

The Fingerprint Inquiry | Scotland

Background

In May 1997, David Asbury was convicted of the murder of Marion Ross. The prosecution case against him included fingerprint evidence.

In the course of the investigation into Miss Ross's murder, a fingerprint was found on the doorframe of the bathroom in Miss Ross's home. It was identified as belonging to Shirley McKie, a serving police officer involved in the murder investigation. That fingerprint became known as "Y7". In the course of the trial of David Asbury, Shirley McKie denied that the fingerprint was hers.

After the murder trial, Shirley McKie was prosecuted for perjury (lying while giving evidence on oath) because of what she had said in her evidence at David Asbury's trial. The evidence before the jury at Shirley McKie's trial included evidence from defence fingerprint experts that Y7 was not her fingerprint. The jury, unanimously, found Shirley McKie not guilty of perjury.

The identification of Y7 was originally made by officers of the Scottish Criminal Record Office. Various fingerprint experts have expressed differing views as to whether Y7 is the fingerprint of Shirley McKie.

In August 2000 David Asbury was granted interim liberation pending an appeal against his conviction for murder. His conviction was quashed in August 2002. The Crown did not oppose his appeal.

Shirley McKie raised an action for damages arising from the identification of Y7 as her fingerprint. It was settled out of court by Scottish Ministers, without admission of liability, in February 2006.

The steps taken to identify and verify Y7, and the measures that might be taken to avoid any shortcomings in the identification and verification of fingerprints in the future in Scotland have not previously been the subject of a public judicial inquiry. The Fingerprint Inquiry is being held under the Inquiries Act 2005 and the Inquiries (Scotland) Rules 2007.

The purpose of a public inquiry

Within the confines of its terms of reference, the purpose of a public inquiry is to investigate thoroughly the matters in question, to establish the facts and find out what happened. Where necessary, recommendations will be made to prevent something similar from happening again.

By statute, an inquiry cannot determine civil or criminal liability or award compensation. However it is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines, or recommendations that it makes (Inquiries Act 2005 section 2).

An inquiry is often described as “inquisitorial” as compared to the “adversarial” proceedings in a court case. It is a means of seeking out the facts in a way that would not be possible in adversarial proceedings in which one party wins and another loses. A public inquiry does not decide in favour of one side or another, nor is it a trial or a disciplinary hearing.

An Inquiry looks for the co-operation of individuals and organisations to assist it. However, it does have the power to call witnesses and to compel witnesses to give evidence, either in writing or orally, and to produce any relevant documents.

The Inquiry Chairman

Inquiries under the Inquiries Act are conducted by an inquiry panel which in the case of this Inquiry, is a Chairman alone – Sir Anthony Campbell, a retired appeal court judge from Northern Ireland.

Subject to the Inquiries Act and Rules, the procedure and conduct of an inquiry are for the Chairman of the inquiry to direct.

Terms of Reference

The Inquiry has the following terms of reference:

- To inquire into the steps that were taken to identify and verify the fingerprints associated with, and leading up to, the case of *HM Advocate v. McKie* in 1999.
- To determine, in relation to the fingerprint designated Y7, the consequences of the steps taken, or not taken.
- To report findings of fact and make recommendations as to what measures might now be introduced, beyond those that have already been introduced since 1999, to ensure that any shortcomings are avoided in the future.

Previous Hearings

The Inquiry has held two preliminary hearings – an Initial Hearing in October 2008 and a Procedural Hearing in November 2008.

Initial Hearing – 20 October 2008

The Chairman announced the core participants in the Inquiry (as at 20/10) and called for submissions from them, and others who so wished outlining:

- the issues within the terms of reference that they would wish to see the Inquiry pursue;
- the lines of evidence that they would regard as necessary for the Inquiry to follow;
- a note of the witnesses and documents that they would regard as relevant to such lines of inquiry.

Procedural Hearing – 21 November 2008

The Chairman announced that the broad issues within the Inquiry's terms of reference that will be considered are:

1. Fingerprints: the identification and verification of the marks labelled Y7, Q12, QD2 and XF.
2. The decision to prosecute Shirley McKie.
3. The response of the Scottish Criminal Record Office and its successor bodies to the acquittal of Shirley McKie.
4. Fingerprint procedures in the Scottish Criminal Record Office and its successor bodies.
5. Training and qualification of fingerprint examiners in Scotland, and presentation of fingerprint evidence in Scottish court proceedings.
6. Research regarding the current status of fingerprinting as a forensic science and possible causes of error.

He also advised that the issues would be kept under review as the Inquiry proceeds.

Inquiry procedures

Since these preliminary hearings, the Inquiry team has continued to obtain documentary evidence and has taken statements from witnesses. These have been made available to core participants in preparation for the oral hearings.

The statements obtained from witnesses are part of the evidence to the Inquiry. If a witness gives oral evidence, this will be given under oath (or affirmation). Most of the questioning of witnesses at the hearings will be by Inquiry Counsel.

A detailed Inquiry Hearings Procedures document is available on the Inquiry website.

The Inquiry team

Inquiry Counsel are Gerry Moynihan QC, Senior Counsel to the Inquiry and Ailsa Carmichael QC, Junior Counsel to the Inquiry.

Ann Nelson is Solicitor and Secretary to the Inquiry and there is a team of support staff.

Biographies have been included in this pack and are also available at:

www.thefingerprintinquiryscotland.org.uk