

**Justice 1 Committee  
Inquiry into the Scottish Criminal  
Record Office and the Scottish  
Fingerprint Service  
Volume 1: Report**

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**Summariser's Note:**

Despite the fact that it is ultimately unsatisfactory and incomplete the Enquiry Report did review a massive amount of written and oral evidence and highlighted some important issues. It is a great pity that the prejudices and party political considerations of some of the members were not left at the enquiry door.

In this précis I have tried to concentrate on the new issues flagged up by the enquiry. It is subjective but I believe gives a clear picture of SCRO as an ineffective and inefficient organisation and places a number of serious questions over the behaviour of its experts.

By any measure this report can be seen as yet another major condemnation of the SCRO fingerprint bureau past and present and a condemnation of those entrusted to ensure that things were put right in the wake of the Shirley McKie case.

**Full report:**

<http://www.scottish.parliament.uk/business/committees/justice1/papers-06/FinalPDFversion-volume1.pdf>

**Summary of Report**

**Note:** Passages of particular importance have been underlined by the summariser.

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**Para 134.** The Committee's view is that Arie Zeelenberg's explanation (that the mark was a single touch, placed tip first with pressure downwards) was comprehensive and detailed. The Committee notes that Alister Geddes and Hugh Macpherson also indicated that it was a single touch. However, the Committee notes that both Mr Geddes and Mr Macpherson reached a different conclusion to Mr Zeelenberg on mark Y7.

135. The Committee's view is that Robert Mackenzie's theory, (that the mark represented several touches) as expressed in his precognition to James Mackay, lacks detail. However, the Committee recognises that it did not press him further on this theory when he appeared before the Committee.

136. Most of the experts discerned an element of twisting in the mark. John Berry and Peter Swann, however, put forward a distinct theory about the level of twisting, suggesting that the mark had undergone a 66 degree anticlockwise movement. The Committee notes that Pat Wertheim was sceptical about this theory, particularly in relation to the lack of smudging of the mark which he said he would have expected to find in a mark with this degree of movement. The Committee also noted that both Arie Zeelenberg and Mike Thompson did not accept the theory in light of the lack of smudging in the mark.

137. While the Committee recognises the clarity of the evidence given by Mr Berry and Mr Swann, the Committee considers that they did not fully substantiate their theory. In particular, they did not offer an explanation as to how this degree of movement could occur without any evidence of smudging or discontinuity. It would have assisted the Committee's understanding of their theory if they had offered further explanation.

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163. The Committee notes that it was common for SCRO to receive tenprints with limited detail in the tip of fingerprints and appreciates the difficulty in attaining this detail. In the case of mark Y7, the Committee acknowledges that the SCRO fingerprint officers felt (un)able to undertake consideration of the mark without having an impression which showed the full detail of the top part of the left thumbprint of Shirley McKie.

164. The Committee notes that both Peter Swann and Charles Stewart stated that although there were 'unexplained' differences in the top part of the mark, these differences could be disregarded due to the fact that there were sufficient characteristics in sequence and agreement in the lower part of the mark.

165. The Committee contrasts this approach with that taken by Arie Zeelenberg who was of the clear view that one single unexplained discrepancy would stop the identification process.

170. Assessing the overall positions taken by the fingerprint experts on mark Y7, the Committee is incredulous that Arie Zeelenberg could find no ridge characteristics in agreement and 20 in disagreement and John MacLeod could find one in agreement and 15 in disagreement and yet John Berry and Peter Swann could find between them 32 in agreement and disagreement.

172. The factors cited as being a possible cause of the divergence in conclusions are—

- use of a plain impression versus a rolled impression;
- use of images obtained from the internet; and
- use of a print published in the Daily Mail.

183. The Committee is of the opinion that the use of a rolled impression versus a plain impression cannot account for the divergence of expert findings on mark Y7.

184. Concerns were also raised about the use by some fingerprint experts of internet images of mark Y7 to reach a conclusion on whether or not it matched the left thumbprint of Shirley McKie

191. The Committee notes the preference of the SCRO fingerprint officers for the use of original material. However, the Committee also notes that Robert Mackenzie and Alan Dunbar made use of material from the internet for the purposes of their presentation at Tulliallan.

