

HMCI Scottish Criminal Record Office Primary Inspection 2004:

Some Observations

<http://www.scotland.gov.uk/library5/justice/scropi04-00.asp>

<http://www.scotland.gov.uk/Topics/Justice/Police/15403/7440>

Introduction

This report is a reflection on the HMCI's report in as far as it refers to the **SCRO Fingerprint Branch**. I open by highlighting certain background issues that should have been taken into account by the enquiry team when making their assessment.

It has to be acknowledged that the original HMCI enquiry in 2000 was thorough within its restricted terms. The enquiry report contained unprecedented criticism of the fingerprint unit. Much of the remedial work outlined in various follow up reports has also been effective and led to improved administration, procedures, training and personnel welfare.

It is also recognised that the vast majority of experts working within Scotland are honest people of integrity although I would argue that in SCRO they have been let down by the organisation they represent.

The HMCI's return visits however have failed to keep important issues on the agenda. There has been a continual reluctance to admit failings publicly although behind the scenes many things have quietly been put right. This '**siege mentality**' adopted by SCRO and its supporters has led to criticism being denied, real problems being hidden and the issue of **openness and accountability** has virtually disappeared from the agenda

It has also led to vast acres of speculation by a media starved of comment as the system seeks to misuse the '**sub judice**' rule and refuses to make any comment. If some of this speculation is wrong then don't blame the messenger.

Some Important Issues

- The decision to retain the **SCRO Director** in a civilian capacity after he retired from the police must be open to criticism. The individual who had presided over the '**Shirley McKie debacle**' was retained and given further powers. Was a major apologist for the way things had been likely to seek to change things or reveal any flaws revealed during his time in charge?
- Following Shirley's acquittal in **May 1999** and in reaction to public pressure, a May 2000 inspection was carried out by the HMCI. In a highly critical report in September of that year he said the SCRO was 'not effective and efficient' and made **twenty-five recommendations** and **20 suggestions** aimed at improving every aspect of the performance. **Less than 6 months after** his damning criticism the HMCI deemed SCRO to have returned to being 'efficient and effective'. This **rush to judgement** - made while the experts were not admitting having made any mistakes and a criminal enquiry was

ongoing – allowed some guilty parties to avoid detection and resulted in many vital issues not being addressed.

- In **October 2003** Mark Sinclair was tried at the High Court in Ayr accused of carrying out a series of armed bank robberies across southwest Scotland. Part of the evidence against him (subsequently withdrawn) was a fingerprint that Alan Bayle, a leading UK independent fingerprint expert, supported by Northern Ireland experts declared to be an ‘unsafe’ identification. Criticism made at the time by Sinclair’s defence team was apparently ignored and there has never been any explanation as to how this happened and what ‘dispute resolution procedures’ had been invoked. There is no mention of this case in the HMCI’s report.
- It is believed that the two experts who made the ‘**unsafe**’ identification are still accredited to the **Council for the Registration of Forensic Practitioners** (CRFP website – *‘Our task is to assure public confidence in their quality. If someone turns out not to be up to standard, we will not hesitate to deal with them, by taking their name off the register if necessary.’*) We have no information on what action was taken to test the expert’s competence or if the Sinclair identification was declared to the CRFP. It is interesting to note that one of the experts was admitted to membership of the CRFP a couple of months **after** the identification was ruled ‘unsafe’ so some form of enquiry must have taken place.
- The current **HMCI Andrew Brown** when Chief Constable of Grampian was responsible for supervising SCRO and was their main outside apologist when controversy was raging. Although the current inspection was carried out by the Assistant Inspector of Constabulary the report is in Mr Brown’s name and his position as an objective observer must be considered compromised.
- As independent expert **Allan Bayle** has testified to the poor quality of the fingerprint productions given in evidence. (one of the major criticisms in the 2000 HMCI’s report) This means that lawyers, courts and juries can still be misled by the SCRO evidence. This can lead to innocent people being wrongly convicted or the guilty escaping punishment.
- **Anonymous information** received from a reliable SCRO source before publication of the latest report indicated that the enquiry officer had made severe criticism of SCRO. As published the report contains no criticism of the Fingerprint Branch. Lack of openness in respect of SCRO only serves to give such anonymous information credibility.
- The **police enquiry** held by the then Deputy Chief Constable of Tayside in 2000 recommended that the 4 experts (and possibly others) who had ‘identified’ Shirley McKie’s and Marion Ross’s prints **be prosecuted**. The Lord Advocate has never given any reasons why he dismissed this recommendation. These experts are still working in SCRO – hidden away, holding the key to many unresolved issues and with serious accusations made against them. Has the HMCI checked that they are not involved in any verification or quality assurance/control duties within SCRO?

