishment of a dedicated training studio there. The Board approved the proposal. The cost savings associated with this move are significant and plans are well underway in relation to developing the best design for the new training facility with an anticipated entry date at the end of November 2012. A project committee meets monthly to manage progress and to facilitate open communication between all involved in the planning and operation of the relocation.

The training suite will be a modern and purpose-built learning space comprising fully integrated IT systems designed to support the learning environment and will accommodate up to 36 participants. The training suite will house two mock courtrooms. The learning space will accommodate seven plectrum shaped tables fitted with PCs and screens. There

will be two interactive smart boards and video-conference facilities. The space will have the capacity to sub-divide into four separate learning spaces through the use of moveable partitions. This will create the necessary flexibility for a suitable judicial training environment.

It is anticipated that the new training facility will provide a flexible, tailor-made, highly effective training space, which will meet the needs of judicial education for many years to come and will produce financial benefit over the current practice of hiring conference space externally.

## JUDICIAL STUDIES COMMITTEE ACTIVITIES

### 2. COURSES

#### 2.1 Induction Courses

Induction courses are held for new judicial appointments over a period of three days. The course is in effect a “crash” course, which includes modules on all the compulsory topics of judicial training. All new appointees are given a starter pack and are invited to attend a Judicial Skills or Refresher course at their earliest convenience. In the past year JSC has provided induction training to 5 full time sheriffs and 16 part time sheriffs. Induction courses for Justices of the Peace are referred to below at paragraph 4.3.

#### 2.2 Refresher Courses

Four three-day residential courses were held in the year to 31 March 2012.

Each member of the judiciary is invited to attend one such three day residential course every three years. The programme is varied and includes talks on matters of topical and general interest and recent developments in law and practice.

**(i) 9-11 May 2011 – Dunkeld House Hotel, Dunkeld**

The course was chaired by Lord Brodie with the support of Sheriff Welsh and Sheriff Thornton. One senator, one temporary judge, seventeen full time sheriffs, three part-time sheriffs and two EJTN guest judges, from Austria and Ireland respectively, attended: Judge Martina Krainz and Judge Anthony J Halpin.

There were presentations from Professor Fergus McNeill, Professor of Criminology & Social Work at the University of Glasgow on Desistence from Crime; Laura Macgregor, Senior Lecturer at the University of Edinburgh on Recent Developments in Contract Law; Clare Connelly on the Zero Tolerance Approach to Domestic Abuse; Rory Macrae and Moira Andrew on the Caledonian System; and Daniel Onifade on Multicultural Scotland.

The judges discussed Sentencing Exercises, Alternatives to Custody and CPOs with Professor Fergus McNeil.

This course also featured a pilot of the JSC Domestic Abuse DVD. The participants worked in groups of 8-9 and were guided through three of the four courtroom scenarios by facilitators. The feedback for this element of the course was extremely positive. It is intended to rerun this structure at the next Refresher Course testing different scenarios and working towards building the ideal programme to host the entirety of the DVD.



**(ii) 3-5 October 2011 – Dunkeld House Hotel, Dunkeld**

This course was chaired by Lord Brodie with the support of Sheriff Welsh and Sheriff Duff. Two senators, ten full time sheriffs, three part-time sheriffs and two EJTN guest judges, from France and Ireland respectively, attended: Judge Daniel Delegove and Judge Denis McLoughlin.

**(iii) 21-23 November 2011 – Dunblane Hilton Hotel, Dunblane**

This course was chaired by Lord Malcolm with the support of Sheriff Welsh and Sheriff Duff. One senator, twelve full time sheriffs, five part-time sheriffs and two EJTN guest



judges, from The Netherlands and Ireland respectively, attended: Judge Gert-Mark Smelt and Judge Brendan Toale.



**(iv) 27-29 February 2012 – Dunblane Hilton Hotel, Dunblane**

The February refresher course at Dunblane was chaired by Lord Malcolm. Participants for the course included eleven sheriffs, six part time sheriffs and guest Judge Timothy Lucey, a moveable District Court Judge from the Republic of Ireland. The course introduced a number of new elements, including a new problem exercise on Contractual Interpretation written by Laura Macgregor, and a new Diversity Module which was led by Professor Hugh Goddard and Siraj Khan from the Prince Alwaleed Bin Talal Centre for the Study of Islam in the Contemporary World, based at the University of Edinburgh. As part of the Crime and Sentencing module, Professor Fergus McNeill led a session on Desistance from Serious and Persistent Offending and two participating sheriffs spoke about the value and public perception of custody. The JSC in-house DVD served as the focus for the Domestic Abuse Module with talks from Forensic Psychologist Professor Liz Gilchrist and Caledonian System Project Manager Monica Wilson. The course also included Sentencing Exercises, a Judicial Ethics session and discussion of Problems in Court scenarios.

## 2.3 Judicial Skills Courses

Three three-day residential Judicial Skills courses were held in the year to 31 March 2012, as well as one one-day Judicial Skills seminar. Each member of the judiciary is invited to attend one such three-day residential course every five years. Having established Skills courses in October 2000, many members of the judiciary are now attending their second Skills course.

### (i) 11 – 13 April 2011 - Fairmont Hotel, St Andrews

This residential skills course at St Andrews was chaired by Lord Brodie. One senator, one sheriff principal, seven fulltime sheriffs, three part-time sheriffs and two EJTN guest judges from Ireland attended: The Hon Ms Justice Mary Finlay Geoghegan and Mr Justice George Birmingham.

Modules were delivered on the nature of the judicial role, credibility assessment, effective courtroom communication, *ex tempore* judgements and judicial ethics. Dr Lisa Jones, University of St Andrews, addressed the judges on Judicial Ethics.

Bill Wright and Ros Stein, voice coaches from the Royal Scottish Academy of Music and Drama in Glasgow attended to coach the judges during the communication session.