192. The Committee also notes the concerns about the so-called brush mark on the internet image of mark Y7. On the basis of the evidence given to the Committee, the Committee is not, however, convinced that this brush mark altered the image in such a way that it would necessarily change an expert's conclusion on the identification of the mark.

199. The Committee notes the opposing arguments presented by fingerprint experts about whether the impression from the Daily Mail was of sufficient quality for comparison purposes. It would appear to Members that the printing process could impair the detail of the print.

200. The Committee considers that the debate among experts about the effect of these factors in the comparison of mark Y7 and Shirley McKie's thumbprint has created additional confusion in an

already complex case. However, the Committee is not persuaded, in this case, that these factors were of critical importance to the conclusions drawn by the various fingerprint experts.

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203. The consideration of mark Y7 highlighted a number of concerns about the consistency of procedures within the SCRO Fingerprint Bureau.

216. The Committee finds it disturbing that in 1997 there would appear to have been no agreed procedure or standard for the comparison of a mark with an elimination print in the SCRO Fingerprint Bureau. In the apparent absence of such documentation, it is not possible for the Committee to give a definitive view on whether Mr Macpherson's approach was appropriate or not.

217. However once the decision was taken to adopt a 16 point standard for identification of mark Y7, the Committee considers that it is reasonable and logical to expect that this standard would have then been used by every SCRO fingerprint officer who subsequently examined mark Y7. The Committee considers that the fact that this did not happen highlights a serious flaw in SCRO's identification and verification procedures at that time.

238. The Committee notes that in initialling the back of the photograph of mark Y7 with her own initials and those of Hugh Macpherson and Charles Stewart, Fiona McBride was using a method for tracking which was not an agreed and documented procedure.

239. However, having done so, the Committee questions why Alister Geddes's initials were not also added to the back of the mark given the fact he too had verified the identification although not to the 16 point standard.

240. The Committee is concerned that senior fingerprint officers were content to allow such an ad hoc procedure to be implemented without further consideration or comment.

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241. Further concern was raised about the procedures in place within the SCRO Fingerprint Bureau in relation to the implementation of what has been termed a 'blind test'.

250. It should be noted, however, that in evidence to the Committee Alan Dunbar did not indicate that any of the fingerprint officers participating in the blind test failed to reach a conclusion on the mark. Alan Dunbar told the Committee that— "No officer came back with a different finding."

251. The Committee was concerned about the uncertainty as to who conducted the test and what their conclusions had been. As such, the Committee wrote to David Mulhern, asking him to arrange responses from Greg Padden and Jean McClure to confirm whether or not they were involved.

252. Responses were received from Greg Padden and Jean McClure. Jean McClure confirmed that she had participated in the blind test but that she had not reached a conclusion on the mark. She explained that when she was asked to consider the mark, it was late and she was tired. She indicated that she had requested a further opportunity to consider the mark in the morning, but that she had not been afforded this opportunity.

253. Greg Padden also confirmed his involvement and that he too had not reached a conclusion on the mark. In his response, Greg Padden indicated that he had not been afforded an opportunity for a 'proper examination' of the mark. However, his impression was that there was insufficient detail in the mark for comparison. Like Jean McClure, he asked for further time the following day to consider the mark. He made this request to Alan Dunbar who informed him that

he could not have any more time and that a conclusion was required there and then. As such, he informed Alan Dunbar that he could not reach a conclusion on the mark.

254. Greg Padden also indicated that he was not aware of the blind test being used before or after its application in the case of mark Y7.147

259. The Committee is concerned about the implementation of what has been termed a blind test. The Committee is clear that it was an ad hoc procedure instigated by senior management in the SCRO Bureau in response to pressure from senior Strathclyde Police officers to have mark Y7 re-examined. The Committee considers the blind test to have been an ill-considered and inappropriate reaction to this pressure by SCRO management.

260. The Committee found the evidence presented to the Committee by Hugh Ferry to be unclear and confusing. He was unable to confirm whether or not he had authorised the blind test and, in spite of evidence to the contrary, he indicated that he had not been informed of the findings of the test.

261. The Committee considers that the instigation of the blind test was without precedent and without any reference to agreed procedures or standards. Furthermore, it does not appear to the Committee to have been carried out under appropriate conditions. However, once it had been undertaken, the Committee considers that the full process and conclusions of all the SCRO fingerprint officers should have been disclosed to Strathclyde Police and to the Crown Office and Procurator Fiscal Service.