- Experts working within SCRO in 1997 are refusing to allow themselves to be interviewed by Shirley's defence team. Did the HMCI wonder if they have anything to hide? Is this their decision or is it being taken on their behalf by others inside or outside of SCRO?
- **Disquiet about SCRO** is still being expressed by some experts in other Scottish fingerprint agencies and 'off the record' some will state their belief that further mistakes cannot be ruled out.

SCRO Report Discussion:

Summary Para 7: HMIC considers the Scottish Criminal Record Office efficient and effective.

Comment: This is a definition used previously to allay concerns. The fact is there are still significant problems related to the operation of the SCRO Fingerprint Branch and until these are tackled such a statement will be treated with scepticism within the UK and world wide.

Recommendation 4: HMIC recommends that SCRO actively pursues further integration of the (Scottish Fingerprint Service) SFS, taking account of the specific issues raised in this Report (paragraph 5.15).

Comment: While highlighting certain budgetary, manpower and job definition difficulties the HMCI does not appear to have picked up on the resistance to integration voiced by some experts elsewhere in Scotland. This opposition appears to have grown from their disquiet at the failure by SCRO to admit to its mistakes and take internal remedial action. They fear being swallowed up by SCRO, the imposition of an alien culture and a drop in standards. Given the comments in this report these fears appear a very real possibility.

Para.5.22: The case of HMA v McKie involved a Strathclyde Police constable accused of perjury in 1998 after she denied, on oath in court, having been present at the scene of a crime where a finger mark found on a doorframe had allegedly been identified as hers. She was found not guilty of perjury in 1999 and is currently pursuing a civil action for damage. The issues relating to the criminal case included disputed expert fingerprint evidence and the procedures in place in SCRO were examined by HMIC in its Primary Inspection of the Fingerprint Bureau in 2000. It highlighted the need for robust processes in the identification of marks and the preparation of evidence for court.

Comment: The various HMCI reports consistently fail to highlight that this was not one failure by the SCRO experts in wrongly 'identifying' Shirley McKie's print but two wrong identifications. In seeking evidence to convict David Asbury for the murder of Marion Ross they also wrongly identified her print on a box containing money found in the accused's home. This represents **two errors** by **four** experienced experts in the **same case**. When their previous work is checked it is found to be perfect!

Para.5.23: The Glasgow Bureau has since adopted a process where anonymity of expert opinion and verification are central factors. The process is resource intensive, involving as it does, three fingerprint experts being deployed in a Verification Unit

and another three within a *Quality Support Unit*. Consequently, these individuals are not available for front-line comparison work. Nevertheless the process has been benchmarked against those in other major bureaux across the UK and HMIC considers it to be effective because it ensures that there are three independent comparisons of marks and detailed procedures are in place to resolve any disputes which arise.

Comment: This very ‘process (of) anonymity’ was claimed by SCRO when they accused Shirley McKie in 1997. The Police enquiry revealed that such ‘anonymity’ did not exist. It was also claimed that the Shirley McKie and Marion Ross ‘identifications’ had been independently verified by four experts – this was not the case. Why should we believe this is happening now when they have still to admit to any wrongdoing in the past? What are these detailed procedures for dealing with disputes – have they been tried and tested? Were they used to resolve the ‘Sinclair’ identification?

Para.5.24: Bureaux outwith Glasgow operate on a much smaller scale and are unable to adopt the anonymous verification system used at Pacific Quay because of the limited number of experts available. While identifications are all verified by independent expert opinion, this cannot be done anonymously where there are only two or three experts within the bureau. SCRO has benchmarked its processes in the smaller bureaux against those in similar bureaux across the UK and is currently considering arrangements to increase the independence between identification and verification of fingerprint marks at the Aberdeen, Dundee and Edinburgh Bureaux. HMIC will examine progress made in this regard at the review inspection.

Comment: Can SCRO really be trusted to benchmark anything? Again confidential information alleges that in other smaller bureaux in Scotland the number of experts needed for verification instead of being increased is going to be reduced from three to two.

Para.5.25: Since 1924 the aim of fingerprint comparison in Scotland has been to find 16 points or characteristics of friction ridge detail on a crime scene mark which are identical in sequence and agreement with a fingerprint given by a suspect or individual who has given fingerprints for elimination purposes. This is known as a 'numeric standard', although fewer than 16 points of comparison are acceptable in some jurisdictions throughout the world. There is no scientific basis for the adoption of a 16-point standard.

Comment: There is no scientific basis for the ‘non-numeric standard’ to be adopted within the Scottish Fingerprint Service. The truth is that world wide there are a number of different ‘systems’ of identification being utilised and the time is long overdue for global standardisation of fingerprinting as a forensic science.