The evaluation questionnaires indicated the course was found to be extremely interesting and stimulating.

### (ii) 7- 9 November 2011 - Fairmont Hotel, St Andrews

This course was chaired by Lord Malcolm assisted by Sheriff Welsh and Sheriff Duff. Two senators, one sheriff principal, six full-time sheriffs, two part-time sheriffs and four guest judges attended: J Linnane and A Lindsay from Ireland; K Harmand from Estonia; and Hugo Bijleveld from the Netherlands. We were also extremely fortunate to have Professor Brettel Dawson from the Canadian National Judicial Institute to facilitate the continued induction training of the Head of Education, Jessica Henderson. This was an exceptional opportunity for Jessica Henderson to work with a judicial trainer who enjoys a world class reputation.

**(iii) 30 January - 1 February 2012 - Fairmont Hotel, St Andrews**

This course was chaired by Lord Brodie, with Sheriff Welsh and Sheriff Duff providing support. The Lord President attended for the first day in addition to two Senators, six full-time sheriffs, two part-time sheriffs and two guest judges attended: Judge Alice Doyle from Ireland and Judge Amelia Busca from Romania. Speakers included Dr David la Rooy, Abertay University on Assessing Witnesses and Professor John Haldane, University of Edinburgh on Judicial Ethics.

## **2.4 Guardianship and Intervention**

A one day seminar on Guardianship and Intervention was held on 16 May 2011 in Edinburgh. Seventeen full time sheriffs and five part-time sheriffs attended. Presentations were delivered by Senior Judge Denzil Lush, Master of the Court of Protection in London, Mr Adrian Ward, Ms Sandra McDonald the Public Guardian and Dr Donny Lyons and Mr George Kappler from the Mental Welfare Commission. There was also a question and answer session featuring a selection of these speakers and Sheriff John Baird.

Ms Laura Dunlop QC attended from the Scottish Law Commission to observe.

## **2.5 IT Training**

The Judicial Studies Committee has been working to develop its IT Training Programme in response to the Scottish judiciary's training needs. The JSC IT training comprises two independent one-day modules, the first on general Computer Skills and the other covering Online Legal Research. These are delivered as a consecutive pair of training days at quarterly intervals during the year.

### **2.5.1 Computer Skills**

This one-day seminar covers basic computer skills such as understanding file management, word processing, emailing and navigating the internet. It is expected that by the end of the course, participants should be able to understand how file directories, folders and paths work, find and manipulate files, work with removable media, set defaults and preferences for

various functions, back up work, navigate the web and access internet files, add favourites, organise storage of e-mails, set up a personal address book and many other skills. JSC are assisted at these courses by Bryan Goodfellow, Head of HR Service Delivery at Scottish Court Service.

A one-day module providing introductory IT training ran for the first time on 2 June 2011. This module was aimed at those less confident in their IT abilities than those who attend the course detailed above. The aim of the introductory course was to focus on Windows desktop, creating and renaming folders, saving, deleting and renaming files, printing, basic word processing as well as sending, receiving, filing and deleting emails.

From time to time JSC are able to offer one-to-one IT training to judges with little or indeed no knowledge of information technology. This training is tailored to individual needs and serves to introduce the participant to some of the areas mentioned above.

### **2.5.2 Online Legal Research**

Three Online Legal Research Courses were held in the reported year. These one-day seminars give members of the judiciary with intermediate IT skills the opportunity to develop their knowledge of the Westlaw legal database and other online legal resources accessible via LINETS (the Legal Information Network for Scotland). During the morning session participants are presented with a comprehensive and interactive demonstration of the functions of such databases (with particular emphasis on Westlaw) run by Legal Assistants Afsi Barekat and Steven Balmer. In the afternoon, participants are set problem exercises which the Directing Team help the participants to apply their newly acquired knowledge to. A total of 21 sheriffs and part-time sheriffs attended these courses; these courses are run by the Legal Assistant and Sarah Kerr, the System Manager at LINETS.

Feedback from all the IT courses was resoundingly positive.

## **2.6 Court Expenses**

A one day seminar on Court Expenses was held in June 2011. This is the first time this area has been covered by the JSC and the feedback received indicated that participants found the

course useful and informative. One senator, one sheriff principal, thirteen full time sheriffs attended, and approval was given for Ms Barbara Brown, Principal Clerk and Legal Secretary to the Scottish Land Court to attend as an observer. .

Presentations were delivered on ‘The Law of Court Expenses’ by The Rt Hon Lord Carloway, ‘Court Expenses: Practical Issues – An Overview’ by Mr Tom McCafferty, Sheriff Court Auditor; Mr Kenneth Cumming, Court of Session Auditor and Mr Alex Quinn, Consultant Law Accountant. Mr Quinn also supervised a workshop session which examined four accounts from the Sheriff Court and Court of Session.

## **2.7 Sheriffs’ Principal Management Training**

Following the appointment of two new Sheriffs Principal, Craig Scott and Mhairi Stephen, a two day seminar was held in Cardrona near Peebles. The course was attended by the existing Sheriffs Principal, and on the Friday by Administrative Judges from the Court of Session and the Lord President. The course gave the participants the opportunity to identify existing problems in the administrative functions of their role and offered some solutions to dealing with those problems. The central theme of the course was judicial leadership and management of people. . Retired Sheriff Principal James Taylor delivered a paper on how the role of Sheriff Principal has evolved over the years and this was followed by discussion. Stephen Humphreys, Director of Judicial Office, spoke on “Statutory Powers and Levers”. The Hon Mr Justice Ernest Ryder, Presiding Judge for the Northern Circuit and His Honour Judge Henry Globe QC Resident Judge at Liverpool Combined Court and Honorary Recorder of Liverpool addressed the English perspective.