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299. The Committee recognises the concerns expressed by several experts about the cropping of images of mark Y7 for court presentation. However, in this context, the Committee also notes that the practice of cropping was common place.

300. However, the Committee considers that the practice of cropping images for court presentation purposes was contrary to principles of disclosure and transparency. The Committee welcomes the action taken by SCRO to discontinue the practice.

301. While it has been useful and legitimate to explore issues pertaining to the professional competence of the SCRO fingerprint officers in relation to mark Y7 it has not been the Committee's intention to undertake a disciplinary inquiry and accordingly the Committee offers no view on the professional competence of the officers.

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326. The Committee notes that HMIC, ACPOS, the chief executive of the Scottish Police Services Authority and Scottish Ministers have all accepted that mark Y7 was misidentified as having been made by Shirley McKie. The Committee also recognises that John MacLeod, in his first report to the Scottish Executive, concluded that the SCRO fingerprint officers, in reaching their findings on mark Y7, had demonstrated a lack of reasonable care.

327. The Committee did not specifically seek to determine whether the SCRO fingerprint officers acted with malice, however, on the basis of the evidence that it has taken, there is no basis to say that the SCRO fingerprint officers had acted maliciously in their identification and verification of mark Y7. It would appear to the Committee that proving malice may have been challenging for Ms McKie's lawyers had the action proceeded to proof.

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341. What emerged from the evidence-taking process was that the differences of opinion as to the identification of mark Y7 are so fundamental that they cannot, in the opinion of the Committee, be reconciled. Illustrative of this complete lack of consensus is the fact that John Berry and Peter Swann could, between them, find 32 ridge characteristics in agreement between mark Y7 and Shirley McKie's left thumbprint and yet Arie Zeelenberg could find none in agreement and 20 in disagreement.

342. The Committee found it staggering that respected and highly experienced experts could have such widely divergent professional opinions on the identification of mark Y7.

343. But the level of disagreement goes far deeper than one group of experts simply coming to a different conclusion on the identification of mark Y7. There appears to be fundamental disagreement among the experts on most matters relating to the analysis to which mark Y7 has been subject. One such area is that there is no agreement on the way in which dissimilarities between marks are accounted for.

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347. The Committee has not given a view as to whether mark Y7 was correctly identified or not. It was not part of the remit of the inquiry to give a view on this matter. Indeed, any opinion proffered by the Committee as to whether mark Y7 was or was not made by Shirley McKie would be reported as being the verdict of a re-trial of Ms McKie.

348. Instead, the remit of the inquiry is forward-looking and is focussed on the efficiency of SCRO and the Scottish Fingerprint Service. The primary reason for undertaking the inquiry was to contribute to the process of restoring public confidence in the Scottish Fingerprint Service.

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352. It is clear to the Committee that, at best, the case highlighted inconsistencies in the identification and verification procedures within the SCRO Fingerprint Bureau. Procedures, in so far as they were written down at all, appear not to have been properly followed or to have been ignored. Furthermore there appear to have been a number of instances when ad hoc procedures were adopted.

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355. Since 2000, the SCRO Fingerprint Bureau in Glasgow and the Scottish Fingerprint Service have been the subject of a great number of formal inspections and reviews. The following reports have been examined by the Committee—

- HMIC Primary Inspection of SCRO Fingerprint Bureau 2000 (May 2000)
- ACPOS Change Management Review Team (October 2000)
- Mackay inquiry report (synopsis - August 2006) (Original report - October 2000)
- HMIC Primary Inspection of SCRO 2000 (December 2000)
- HMIC Second Year Review of SCRO Primary Inspection 2000 (2001)
- HMIC Third Year Review of SCRO 2000 (2003)
- HMIC SCRO Primary Inspection 2004

365. Following the request from the SCRO Executive Committee, the then HM Chief Inspector of Constabulary, William Taylor QPM, agreed to re-visit the disputed fingerprint identification in the case of HMA v Shirley McKie as part of an inspection of the SCRO Fingerprint Bureau. The inspection was brought forward and pre-inspection work started in April 2000. This culminated in the formal Primary Inspection visit by Mr Taylor which took place on 22 and 23 May 2000.207

367. It is clear to the Committee that the important decisions to bring forward the HMIC inspection process and to isolate the Fingerprint Bureau from the rest of SCRO were taken in direct response to the broadcast of the Frontline Scotland programme and subsequent media coverage of the McKie case.

