



J1/S2/06/24/3

## STRATHCLYDE JOINT POLICE BOARD

Our ref PB/MB/CW/pbl084  
Your ref  
Date 06 June 2006  
If phoning please ask for: Mr Blair

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Ms Pauline McNeill MSP  
Convener  
Justice 1 Committee  
Justice 1 Committee Clerks  
Room T3.60  
The Scottish Parliament  
EDINBURGH EH99 1SP

Dear Ms McNeill

### SCOTTISH CRIMINAL RECORD OFFICE AND THE SCOTTISH FINGERPRINT SERVICE

I refer to your letter of 31 May 2006 addressed to Councillor Jean McFadden, Convener of Strathclyde Joint Police Board in which you requested in connection with the enquiry presently being undertaken by the Justice 1 Committee of the Scottish Parliament into the Scottish Criminal Record Office, a copy of the report prepared by Mr Jim Black for the Scrutiny Committee which reported in 2002 to Strathclyde Joint Police Board in respect of disciplinary or capability matters relating to the suspended fingerprint officers.

I enclose a copy of the report for the assistance of the Committee.

As you will be aware the Scrutiny Committee recommended to the Board that there were no matters of discipline or capability relating to the staff and that all should be returned to operational duties.

Yours sincerely

**MIKE BLAIR**  
Assistant Clerk

Enc

## Scottish Criminal Record Office

### Investigation Report

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## Introduction

This is the report of an internal disciplinary procedure investigation.

Mackay Simon WS, Employment lawyers, put Jim Black forward to the parties involved. He was asked to act as an independent investigating officer under the ad hoc procedure agreed between the various parties.

## Background

### (1) The McKie Mark

This investigation relates to the circumstances of the identification for elimination purposes in February 1997 of a fingerprint mark (called Y7 in the police identification system) as that of a Detective Constable Shirley Cardwell (now known, and named as such during the report, as Shirley McKie). This took place as part of a murder inquiry.

Shirley McKie denied that she had been in that part of the house near to where the body was found and so it could not be her mark. Over the following weeks, months and years she has continued to deny that it was her mark.

The details of the events are laid out in the Director's Narrative (Appendix 1). In outline, the fingerprint experts at Scottish Criminal Record Office (SCRO) continued to identify the mark Y7 as Shirley McKie's. She denied this under oath at the trial of the man charged with the murder. She was charged with perjury and tried. She was found not guilty of perjury.

At her perjury trial two defence fingerprint experts from out with SCRO stated that in their opinion it was not Shirley McKie's mark. Two police reports into the running of SCRO Fingerprint Bureau were undertaken. These highlighted faults with the management of the bureau and the report of Her Majesty's Chief Inspector of Constabulary (HMCIC) engaged two overseas fingerprint experts who said that in their opinion Y7 was not Shirley McKie's mark.

In August 2000 the four experts who had carried out the formal identification and court preparation work in relation to Y7 were suspended on full pay. In September 2001 two senior managers within SCRO Fingerprint Bureau were placed on non operational duties in the light of their contact with the case.

### (2) The "Asbury" Mark

Following a BBC Scotland "Frontline Scotland" television programme further questions were raised over the identification of a mark Q12 which was taken from a tin box found in the home of accused, David Asbury. The mark Q12 on the tin had two fingerprint marks identified, those of the accused and of the deceased, Marion Ross. The defence experts who had given evidence in the McKie perjury trial said that they did not agree with the identification of the mark as that of Marion Ross.

### **(3) Criminal Investigation**

The four experts have been subject to a criminal inquiry that decided that no further action should be taken.

#### **The Investigation Objective**

This investigation has sought to establish whether on the balance of probabilities there are grounds on the basis of conduct or capability for disciplinary action within the ad hoc procedure laid down.

#### **The Investigation Process**

The report is based upon building a working understanding of the skills of the Fingerprint Expert and examining the events surrounding the identification of Y7 and Q12.

Time was spent with the SCRO Training Officer to gain an initial understanding of the management processes now employed in SCRO and some insight into those in place in 1997.

Visits were made to the Greater Manchester Police Fingerprint Unit and the Metropolitan Police Fingerprint Unit at New Scotland Yard. This allowed a comparison with different units and the manner in which they operate.

Examination was made of relevant original documents in the case. Tayside Police who had been responsible for carrying out the criminal investigation concerning the four suspended experts now holds these.

The reports of Her Majesty's Chief Inspector of Constabulary (HMCIC) and the Association of Chief Police Officers in Scotland (ACPOS) Change Management Review Team were considered.

Clarification and advice of employment law issues was sought periodically from Mackay Simon, part of Maclay Murray & Spens, and employment lawyers to SCRO.

Each of the six people involved in the disciplinary procedure were interviewed in Glasgow in December and February. Their Trade Union Official accompanied them other than at the second meetings with Robert Mackenzie and Alan Dunbar when they elected to meet with Jim Black unaccompanied. Notes of the meetings were made and minor amendments agreed to clarify and capture the content of the discussions. These notes are attached to this report.

## **General Issues**

### **Definitions of discipline in the employment situations**

Within the employment situation, there are two main issues that may result in disciplinary action being taken against an employee – conduct and capability.