Col. Christopher Keeble, Fellow at Harris Manchester College, Oxford spoke on the Ethical Basis for Leadership. Jean Kerr and David McCormack, Leadership Development Consultants at IBM spoke on the subject of taking leadership theories and turning them into practice. Iain Livingstone, Assistant Chief Constable, Lothian and Border Police and John Gwynne, Deputy Director-General of the Scottish Crime and Drugs Enforcement Agency spoke on the operational challenges in the transition to a leadership role.

Feedback for the course was extremely encouraging, with the contributions of the English Judges and their analysis of the problems faced being found particularly useful. This course was entirely bespoke and is an example of the innovative and effective training which JSC delivers.

## **2.8 Firearms and Environmental Offences**

Sheriff Duff chaired a one-day course in Glasgow on Firearms and Environmental Offences. The first topic was firearms legislation conducted by Ian Bradley, Principal Depute, Crown Office. Inspector Andrew Wallwork of Lothian and Borders Police then brought in some firearms and discussed the operational use of firearms from the police perspective and the types of weapon they deal with in Firearms offence cases involving the public. Chief Supt Charlie Common was also in attendance to answer questions. In the afternoon Calum MacDonald and Fraser Lovell from the Scottish Environment Protection Agency looked at Environmental Offences in Scotland.

## **2.9 Complex Case Management**

This one-day course held in Glasgow was chaired by Lord Brodie. Speakers included Lord McKay of Drumadoon who spoke about the management of long jury trials. His Honour Judge Alistair McCreath, Senior Circuit Judge, Southwark Crown Court gave a paper on the use of 'defence statements' which relate to disclosure provisions in criminal trials, and Sheriff D Leslie addressed the course on his handling of a recent long running Fatal Accident Inquiry in Kilmarnock. Mike Bell and his team from COPFS (Crown Office and Procurator Fiscal Service) talked about the Crown handling of long FAIs in particular the Inquiry into the Rose Park Nursing Home in Uddingston.

## **2.10 Vulnerable Witness Training**

Sheriff Welsh chaired a one day course on Vulnerable Witnesses and CCTV in October. Three sheriffs and seven part-time sheriffs attended. Professor Fiona Rait spoke about the legislative provisions relating to vulnerable witnesses, followed by a talk from child psychologist Dr Katherine Edward, who spoke about "Understanding the Vulnerability of Witnesses called to give Evidence", particularly children. The Scottish Court Service

Electronic Service Delivery Unit (ESDU) gave a demonstration of the CCTV court technology in operation. The day concluded with participants working through practical exercises with the CCTV technology. As well as receiving hands-on experience, participants also had to overcome technical glitches that were deliberately included throughout the practical exercises to test reactions.

## **2.11 Judicial Reasoning**

JSC held a one day seminar in November chaired by Lord Brodie, who was supported in his directing duties by Sheriff Duff and Sheriff Welsh. Speakers included the Lord Hope, Lord Carloway, Sheriff Principal Lockhart and former Sheriff of Lothian and Borders, Dr Charles Stoddart. Eleven sheriffs and eight part-time sheriffs attended. Feedback from the participants indicated that they found the day interesting and thought-provoking and took away some very useful hints and tips.



## **2.12 Abbreviated Causes**

JSC held a one-day seminar in December on Summary Applications, Summary Cause and Small Claims Procedure chaired by Sheriff Duff. The seminar included discussion on how best to overcome problems associated with these procedures, alternative dispute resolution, difficult heritable cases and licensing appeals. Former Sheriff, Jim Tierney, spoke on



summary applications. The course was attended by nine sheriffs and twelve part-time sheriffs attended.

### **2.13 Mentoring Training**

A formal mentoring scheme for the judiciary in Scotland was implemented from 1 April 2011, as necessitated in the first judicial training determination by the Lord President. The scheme is mainly applicable to new judicial officer holders who wish to take advantage of this type of personal support and guidance. Mentoring training was provided for those nominated to be mentors. As at 31 March 2012 a total of 52 mentors had received training through JSC.

The purpose of the mentoring scheme is to:

- (i) provide a meaningful form of support in the performance of the judicial function for the first year of the new judge's career;
- (ii) offer a valuable means of alleviating judicial stress during particularly challenging periods of the judge's career, especially at the time of and shortly after appointment to the bench;
- (iii) enhance collegiality within the judiciary;
- (iv) focus on the personal needs of the judge, particularly during the early stages of his/her career on the bench; and
- (v) recognise that effective welfare, guidance and support are essential elements of the judicial culture in Scotland.

The mentoring scheme, which is voluntary, applies to all members of the judiciary (judges of the Court of Session, sheriffs principal, sheriffs, part-time sheriffs, stipendiary magistrates and Justices of the Peace). From 1 April 2011, every newly appointed judge is entitled to have the support of a trained mentor from the same tier of the judiciary to which they are appointed. There were six mentoring seminars held by the end of March 2012. Each employed interactive workshops to address the principles, purposes and benefits of mentoring as well as the skills and qualities required of a mentor and the challenges the role may entail. The first round of mentoring training is due to conclude in May 2012. Courses will run after that point as and when they may be required.



## **2.14 Military Fatal Accident Inquires**

This course was chaired by Sheriff Principal Dunlop and was attended by four other Sheriffs Principal and designated sheriffs from each of the Sheriffdoms. Col. Clive Newell OBE, FCMI, Head of Defence Inquest Unit, Ministry of Defence spoke on the Defence Inquests Unit in the Role of Military Fatalities and looked at some of the aspects the Scottish FAI system could benefit from adopting. David Ridley, Coroner, Wiltshire & Swindon spoke on his experiences as a Coroner and some of the practical difficulties in dealing with these types of inquiry. Mike Bell, COPFS, discussed the implementation of the legislation in Scotland and how he foresaw the Military FAI operating in Scotland. The session concluded with James Chalmers, University of Edinburgh, who presented on the operation of the Public Interest Immunity.