371. The inspection report was formally published on 14 September 2000. In its overall assessment, HMIC concluded that the SCRO Fingerprint Bureau was “unable to provide a fully efficient and effective service with its present level of staffing, resources, processes and structures.”

383. Mr Taylor also confirmed that it was he who took the decision to select Arie Zeelenberg and Torger Rudrud as the experts to examine the mark having spoken with chief constables in Europe in order to identify someone to help.

384. Anthony McKenna, one of the SCRO fingerprint officers who had verified the original identification of mark Y7 submitted evidence that he and his colleagues had been given assurances that whoever was selected by HMIC to re-examine mark Y7 would be acceptable to them. His colleague Charles Stewart submitted—

“...when we were promised by the HMIC that they would use experts we would consider to be our equals, we warned them not to use the Dutch and explained the basis and conclusions of the Evett and Williams report to them, and explained how it found the Dutch to be lacking in fingerprint identification skills as they spectacularly failed to identify the correct number of identifications.”

385. Arie Zeelenberg and Torger Rudrud independently conducted a comparison of the latent mark found at the crime scene and the fingerprints taken from Shirley McKie for elimination purposes. Both experts were clear in their opinion that there was sufficient detail in the mark found at the crime scene to make an identification. The Primary Inspection report stated that—

“Two of the experts, independently, conducted a comparison of the latent mark found at the crime scene and the fingerprints taken from Shirley McKie for elimination purposes. The two experts who made the comparison were clear in their opinion that there was sufficient detail in the mark found at the crime scene to make an identification. Both experts are unequivocally of the opinion that the mark was not made by Shirley McKie. It is their view that [that] decision could have been reached at an early point in the comparison process.”

394. The Committee has strong concerns that HMIC went to press with emerging findings in the absence of a written report which set these findings in context. The failure of HMIC to publish an interim report to substantiate the emerging findings prevented elected members and others with a legitimate interest from considering the findings in context and subjecting them to detailed scrutiny at that time.

395. The Committee considers that these failings enabled criticism to be levelled that, by taking the approach that he did, HM Chief Inspector of Constabulary was primarily acting in response to intense media pressure and a high profile campaign.

396. Despite these concerns, the Committee considers that the HMIC inspection of processes and procedures within the SCRO Fingerprint Bureau was extremely detailed and thorough. The Committee is satisfied that the HMIC inspection highlighted serious operational problems within the Bureau. The Committee now turns its attention to the findings contained in the HMIC report.

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430. The Committee notes the frequent changes of personnel at the level of the Head of Bureau and above. For example, in the period 1997 to 2006 the Director of SCRO and Deputy Director

have changed on four occasions, while the Head of the Glasgow Bureau has changed three times.

431. The Committee considers that such frequent changes in the management regime must have created a lack of continuity and had an unsettling effect thereby contributing to a lack of confidence among staff in the management of the Bureau. The Committee strongly questions whether the deployment of senior managers (whether serving police officers, who were either on secondment or close to retirement age, or retired police officers) for short periods of tenure was appropriate in an organization facing operational difficulties, rapid change and intense scrutiny. ACPOS and the incoming Scottish Police Services Authority should reflect on this matter in order to ensure that there exists the necessary level of management continuity in future.

456. The Committee notes the concerns raised by HMIC in 2000 about the rate and management of sickness absence in the SCRO Fingerprint Bureau and support structures for staff more generally. The failure of the organisation to monitor sickness absence levels in order to manage the situation was a glaring example of management failure at that time. The Committee considers that the response of the CMRT was worryingly inadequate.

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479. In the synopsis of the Mackay report it is noted that several SCRO staff members stated that they had been unhappy with the standard of enlargements produced by the charting PC from the outset but continued to use it because they believed the enlargements were simply an illustration for the jury and the actual size photographs and tenprints were “best” evidence.

