

Forensic Science and Crime Detection in Scotland

INTRODUCTION

The **Shirley McKie and David Asbury cases** have highlighted major issues for fingerprinting and the forensic science services in Scotland.

Following criticism contained in the major procedural and criminal enquiries carried out in the wake of these cases major changes were put into place from 2000 onwards relating to the running of the Scottish Criminal Records Office (SCRO) and other fingerprint units within Scotland.

Despite this however the SCRO has been the subject of continuing criticism from the McKie family, the media, MSP's such as Michael Russell, Alasdair Morgan, Alex Neil, Fergus Ewing and from the international fingerprint and forensic world.

The major problems identified are a failure by the SCRO to admit mistakes and a general lack of openness and accountability within the organisation. It has been recognised that this could allow other mistakes to remain undetected or to be covered up. These failures are seen as reducing the credibility of fingerprint identification services and having a negative impact on criminal justice in Scotland.

In September of last year SCRO fingerprint evidence in a case against Mark Sinclair, who was accused of carrying out a number of armed robberies in Ayrshire, was suddenly withdrawn when three independent experts from outside of Scotland found it to be unsafe. A complaint that the lessons of the McKie case had not been learned was made to the Deputy Justice Minister and the Lord Advocate by Mr Sinclair's QC Ian Hamilton and MSP Alex Neil. The Executive made no official response and the Lord Advocate failed to reply to a request that he make a public statement.

In failing to act the Scottish Executive and Lord Advocate continued its policy of refusing to respond to the continuing criticism against the SCRO.

Claiming that such matters were sub judice because of Ms McKie's ongoing civil action the Executive denied MSP Michael Russell a parliamentary debate and refused to consider a petition from four world renowned fingerprint experts requesting an enquiry into 'Openness and Accountability' at SCRO. It has also been continually evasive whenever related issues are raised within or without the Scottish Parliament.

While important in constitutional and justice terms, this repeated refusal by the Executive and Lord Advocate to respond openly to the continuing criticism is threatening the important crime prevention and detection role of fingerprinting and the other forensic sciences such as DNA

It is generally accepted by many people outwith the Scottish Executive and Crown Office that it is no longer legitimate or sensible to use the subterfuge of sub judice in individual cases to avoid dealing with major national issues that have implications for the administration of justice within Scotland.

MAJOR ISSUES

It is believed that the following general issues threaten the position of fingerprinting and the forensic services as major crime prevention and detection tools in Scotland. They require to be addressed as a matter of urgency by the Scottish Parliament's Justice Committee.

Forensic Science Services. Nearly eight years of mounting criticism from home and abroad against the SCRO and the failure of the Scottish Executive to effectively respond has damaged the credibility not only of the fingerprint services in Scotland but of the whole of the forensic services. Some analysts including Dr Allan Jamieson, Director of the Forensic Institute, see a need for a complete overhaul of these services and to remove them from police control by establishing a national Forensic Science Service.

In England responsibility for all the Forensic services, except fingerprinting, has been removed from the Police and placed under the umbrella of just such a service. The implementation of such a recommendation would have important implications for the funding and provision of fingerprinting and forensic services in Scotland and should be part of the overall Justice Committee review suggested.

Effectiveness and Efficiency. As the Sinclair case demonstrates despite the enquiries referred to above into the SCRO, the subsequent remedial action and the assurances of the Executive and Crown Office, mistakes continue to be made. This is leading to a situation where justice is being compromised and fingerprint evidence in Scotland is being treated with scepticism by lawyers and the public alike. There is also a danger that other forensic evidence like DNA suffering a corresponding loss of credibility.

Openness and Accountability. The failure by the SCRO, Executive and Lord Advocate to admit that the problems within SCRO are much deeper than previously recognised and to open the matter up to further debate casts doubt over their openness and accountability. This has far reaching effects on the administration of justice in Scotland and lends further credibility to those who believe a 'cover up' has been perpetrated.