Follow up training in Warminster is being arranged for a number of those who attended

## **2.15 Domestic Abuse Courts Training**

The JSC organised an afternoon's training session to offer training to nominated sheriffs sitting in the specialist Domestic Abuse Courts launched in Edinburgh and Livingston. The session was chaired by Sheriff Principal Stephen with three Edinburgh sheriffs and four Livingston sheriffs taking part. Dr. Marsha Scott, from West Lothian Council and Nel Whiting from Scottish Women's Aid opened the training with a discussion concerning the dynamics of domestic abuse. Sheriff Andrew Mackie and Mhairi McGowan from Glasgow's ASSIST programme led a panel discussion focused on the operation of the Glasgow model. The session concluded with Acting Assistant District Procurator Fiscal Adrian Cottam and Detective Inspector Matt Paden, presenting on the preparations in their departments for the court and on multi-agency working.

## **2.16 Media Law and Data Protection**

The one day seminar opened with an introductory talk on the Data Protection Act 1998 given by Tim Musson from Computer Law Training Ltd. Tim explained the fundamental concepts of Data Protection, namely the definitions of "*data*", "*personal data*" and "*data*

*controller*” and the application of the Data Protection Principles. Judith Alcock, Deputy Legal Secretary to the Lord President, led a session entitled ‘Data Protection and the Judiciary’ discussing how and when a judicial office holder may engage the Data Protection Act. In addition, Judith introduced the *‘IT & Information Security Guide for Judicial Office Holders in Scotland, Protecting Information: Prevention of and Management of Incidents,’* which is in the process of publication on the Judicial Intranet. This document is to be issued by the Lord President under s.2(2)(d) of the Judiciary and Courts (Scotland) Act 2008 and discussed pending guidance on data protection for the judiciary, which is currently with the ICT Committee of the Judicial Council. Judith Rauhofer, Lecturer in I.T Law at the University of Edinburgh, led a highly interactive afternoon session on the topics of *‘Social Networking and Online Privacy’* and ‘The Regulation of Investigatory Powers Act 2000’. Judith led a workshop style session during which participants were asked to consider case studies in groups.

## **2.17 Football Related Offences**

This one day course opened with a talk from Prof. Tom Devine, University of Edinburgh who gave a comprehensive talk on the history of sectarianism in Scotland. This provided an invaluable introduction and provided a context for the rest of the day’s discussion. The second session involved four presentations from various branches within the police. Lyndsey Gray spoke on Football Banning Orders, Marian McLean from the Football Co-Ordination Unit for Scotland (FoCUS) discussed the role of that organisation, Supt. Lesley Clark spoke on Hate Crime from a match commander’s perspective, and Chief Supt. Ellie Bird looked at the issues for British Transport Police. The afternoon session contained a panel discussion from the morning speakers with a question and answer session, followed by some input from COPFS as to their approach to dealing with football related offences and the role of specialist fiscals to deal with these cases.

Participants were also given the opportunity to attend the Old Firm Game the day before the Course as guests of Strathclyde Police. This is part of an on-going agreement that facilitates shrieval match visits to football stadia in Scotland to provide insight into the policing operations at football matches.

## **2.18 Local Sheriffdom Training Events**

JSC continues to support local annual training events held within each Sheriffdom, which are organised by the sheriffs principal and a nominated member or members of the sheriffdom responsible for overseeing the content and canvassing opinion of their colleagues. The JSC has assisted in arranging for the attendance of speakers and preparation of material at these events. Advantage can be taken of local training days arranged by the Procurator Fiscal and Sheriff Court staff to run a reduced number of courts so as to allow as many sheriffs as possible to attend. This year JSC provided full support, organising speakers, handling the administration side and providing the necessary equipment. A legal assistant attended each event to ensure the smooth running of the training day.

## **3 FUTURE COURSES**

The course curriculum requires a large amount of organisation and advance planning. During the reported year, the JSC has been preparing for conferences and seminars in the following:

### **3.1 Legal Landscape Post *Cadder***

A one day course is due to be held in Glasgow on the subject of the Right to Legal Assistance following the decision in *Cadder v HM Advocate* [2010] UKSC 43. Speakers include Sir Gerald Gordon QC, James Chalmers, Prof Jim Murdoch and representatives from the police.

### **3.2 Senators' Training**

Senators' Training 2012 will be hosted in June at the Mackenzie Building in Edinburgh, with all present Senators of the College of Justice invited to attend over a three day period from Wednesday 6<sup>th</sup> June – Friday 8<sup>th</sup> June following the Jubilee Bank Holidays on Monday and Tuesday. The Supreme Courts will be closed for this period, with the exception of long-running trials and urgent business. The event will be attended on Thursday by The Chief Justice of Canada Beverley McLachlin and The Master of The Rolls The Rt Hon Lord Neuberger of Abbotsbury. Also present on Thursday will be Mr Luis Pereira, Secretary General of the European Judicial Training Network and Dr Wolfgang Heusel, Director of Die Europäische Rechtsakademie (The Academy of European Law). On Friday, in addition

to Lord Neuberger, Lord Justice Girvan and Lord Justice Moses of Northern Ireland and England & Wales respectively, will contribute a paper each and participate in the day's sessions.

The content for the three days is being devised by the Organising Committee comprising of Lord Carloway, Lord Brodie, Lord Malcolm, Sheriff Welsh and Sheriff Duff; Steven Balmer is the legal assistant assigned to this event. The Wednesday will focus on The Sifting Process and the Judge's Function as Gatekeeper. The afternoon will involve a presentation by LawCare on the support structures available to the judiciary in dealing with work related problems.

JSC are working in partnership with the ERA in forming the content for a European Law themed day on the Thursday, and the Friday sessions will cover the adaptation to sitting as part of an appellate bench and the ethics of punishment.