480. The Committee is concerned that a piece of equipment which was intended to assist in the production of enlargements for use by fingerprint officers in court was clearly not fit for purpose. Evidence received by the Committee regarding the quality of court enlargements used during the perjury trial of Shirley McKie suggests that images produced by SCRO officers using the charting PC were of an unacceptable quality. It was only after a review of court productions in this case that use of the system was suspended. The Committee questions why management failed to respond more quickly to officers’ concerns about use of this equipment. This appears to be an example of poor communication between management and staff within the Bureau.

483. As discussed in section 2 of this report, the Mackay inquiry also considered the implications of the McKie case for training of fingerprint officers in presentation of evidence in court. Although the Mackay synopsis reported that an advocate who was involved in the McKie perjury trial suggested that the SCRO fingerprint officers believed in the accuracy of what they were describing in relation to their 16 point identification, that advocate suggested that the officers had “had difficulty in explaining their positions in relation to the distorted part of mark Y7”. Another advocate recalled the SCRO fingerprint officers’ evidence as “sound and convincing” but felt that “their presentation could have been better”. Evidence to Mackay inquiry from another advocate suggested that while there was “no obvious sign of collusion or corruption” in the manner in which the SCRO fingerprint officers gave their evidence he voiced concerns that the fingerprint officers had displayed an “arrogant manner” when giving evidence.

484. This report of events at the McKie trial and the statements made by the advocates to the Mackay inquiry could appear to be at odds with evidence submitted to the Committee’s inquiry by the SCRO fingerprint officers and the former SCRO Director Harry Bell. They suggested that at a meeting with the Advocate Depute following the conclusion of the perjury trial, the Advocate Depute made no criticism of the evidence given by SCRO fingerprint officers. In Mr Bell’s written submission, he stated—

“It was clear that the Crown were satisfied with the fingerprint evidence of the SCRO experts and indeed their credibility and the integrity of experts at the SCRO Fingerprint Bureau.”

489. The findings of HMIC and the CMRT, along with the comments of James Mackay, strongly suggest to the Committee that the general standard of court presentation displayed by SCRO fingerprint officers had been lacking. The Committee notes that HMIC found that SCRO staff acknowledged that there was room for improvement in their presentation skills. The Committee also notes that officers' ability to present their findings in court may have been hampered by the poor quality of the enlarged images produced using the charting PC.

490. The Committee considers that poor court presentation skills were principally the result of inadequate training for and limited experience of officers facing cross-examination, in particular, hostile questioning.

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497. The Committee is concerned at the contradictory evidence it has received in relation to the existence of written procedures in 1997. Although ten years have passed and SCRO is not obliged to retain documents which have been superseded during that period, the Committee is surprised that no evidence of documented procedures from that time could be provided. In the absence of any such material, the Committee can make no further comment on written procedures in 1997.

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515. The Committee is concerned that elimination identifications appear to have required a significantly lower degree of verification and, potentially, a lower standard of identification.

525. In light of the controversy surrounding mark Y7, which was identified as part of an elimination process, the Committee is concerned that HMIC did not consider this matter more closely. HMIC's Primary Inspection report of the SCRO Fingerprint Bureau in 2000 contained no specific recommendation or suggestion regarding verification of elimination identifications.

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539. The Committee notes the recommendation made by HMIC that there should be a national policy for dealing with erroneous and disputed fingerprints and the proposals made by the CMRT.

540. The Committee is concerned that there was no central record of misidentifications or disputed identifications within the SCRO Bureau in 2000.

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650. Considering the conclusions of the HMIC Primary Inspection of SCRO in 2004, which discharged the remaining recommendations and suggestions made in 2000, it would appear that there had been a remarkable turnaround in all aspects of the operation of the SCRO Fingerprint Bureau. The Committee considers that this degree of organisational change coupled with formal independent scrutiny by HMIC should have, by itself, been sufficient to restore fingerprint services in Scotland to a state of efficiency and effectiveness.

651. However, from the evidence presented during the course of the inquiry, it is evident to the Committee that there remains a continuing sense of crisis within the Scottish Fingerprint Service. Although this appears to be principally generated by the continuing dispute around the McKie case, the Committee considers that its root causes still lie in weaknesses in management, processes and human resources.

652. The future of the Scottish Fingerprint Service and public confidence in its work will only be restored if people believe that meaningful change has been effected and the Service can be

considered to be operating to the highest of international standards. It is against this background that recent developments must be measured.