Non-Numeric System. Plans are currently in place in Scotland to follow Europe (including England) and America by moving away from the previous '16 point system' of fingerprint identification towards a more scientifically rigorous 'non-numeric system'. If the new system is to be effectively implemented and achieve credibility it is vitally important that the present inconsistencies and inefficiencies are admitted and corrected. It is also doubted by a growing number of experts outside of Scotland if the new system can be effectively introduced using the existing manpower, facilities and skills base. Some see a complete review of training and related issues as essential.

Legal Aid. As a result of the McKie, Asbury and Sinclair cases, the massive publicity they have generated, the continuing failure of the Executive and Crown Office to address the growing concerns referred to above and the growth of biometric databases there are already signs of an increase in the number of challenges to fingerprint and forensic evidence in Scottish courts. This has implications for an already stretched legal aid budget in that many more accused will be applying for assistance in funding forensic experts. If accused are denied the services of an expert to counter scientific evidence they are effectively denied justice.

International Implications. To a great extent the whole world of fingerprints and the forensic sciences is in the throes of change, In America, following a number of

‘Daubert Hearings’ and high profile identification mistakes like the ‘Mayfield case’ challenge is now the norm for forensic evidence. This has led to much more rigorous testing of fingerprint evidence in court and to an urgent revision of training and evidence presentation skills. The implications of such cases that have been ignored in Scotland will become much more pressing when the ‘non-numeric system’ is adopted.

International Concern. For the last three years the international fingerprint community has expressed concern about the work of SCRO and the failure of its experts to admit mistakes. In May 2002 a statement by 171 Experts from 18 countries including 26 USA states was presented to the Minister for Justice asking him for a , *‘Review of the openness, transparency and the admission of mistakes at the Scottish criminal records Office.’* There was no official response. As letters and internet comments indicate the international fingerprint community views the perceived failure of the Scottish Justice system as much more important than any individual expert failure.

Misuse of the Sub Judice Rule. It is alleged that specific ‘sub judice’ rules have been mis-used by the Executive and the Crown Office in order to stifle more general debate. The ludicrous position has emerged where the Justice Committee itself is using the ‘sub judice’ rule to avoid looking at the implications of mis-using the very same rule. Meanwhile freedom of speech and openness and accountability in the Scottish Parliament and the justice system as a whole suffers.

Statistical data. Centrally available statistical data re mistakes made by the SCRO and the forensic services subsequent to and following the McKie and Asbury cases is not available. This is seen as an important omission in assessing the effectiveness of these services. Lack of such statistics is seen as effectively preventing MSP’s from monitoring the work of forensic organisations as it impacts on their constituents. There is a strong case for a review of the statistical data required to sustain the principle of openness and accountability.

Growth of Databases. As can be seen from recent statements by the Home Secretary in England and by Police chiefs nationally and internationally fingerprint, DNA and other biometric databases continue to grow and are seen as important weapons against crime and terrorism. It is essential that if our individual rights and freedoms are to be

protected that these databases are subject to strict controls, check and balances. In the light of the above information credibility is a major issue in Scotland.

CONCLUSION

Fingerprinting and the forensic sciences continue to be invaluable crime detection and prevention tools.

Unless the issues identified are faced as a matter of urgency their efficacy will be seriously reduced.

There is a strong case for an enquiry into every aspect of the running of these services by the Justice Committee.

Given the state of flux of fingerprinting and the forensic sciences across the world Scotland has the opportunity of taking a lead in their effective use in crime prevention and detection. Maximising use while ensuring openness and accountability and the protection of the individual from false accusation would help re-establish the reputation of Scotland's justice system internationally.

RECOMMENDATION

It is recommended that the Justice Committee carry out a general review of fingerprint and forensic services in Scotland, take evidence from interested parties at home and abroad and come forward with recommendations to ensure an open and accountable system within which they can operate effectively and efficiently.

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