### **3.3 Environmental, Wildlife, Health and Safety Law**

This forthcoming event will focus on three discrete areas of regulatory crime: "Health and Safety: Investigation and Prosecution" to led by John Blackburn, HM Principal Inspector, Health and Safety Executive and Sally Clark, PF Depute from the Health and Safety Division, COPFS. Following this Calum MacDonald, Director of Operations, Scottish Environment Protection Agency (SEPA), Mr Craig Harris, Head of Wildlife and Environmental Crime Unit at COPFS, and Professor Mark Poustie, Head of Law School at the University of Strathclyde will speak on enforcement issues. The afternoon session will be chaired by Sheriff Kevin Drummond QC focusing on wildlife crime. Alan Stewart from the National Wildlife Crime Unit will speak on "The investigation of Wildlife Crime in Scotland", Wildlife Conservation Trust and Mr Mark Oddy, Estate Manager at Buccleuch Estates Ltd is due to talk about "Living with Licensing – The Practitioners' View" to place wildlife crime in context.

## **4. JUSTICE OF THE PEACE TRAINING**

There were 440 justices in Scotland at the end of March 2012. The overall number of justices fluctuates throughout the year as justices reach their retirement or tender their resignations. The Sheriffdoms of North Strathclyde and Tayside Central and Fife recruited 59 justices whose appointments were confirmed once they had successfully completed the required national and local induction training programmes.

Recruitment in 2012-2013 has taken place in the Sheriffdoms of Lothian & Borders and South Strathclyde Dumfries & Galloway. The prospective justices are commencing their induction training programmes.

### **4.1 Justices of the Peace Annual Conference, 30 March- 1 April 2012 Stirling Management Centre**

This was the fifth national Annual Conference. The Director, Sheriff Welsh made a number of changes this year to the structure of the Annual Conferences. The plan is to hold two annual conferences each year. This was the first conference to be held with the second conference to be held in September 2012. The support from justices in respect of these changes has been very positive. The JSC anticipates that this will be the structure of national conferences to be followed in future years.

50 justices attended this conference, which provided an opportunity to deliver judge led training on a range of topics. Importantly, justices were able to meet each other and exchange judicial experiences from their respective Sheriffdoms. A member of each Justices' Training Committee was invited to attend. This facilitates the easy sharing of knowledge among those not present at the conference..

The Conference was chaired by Lord Brodie. Sheriff Welsh, Sheriff Duff and Gillian Mawdsley formed the directing team supported by a team of 7 legal facilitators representing a number of the Sheriffdoms. The contribution of the legal advisers is vital to the success of the conference given their relationship with the justices who are attending.

The emphasis at the conference was on presenting a varied programme using different modes of teaching and learning. The concentration was on topics that can best be presented at a national forum with new initiatives including a key note speaker on diversity and equality and workshops on sentencing. The sessions all utilised short talks and facilitator led small group sessions including practical and interactive exercises using scenarios presented on DVDs filmed by the JSC.

Pre-conference workshops were organised with the SCS IT team under David Morris, Director and Gerry Dawson, recently appointed as justice IT support. Ensuring that justices can access their email and the judicial intranet is important for their role as justices. The workshops focused on introducing the IT team and support mechanisms. Computers were set up to allow practical demonstrations to take place. There was a useful presentation and hand-outs. This session made an encouraging start to the development of the content of future workshops. There has been a substantial increase in computer access by justices.

A workshop by LawCare was set up by Trish McLellan who made justices aware of the extent of their services and support for the judiciary in pastoral care.

The conference opened with the welcome and introduction by Lord Brodie and Sheriff Principal Mhairi Stephen who had recently become a member of the JSC. That was followed by an entertaining session by Sheriff Cubie and Sheriff Wood on 'Finding your judicial voice.'

Speakers on Saturday included Dr David La Rooy, Abertay University on 'Assessing Witnesses' focusing on credibility and reliability issues. Sheriff Duff provided a practical talk on 'Disclosure, Delay and Decisions in Court – Your role' that gave practical tips on how to avoid delay and 'court churn'.

Sentencing is a standard topic covered at conferences. Sheriff McFadyen introduced the topic which was followed by syndicate group sessions each led by Lord Brodie, Sheriff Welsh, Sheriff Foulis and Sheriff McFadyen. The justices had an opportunity to undertake

role play in sentence delivery with discussions about sentencing range and how sentences should be delivered. Justices described this session as ‘quality learning.’

Sheriff Welsh delivered the final session of the day entitled ‘Are we friends: 21<sup>st</sup> century ethical challenges for the judiciary.’ It warned of the pitfalls of the social networks such as Facebook for the judiciary.

We are grateful to Fraser Gillies, Chair SJA in speaking and in hosting the evening Quiz and to Johan Findlay who provided an abbreviated history of justices for the welcome packs.

Diversity and equality is one of the JSC’s priorities in training across the whole judiciary. Sunday was focused on delivery of raising awareness of disability being one of the ‘protected characteristics’ under the Equality Act 2010. We were fortunate to have Eleanor Williams, Head of Legal, Equality and Human Rights Commission (Wales) to deliver an inspirational keynote speech on her subject ‘How brave is Scotland?’ Two presentations followed by Epilepsy Scotland and the Scottish Consortium for Learning Disability with whom we have been working on developing resources to support the judiciary. The session was well received with an indication that it had been the most valuable session of the weekend.

The justices who attended the conference represented a wide range of experience from those recently appointed to those with long service. The conference was assessed as an enjoyable and stimulating course, with special appreciation of the input received from judicial sources.

## **5. OTHER ACTIVITIES**

### **5.1 Domestic Abuse DVD Screening**

The final elements of the filming (including the contributions from ASSIST, Fife Women’s Aid and victim testimony) took place early in this quarter. The editing of the DVD occurred across several days in late March/early April. Several pre-edit meetings between JSC staff, the Deputy Director and Director were arranged to ensure that the minimum amount of

studio time was expended. Comprehensive facilitator notes were developed to ensure that the DVD will have currency beyond the tenure of the current directing team.