657. Despite this record of reform, and its endorsement by HMIC, the Committee's inquiry has revealed that there remain weaknesses in several aspects of the operation of the Scottish Fingerprint Service.

659. Media and public reaction following the settlement in February 2006 of the civil action brought by Shirley McKie against Scottish Ministers prompted the Minister for Justice, Cathy Jamieson MSP, to announce further reform to the SFS. On 22 February 2006, in a statement to the Parliament, the Minister announced that she had instructed the then interim chief executive of the Scottish Police Services Authority, Deputy Chief Constable David Mulhern, to bring forward by the end of March 2006 an action plan to develop the Scottish Fingerprint Service as an integrated part of the new Scottish Forensic Science Service (SFSS) from April 2007.

663. Given the fact that the programme of reforms prompted by the HMIC inspection of the SCRO Fingerprint Bureau in 2000 had been so recently implemented, the Committee was surprised at the extent of further reform proposed in the Action Plan. As part of its scrutiny of the actions proposed in the Action Plan, the Committee sought evidence on the current status and performance of the Glasgow Fingerprint Bureau and the wider SFS in order to ascertain whether there were outstanding issues which required to be addressed.

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665. The starting point for the Action Plan was to revisit the recommendations and suggestions made by HMIC in its 2000 report.

666. In order to give an informed and impartial assessment of the discharge of the various recommendations and suggestions made by HMIC in its inspection of the SCRO Fingerprint Bureau in 2000, Sir David O'Dowd, former HM Chief Inspector of Constabulary for England and Wales, was asked to re-visit HMIC's 25 recommendations and 20 suggestions and to provide a current assessment of the position, given the passage of time and the opportunity that the publication of the Action Plan for Excellence presented to evaluate the changes already introduced in the Scottish Fingerprint Service. The stated intention was that this would inform a baseline assessment of the SFS, including an examination of current practice.

671. Sir David highlighted a range of weaknesses in a number of areas. The Committee has chosen to highlight those which it considers to be the most significant:

- Structure, leadership and management of fingerprint services in Scotland
- Human resources
- Procedures
- Quality Assurance

678. The Committee questions the discharge in 2003 of the HMIC recommendation that a centralised model for a national fingerprint service be considered. Although practical considerations had resulted in the establishment of the current four bureaux model, HMIC failed to carry out an assessment of whether this model would deliver an efficient and effective fingerprint service for Scotland. Only one year later, in 2004, HMIC (now led by a new HM Chief Inspector of Constabulary, Andrew Brown) found that there were significant integration issues in the SFS.

679. The Committee is most concerned at the extent of the integration difficulties identified by Sir David O'Dowd and in particular Sir David's comment that there is the potential for the service to

become “dysfunctional”. This appears to be damning criticism of how the SFS has been managed in the years in which it has been in existence.

681. Sir David reviewed the current situation within SFS. He found that in the smaller bureaux in Aberdeen, Dundee and Edinburgh, there was no clear standardisation of data collection and analysis although he accepted that this was being addressed. Sir David also noted that at the time of his review, the sickness absence rate in Glasgow was a “worrying 12.24% with some 16 staff sick and seven of those being stress related.” He commented—

“There is no doubt that since HMIC’s last visit there has been a deterioration of sickness management....In light of recent events I question how effectively these issues are being dealt with within the Glasgow office and suggest that there is a pressing need for management intervention to develop an effective action plan accordingly.

682. In relation to the strategy to offer support for the identification and prevention of stress-related illness, Sir David noted that, at the time of the HMIC review inspection in 2003, SCRO had adopted Strathclyde Police’s stress awareness policy and staff had access to the services of Strathclyde Police’s occupational health and welfare service. He noted that the HMIC report of 2004 praised the progress being made in working conditions throughout the SFS and stated that all staff in Glasgow had access to a free, independent employee assistance programme. Sickness levels at that time had been reduced and the recommendation from 2000 was discharged.

691. The Committee shares Sir David O’Dowd’s concerns that there is still no common standard for fingerprint identification and verification in operation across the SFS. The Committee is particularly concerned that in 2003 HMIC considered that its recommendation to increase independence in the process could be discharged while simultaneously stating that the SFS was still working towards a solution.