Conduct – an employee is generally required to conduct him or herself in a manner which is not likely to destroy the duty of trust and confidence that an employee owes to an employer. Certain areas of conduct which result in the breakdown of this relationship of trust and confidence may properly be termed gross misconduct. However there are also other types of conduct of an employee that, while not amounting to gross misconduct, may constitute conduct in respect of which an employer believes that disciplinary action may be appropriate. Examples of gross misconduct may be lying or falsifying records, deliberately covering up errors or acting recklessly in the manner in which work was carried out, while a general example of minor misconduct may be bad timekeeping.

Capability – an employee should be qualified and capable of carrying out the duties associated with the post in which they are employed. If it appears that an employee is no longer qualified to carry out their duties, for instance as a result of advances in technology with which the employee has failed to keep apace, or an employee does not appear to be capable of carrying out their duties as their level of competence is no longer that which is expected of them, or where the work completed can be shown to have fallen below the standard expected and procedures laid down, then an employer may also consider taking disciplinary action.

### **The Fingerprint environment**

Fingerprint identification is scientifically based and has been relied upon for many years as a major source of evidence for courts.

It appears to this report that there are, however, elements that mix the science with an art and strong opinions. It appears a complex world with elements individuality in opinions.

While there are numeric standards laid down of the number of characteristics of the person's fingerprint that are required for identification (16 characteristics for "idents" of suspects although this can be less dependent upon the quality of the print) experts often state that they do not need that number to be able say that a mark relates to a particular person. These formal numbers have generally speaking been for the benefit of easier understanding for court and jury (and are now being discarded throughout the fingerprint world).

In case of "Eliminations" (identification of marks against a person who had a legitimate reason for being at a crime scene, a police officer or relative), while a formal number of 10 or 11 characteristics might be sought, the normally non

controversial nature of eliminations allows for identification with fewer characteristics when the expert is sure of their work.

It should also be noted that the marks looked at by the experts in this field are not the clear precise fingerprints of public awareness. To the untrained eye they may be small smudged marks that can involve movement in the finger that brings different parts of the finger into view at differing angles. Many marks taken at the scene of a crime and forwarded to SCRO Fingerprint Bureau will eventually be discarded as "Fragmentary and Insufficient". This is always the first task of the fingerprint teams when they receive the material. SCRO prides itself that they are willing and able to work with marks that other bureaus might discard.

Across countries there are different definitions of what constitutes a single characteristic or two characteristics. One person might count 16 where another might only allow 8. They will both agree it is the same individual's mark.

In this complex world errors are made. The verification procedure normally contains these within a bureau. In the recent past, however, both New Scotland Yard and the Greater Manchester Police Fingerprint Units have discovered errors that had gone outside their departments into the police and court system. When there were discovered they were readily acknowledged by both the experts and the departments.

### **The external environment surrounding the case**

The general public awareness and concern in this case goes without question.

There has been a substantial volume of publicity in the various branches of the media.

There is a clear concern for the personal circumstances of those involved.

It is the position of this report that these matters cannot have any bearing on the internal disciplinary issues being considered on the basis of the internal procedures laid down, the legal foundations as set out in legislation and case law and on the actual facts discovered in the investigation.

### **The official environment surrounding the case**

1. Shirley McKie was found not guilty of perjury. This fact has no relevance to conduct of this report and to the recommendations that will arise from it.
2. There have been a number of official investigations and reports that relate to the matter as well as statements in the Scottish Parliament.

In these reports and statements it has been stated that there was an

"erroneous" identification. This is based in particular upon on Her Majesty's Chief Inspector of Constabulary 's (HMCIC) investigation and report into the SCRO Fingerprint Bureau that in turn relied upon the work of two foreign fingerprint experts, from Holland and Norway.

There remains considerable controversy over this matter despite the official position. There are Internet sites on the matter, some purporting to show the mark although close control is maintained of the original material. Each of the experts interviewed remains convinced of their identification and feel that opinion in the fingerprint world is moving in their direction.

Jim Black is not, however, a fingerprint expert and cannot in anyway be a final arbiter and these elements have played no part in the analysis of this report or its recommendations.

3. The publicity surrounding the "Asbury" mark and actions of the Crown following the BBC television programme are also outside the remit of this investigation.
4. A police criminal inquiry team has investigated the four fingerprint experts at the centre of this matter and the Procurator Fiscal has decided that no prosecutions should take place.

The decision in this matter is considered to be outside the remit of this report.

### **Review of the Issues Arising from the Investigation**

The interviews were completed in December, each taking around two to three hours, and again February, taking around half an hour. The six people were supported by their UNISON official as requested. A recess took place at the end of the questioning session to allow the interviewees a time of discussion with their representative before they made a final statement.

The schedule of the meetings in general followed the pattern of examination and verification that took place in from January/February 1997 onwards.

The meetings were conducted in a spirit of openness and co-operation and the six people involved answered freely.

The notes of the meeting (set out below) reflect the relevant points examined.

#### Issues of misconduct

This report finds no evidence of misconduct as defined above.

In the case of the four suspended experts the procedures followed and the relationships maintained throughout the initial work, the preparation for the court cases and in the years following remained professional and correct.