The DVD was debuted at the May Refresher Course alongside two presentations on related topics to break-up the intensity of the day. Feedback suggested that, in fact, only one interspersing presentation may be necessary as this would shorten the length of the day and sufficient respite is provided by the refreshment breaks.

Many parties assisted in the development of the four courtroom scenarios and in the filming of the DVD through the generous allocation of their time and expertise. This project represented positive engagement by JSC with Scottish Government and specific interest groups in civil society with a particular interest in domestic abuse. JSC retained editorial control at all stages of production and has exclusive right to use the product. The DVD is an outstanding teaching tool and has met with resounding approval from those consultees involved in the production. Half the cost of production was met by Scottish Government.

As JSC is unable to distribute the DVD within the jurisdiction, while it remains an active training tool, an informal screening was organised at Edinburgh Sheriff Court to thank those involved. International interest in the DVD has been received from Romania and the USA. It is intended to make it available in the Scotland section of the International Organization for Judicial Training website, which is password protected.

Twenty-three participants attended the screening in addition to members of the JSC staff and representatives of Women's Aid, Shakti Women's Aid, Rape Crisis, Victim Support, Scottish Government Victims Unit and COPFS. Uniquely the DVD presents judges with victim testimony as well as academic commentary.

## **5.2 JSC Intranet and Website**

A Judicial Intranet was launched on 4 April 2011. The intranet will, for ease of reference, contain copies of and information regarding all of the policies and procedures that have been introduced since 1 April 2010 when the Lord President assumed his responsibilities as head of the Scottish Judiciary. It will become the means by which the Lord President will



communicate when he has information to disseminate, or which he wishes to be disseminated, to members of the Scottish judiciary.

The intranet was developed by a group under the chairmanship of Lord Hodge. It is a developing project and, through phased development, will, in time, extend to encompass electronic access to all of the information and/or sources of information that are agreed as useful by members of the Scottish judiciary.

The JSC Intranet is now contained on the Judicial Intranet under “Judicial Studies”. Using an electronic course booking system, judges can book training courses and view their own training record. The intranet also contains information about the JSC, briefing materials, and links to international judicial training organisations. Furthermore, there is now a Sentencing Information Resource, which includes information on the national and local programmes provided by Criminal Justice Authority Areas and local authorities, a sentencing checklist and summaries of cases containing sentencing guidelines. It is anticipated that the intranet will be a useful electronic resource for judges. All feedback is welcome to enable the continued improvement of this electronic resource.

The new JSC website was launched on 21 September 2010 and can be accessed at <http://scotland-judiciary.org.uk/59/0/Judicial-Training>. It has been rebranded and updated.

### **5.3 The Jury Manual**

The Jury Manual Committee met three times during the year on 11 July and 26 September, 2011 and on 9 February 2012 to discuss revisions and publication of the document. The Committee comprises:

- Lord Uist, Chairman
- Lord Turnbull
- Lord Bannatyne
- Sir G Gordon QC
- Sheriff L. D. R. Foulis
- Sheriff J. K. Mitchell

- Sheriff T. Welsh QC, Director (*ex officio*)
- Sheriff A. Duff, Deputy Director (*ex officio*)

This is the second issuing of the Jury Manual to be made public following its initial publication on the Judiciary of Scotland Website in February 2011. The resource is available to members of the judiciary electronically via the Judicial Intranet, digitally as a CD and in hard copy. The nature of the Jury Manual, which is reviewed annually, is that of an *aide-memoire* and has no binding legal authority.

#### **5.4 Sentencing Checklist**

JSC issued Sheriff Morrison's updated Sentencing Checklist electronically in January 2012 and in hard copy in March 2012 to all members of the judiciary. This version updates the March 2011 Sentencing Checklist.

#### **5.5 Developments in Law, Practice and Procedure**

During the year, the JSC produced briefing material on the following:

- Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011
- Disclosure Provisions of the Criminal Justice and Licensing (Scotland) Act 2010
- *NJDB v JEG and another* [2012] UKSC 21

#### **5.6 The Equal Treatment Bench Book**

The Equal Treatment Bench Book is currently being updated in order to incorporate the changes and developments in the law since the second edition was produced in August 2008, most notably The Equality Act 2010. This is due to be published in the current year.

## **5.7 Provision of Starter Packs to Sheriffs, Part-Time Sheriffs and Senators of the College of Justice**

There were a number of judicial appointments during the reported year at shrieval and part-time levels. All have been supplied with a pack of the relevant briefing papers, guidance, materials and legislation.

## **5.8 E-Book on Criminal Jurisdiction**

Dr Charles Stoddart has been responsible for the writing of the E-Book on Criminal Jurisdiction on behalf of JSC since January 2010. Steven Balmer has been assisting Dr Stoddart in this project since Afsi Barekat left her post in August. The aim is to produce high quality briefing material of immediate use to the busy first instance or appeal judge either on the bench or in chambers. The intention is to enable each judge to personalise their own copy by adding electronic annotations. To ensure the E-Book is hosted in an intuitive and user-friendly fashion, the launch will be postponed until the appointment of a Learning Technologist to the staff of JSC. Dr Stoddart and Steven Balmer will ensure the material is kept up-to-date in the meantime.

## **5.9 JP Bench Book and Legal Advisers' Bench Book**

The JP Bench Book aims to support Justices in the delivery of their judicial duties. The Bench Book is currently undergoing updating and revision. The updated Bench Book will be developed as an up to date user friendly online resource for Justices which will support all Justices of the Peace in their judicial functions.

The JP Bench Book will incorporate the JP Signing Manual that was previously the responsibility of the Scottish Government.