Para.5.26: In some cases fingerprint experts may be unable to find 16 points of similarity but are able to find a sufficient number to satisfy themselves that it is a positive identification. The move to a non-numeric standard allows experts to express informed opinions on identification based on their skills, expertise and experience and provide a court with the best evidence available. (My emphasis)

Comment: This is an extremely dangerous change given the present state of the SCRO. Given the fact that **two mistakes** were made in the ‘Marion Ross case’, a

further mistake occurred in the ‘Sinclair case’ and all the experts and their supervisors who made these mistakes are still working within the Fingerprint Branch what confidence can we have that they can effectively operate a new system that places so much more emphasis on ‘**skills, expertise and experience**’. In the hands of properly trained ‘scientists’ a ‘non-numeric system’ like ‘**ridgeology**’ can be much more effective. In the hands of inexperienced, incompetent or dishonest experts however it is likely that the only result of the move to a ‘non-numeric system’ will be to remove the safeguards imposed by having to identify at least **16 points**. Experts will now be able to claim an identification on as few as **8 points**. When you consider Mr Bayle’s scathing criticism of the clarity of SCRO’s court productions the danger of reducing the points required is clear.

Para.5.27:HMIC has been assured that the Scottish police service is at a proper state of readiness for the introduction of the non-numeric standard and looks forward to reviewing its impact at the time of the review inspection.
(My emphasis)

Comment: The Scottish Police Service is **not** ready to introduce a new standard. The Scottish Fingerprint Service has yet to emerge as a coherent unit. Serious issues of manpower, training, standardisation, authorisation and accreditation require to be tackled. The adoption of the new standard is yet another example of the ‘rush’ to convince the justice system in Scotland and the profession across the world that the SCRO is now ‘effective and efficient.’

Para.5.28: All four SFS bureaux have achieved accreditation under the International Organisation for Standardisation (ISO) ISO9001. This entails examination of those elements of an organisation's management that direct and control it with regard to quality. The standard is based around the principles of customer satisfaction, continuous improvement and the development of a process based quality management system. It requires an organisation to look closely at itself and consider how it can improve. (My emphasis) HMIC acknowledges the positive approach taken by the SFS in undergoing this regular scrutiny and achieving the required quality level associated with the award.

Comment: If the facts and speculation in this report have any validity then the claims re ‘**customer satisfaction, continuous improvement and quality management**’ are premature. While so many issues remain unresolved it is hard to see how the level of quality claimed was ever achieved.

Para.5.29: The Council for the Registration of Forensic Practitioners (CRFP) is a professional regulatory body which maintains a register of currently competent forensic practitioners.....registration is by application, giving details of the applicant's career, qualifications and training and the identification of two professional references. Declarations about past record and commitment to the principles in the CRFP Code of Conduct are required, along with a list of recent casework from which examples are selected for detailed scrutiny and assessment. The emphasis is on current competency to secure public confidence, so each practitioner has to undergo revalidation every 4 years. CRFP examine what steps have been taken to keep up to date with relevant developments, maintain competence levels and further develop professional expertise.

Comment: The principles behind the CRFP are excellent and offer the hope of future standardisation in the forensic sciences across the UK. A register of properly trained, qualified and supervised experts can only help the credibility of these sciences. As stated above however the two experts who endorsed the 'unsafe Sinclair identification' are CRFP members and one was accredited only two months after the identification was challenged. This raises issues re the quality of applications, standards for accreditation and how well the system is policed.

Para.5.31: HMIC welcomes the extent of progress which has been made since the Primary Inspection of the Fingerprint Bureau in 2000. Significantly, all of the recommendations and suggestions which remained outstanding from that inspection have been examined and can be discharged.

Comment: A complacent report failing to take into account very real problems within SCRO. Its findings do not in any way draw a line under the 'Marion Ross Case'. Many questions remain and if the Justice authorities will not ask them then they will have to be asked at next year's civil hearing in the Court of Session.

Conclusion

If the culture of arrogance and cover up identified at SCRO over the years is not changed and is exported to other Scottish units all the commendable measures outlined in the HMCI's report, aimed at creating a reliable Scottish Fingerprint Service, will have been for nothing. **It is reasonable to suggest that some of the honest majority of experts in Scotland who view the goings on at SCRO with horror could well be driven from the Service.**

This latest HMCI report will not restore public confidence in a discredited system. No matter how sophisticated the technological and other change, without a culture of objectivity, openness and accountability trust will always be an issue.

In closing I would appeal to the HMCI to address the issue of removing the Scottish Fingerprint Service from Police control as a matter of urgency. The forensic scientist's essential culture of total objectivity does not sit comfortably with the overpowering subjective culture of a Police Service properly engaged in a 'fight against crime'. The time is long overdue for the Scottish Fingerprint Service to join the other forensic sciences in a **Scottish Forensic Service.**

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