## 5.10 European Judicial Training Network

This training network is the only body which represents most of the major judicial training organisations within the EU. JSC is a member of the Network. It provides members with a means of communicating information about forthcoming training events and accessing written and electronic materials. The Network exists to promote judicial training programmes with a European dimension for members of the European judiciary. This involves the exchange of experiences between the judiciary of the European Union, promoting training events on matters of common interest thereby providing a forum during which issues such as cross border criminal co-operation, commercial and family law matters may all be considered. The Network also organises exchange visits for judges. JSC reserves two places, funded by the EJTN, on each residential course for foreign guest judges. This reported year we had visitors from Poland, Romania, Germany, Ireland and Italy.

## 5.11 International Organization of Judicial Training

The International Organization for Judicial Training (IOJT) was established in 2002 in order to promote the rule of law by supporting the work of judicial education institutions around

the world. The mission of the IOJT is realised through international and regional conferences and other exchanges that provide opportunities for judges and judicial educators to discuss strategies for establishing and developing training centres, designing effective curricula, developing faculty capacity, and improving teaching methodology.

The IOJT is a volunteer, non-profit organization and relies upon the efforts and good will of its members. The organization is governed by a General Assembly of its members which meets every 2-3 years during the international conference. There is an elected Board of Governors which consists of an Executive Committee, Regional Deputy Presidents, additional Deputy Presidents and Governors. As of May 2012, the IOJT has 105 member-institutes from 64 countries.

In November Vice Chairman Lord Malcolm, the Director, Deputy Director and Head of Education attended a conference in Bordeaux entitled “Judicial Training in a Globalized World: Restoring Trust and Stability.” Sheriff Welsh gave a presentation at this seminar on how JSC teaches judicial ethics while respecting judicial independence. Judges from Australia, Madagascar and Mexico also presented papers on their national institution’s experiences. The conference provided an excellent opportunity to network with other judicial trainers and exchange views on best practice as well as observing how other international training institutions deliver training and education.

## **5.12 French Trainee Judges**

In March JSC entered a bi-lateral training agreement with our counterpart French training organization, to enable two French *stagiers*, from the *Ecole Nationale de la Magistrature*, Laurance Grosclaude and Raphaelle Bail to come to learn in Scotland for a month. Their activities involved shadowing Scottish Judges from the High Court, Court of Session and the Sheriff Court. They also visited the parole board, HMP Edinburgh and HMP Glenochil, attended 2 JSC Seminars on Media Law and Football Related Offences, spent two days with Counsel, four days with Crown Office and also had days at the Children’s hearing panel and at Law Firm Anderson Strathern LLP. This was an extremely beneficial training collaboration

## **6. REPORTS**

### **6.1 The Work of the Director, Sheriff T. Welsh QC**

The Director has operational responsibility for the creation and delivery of all training and education for all judicial office holders in post. In addition to working with the Head of Education, Jessica Henderson on the content of the courses, the Director attends most courses as part of the directing team. The Director also works closely with the JP consultant Gillian Mawdsley. For the present reporting period the most important and central non training issue which has occupied the Director has been the planning and organisation of the JSC move from Bearford House to the custom built training studios in the Parliament House PSA Wing and the administrative integration of JSC into the Parliament House complex. This will mean that the administrative headquarters of JSC is after some 8 years in a city centre office site reunited with the main court administration as part of the Judicial Office for Scotland. A planning and relocation board has met regularly to supervise the extraction of JSC from its present home and its integration into the Parliament House site. The Director sits on that board. Apart from the strategic importance of the physical move this reorganisation will complete the administrative docking of JSC with Judicial Office ongoing since April 2010 when the Lord President who is also President of JSC took over responsibility for the whole Scottish Judiciary.

The Director is a co-opted member of the Sheriffs' Association. He also sits on the Scottish Appropriate Adult Network Committee, which supports the development and maintenance of the Appropriate Adult Services in Scotland. The Director is on the Board of LINETS which provides an integrated IT platform to the public sector in Scotland.

The Director continues to be a member of the Joint Standing Committee for Legal Education in Scotland, which discusses current developments in legal education and training. It comprises representatives from Scottish Universities, the Law Society of Scotland, the Faculty of Advocates and the legal profession involved in the education and training of lawyers.

The Director has chaired five induction courses, directed at a number of judicial skills and refresher courses and shared with the Deputy Director the directing of one day training seminars. He attended the Justices of the Peace Annual Conference in 2011 and directed the Sheriffs' Principal Management Training in Cardrona in June 2011. In August 2011, the Director undertook a coroner visit in Salisbury followed by a Coroners course at the Army Land Warfare centre in Warminster in preparation for Military Fatal Accident Enquiry training in January 2012.

Between 31<sup>st</sup> October and 3<sup>rd</sup> November 2011 the Director attended the biennial conference of the International Organization for Judicial Training in Bordeaux with the Vice Chairman, the Deputy Director and the JSC Head of Education. During the conference he gave a presentation on teaching judicial ethics while respecting judicial independence.

Recognising the increasing importance of delivering distance learning programmes and the development of online training resources, Sheriff Welsh regularly contributes to the Information and Communications Technology Committee and the Judicial Intranet Working Group.

He is jointly responsible for drawing up the JSC Business Plan with the aim of furthering high-quality facilitation in the delivery of training at all levels of the judiciary. This has included developing new one day seminars referred to above and material for use at residential courses. He advised on the filming and editing of various training DVDs, most recently on domestic abuse, for use at courses. He continues to advance training on effective case management and behaviour in court, particularly in the area of diversity which will be included in the curriculum for next year.

## **6.2 The Work of the Deputy Director, Sheriff Alistair JM Duff**

Sheriff Duff was appointed as Deputy Director of JSC with effect from 1<sup>st</sup> September 2011 and is the first full time sheriff to occupy the post. His commitment to JSC totals 120 days per year, effectively half of his working time. This has meant the he has had to juggle his work with JSC with his responsibilities as a resident sheriff in Dundee.

The Deputy Director supports the Director in his many day-to-day operational duties and deputises for the Director when he is absent. The Deputy Director's duties include assisting with strategic decision making related to the future planning of training events, the JSC Business Plan and financial budgeting for the organisation.

The Deputy Director assists the Director with the development and delivery of all of the residential Judicial Skills and Refresher Courses. With the Director he developed and provided the induction training for three sheriffs and fifteen part-time sheriffs appointed during the period of this report. He has also supported the work of the Jury Manual Committee.

The Deputy Director, along with the Director, provided training at a number of courses for judicial officeholders who had volunteered to act as mentors to newly appointed judges.

The Deputy Director is responsible for the design and delivery of training at national level for lay Justices of the Peace. He will be participating in the two Justices of the Peace Annual Conferences in Stirling during 2012. In addition, he will take part in two national induction courses for prospective justices from Lothian and Borders and South Strathclyde Dumfries and Galloway later this year.

Regular liaison is also undertaken with the Sheriffdom Legal Advisers to identify and discuss training needs and provision for justices. That work too fits with his role as supporting the JSC Justices Training Subcommittee. Work taken forward has involved reporting to the Lord President on the annual Sheriffdom training plans and reports submitted with recommendations being made to standardise the future format of such reports.

In all aspects of the training of Justices he has enjoyed the invaluable support of Gillian Mawdsley, JSC's Lay Justice Training Consultant, who has brought great enthusiasm, creativity and endeavour to this most important area of JSC's work.

The Deputy Director has represented JSC in its contact with the Scottish Government as well as with fellow judicial training institutions in England, Northern Ireland and the Republic of Ireland. Between 31<sup>st</sup> October and 3<sup>rd</sup> November 2011 the Deputy Director attended the



biennial conference of the International Organization of Judicial Training in Bordeaux along with the Vice Chairman, the Director and the JSC Head of Education.

### **6.3 The Work of the Head of Education, Jessica Henderson**

Jessica Henderson took up the post of Head of Education for Judicial Studies on 12<sup>th</sup> September 2011 and is responsible for supporting the Director to uphold the academic rigour and educational integrity of the Judicial Education Programme. One of her key functions is to provide advice on curriculum planning, adult learning and teaching methodology, programme evaluation and governance. Critical to her role is ensuring that the Judicial Training Programme is underpinned by appropriate pedagogic theory. The Head of Education continues to carry out educational research at the University of Edinburgh and is a Fellow of the Higher Education Academy and an Associate of the Chartered Institute of Personnel and Development.

In the first four months in her role the Head of Education spent time observing the JSC training courses; five residential courses and six one-day seminars. From these observations she has been able to establish areas of good practice and areas that require further development. In some cases, such as the one day course on Mentoring Skills, she was able to recommend immediate changes to the delivery mode which were implemented by the Director and Deputy Director. Feedback shows that these changes were well received by participants.

The Head of Education has attended external events in order to map international practice. These visits have included an International Organization of Judicial Trainers (IOJT) event in Bordeaux in November 2011, two visits to the Judicial College in London in September 2011 and December 2011 respectively which included two training observations. These activities provided her with valuable networking opportunities and gave her a broader perspective on judicial training. Further to this JSC welcomed a visit from Brettel Dawson from the National Judicial Institute of Canada in November 2011. Jessica and Brettel had the opportunity to observe a Skills course together which led to fruitful exchanges and towards

the end of the week they spent time discussing the Canadian model of Judicial Education and the future direction of JSC.

In January 2012 the Head of Education established the JSC Programme Team which is made up of the Chairman, Vice Chairman, Director, Deputy Director, Head of Education and the Learning Technologist. The overriding function of the Programme Team is to plan the new 2013/14 curriculum in anticipation of moving to new premises and in light of the recommendations for educational improvements from the Head of Education. The Programme team has met three times and has started the curriculum mapping exercise. A skeleton curriculum will be in place by August 2012 and a fully developed curriculum will be in place by January 2013. It is also envisaged that the Programme team will have access to an advisory body made up of senators, sheriffs and part-time sheriffs whose role will be to advise on training needs and help to inform the future curriculum.

On 6<sup>th</sup> March 2012 the Head of Education arranged a viewing for the Director, the Deputy Director, and the Head of the Secretariat of the Innovative Learning Space at the University of Edinburgh. This was an award winning, bespoke learning space designed to facilitate collaborative and problem-based learning making effective use of technology. The new judicial training suite will be modelled on this space in order to create a suitable and purposeful learning environment for the Judiciary.

In March 2012 the Head of Education held two focus groups in Edinburgh, one for Senators and one for Sheriffs and another shrieval focus group is planned for April in Glasgow. The aim of these focus groups was to update and supplement the Training Needs Analysis carried out by Professor Dame Hazel Genn QC in 2008<sup>2</sup>. The focus groups provided a useful forum to discuss future training needs and to reflect on the existing education programme and how far it is meeting the current training needs. The outcomes of these meetings will inform the work of the Programme Team.

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<sup>2</sup> Professor Dame Hazel Genn QC, *Judicial Learning Needs Analysis for the Judicial Studies Committee for Scotland*.

A Learning Technologist, Jackie Carter, was recruited at the end of March and will take up the post in May 2012. Jackie's role will be to develop technology-supported education for the Judicial Studies Committee and to advise and assist with the introduction of technology-supported learning across the Judiciary in partnership with the Director of Judicial Studies and the Head of Education. Initial projects will be to develop an online interactive version of the Bench book and to begin scoping out a Virtual Learning Environment (VLE) for the judiciary. Jackie will represent the JSC at the Intranet Management Group meetings and will take on management of the JSC section of the judicial intranet from end of July.