695. The Committee has serious concerns about the effectiveness of the quality assurance systems of the SFS, particularly given the fact that the training and quality assurance officer roles have yet to be separated in the three smaller bureaux. The Committee considers that SCRO and SFS management failed to treat this HMIC recommendation from 2000 with the degree of importance it clearly deserved.

696. The Committee is also very concerned that in 2003 HMIC saw fit to discharge this recommendation when this had not yet been achieved in all SFS bureaux. If there were practical difficulties in implementing the HMIC recommendation, the Committee considers that rather than simply discharging it, the correct action would have been for HMIC and SFS management to work together to produce a solution which was workable but still addressed the core problem which had been identified by HMIC.

699. The Committee considers it more likely that the issues identified by Sir David in 2006 are problems which have persisted since they were first identified by HMIC in the Primary Inspection of the SCRO Fingerprint Bureau in 2000.

700. The Committee concludes that a number of important HMIC recommendations were clearly discharged prematurely. Sir David’s review would appear to call into question the diligence with which HMIC carried out its inspections following the HMIC Primary Inspection of the SCRO Fingerprint Bureau in 2000.

701. Accordingly, the Committee recommends that HMIC should conduct an internal review of its inspections of SCRO subsequent to Mr Taylor’s Primary Inspection of the SCRO Fingerprint Bureau in 2000, in order to consider the lessons to be learned for future inspection procedures.

702. The Committee also concludes that a number of failings identified by HMIC in 2000 have simply not been properly addressed by SCRO management. These failings include, but are not limited to: structural and leadership issues; staff sickness absence; identification procedures and quality assurance. The Committee recognises that the Action Plan for Excellence is the latest attempt to tackle these failings.

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716. The Committee considers the ICAS Report to be an important barometer of staff morale, health and well-being at a time of extensive impending change within SFS. Worryingly, the report revealed an organisation still riven by inter-bureaux disputes over the McKie case and a deep division between management and staff. The Committee considers that SFS senior management must tackle the issues raised by staff as a matter of urgency if the organisation is to move forward.

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736. The Committee is concerned by the relatively short timescale for the planned integration of the Scottish Fingerprint Service within the Scottish Forensic Science Service when it is clear that the SFS has yet to achieve full integration of the four fingerprint bureaux into a genuinely national service.

737. The Committee considers that further structural change will not, by itself, address the integration issues which continue to afflict the SFS. The Committee believes that it is vital that David Mulhern and SFS senior management set out clearly to all SFS staff the practical benefits which they believe will accrue from the merger between the SFS and the forensic laboratories. The objective should be to secure the buy-in of staff to the plans for the merger.

743. The Committee notes the appointment, on 10 January 2007, of Tom Nelson as Director of the Scottish Forensic Science Service. Mr Nelson was Head of the Lothian and Borders Police Forensic Laboratory before leading the work to establish the Scottish Forensic Science Service.

744. The Committee considers it vital that, as an early action, Mr Nelson should review the management structures in place across the Scottish Fingerprint Service and specifically address the issue of succession planning to ensure continuity and stability in the senior management structure – this is an issue which the Committee considers to have been a long-running area of weakness.

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753. The Committee recommends that as part of succession planning, the Director of the SFSS reviews the skills and attributes required by the Head of Service and the heads of each of the fingerprint bureaux including consideration of whether experience as a fingerprint expert or a forensic scientist would be advantageous in these roles.

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767. The Committee has serious concerns about the exceptionally high rate of sickness absence among staff in the Glasgow Fingerprint Bureau. Evidence received by the Committee suggests that although levels have fluctuated, this has been a continuous problem since the mid-1990s. The Committee is shocked that this situation has been allowed to continue for so long without being addressed by management. The Committee considers this to be completely unacceptable.

768. The Committee believes that the combination of constant workload pressures exacerbated by insufficient resources, ineffective management and leadership and an almost constant level of

intense external scrutiny has been the root cause of the historically high sickness absence rates in the Glasgow Fingerprint Bureau.

770. The Committee notes the intention to introduce a new attendance management policy for the SPSA as a whole. The Committee considers that in order to address the persistent problem of sickness absence in the SFS Glasgow Fingerprint Bureau, this policy will need to be carefully and sensitively managed particularly during the introductory phase if it is to succeed.

771. To this end, the Committee also considers that it would be beneficial if a mechanism can be found which allows truly anonymised feedback from the safeline and counselling service to be given to SFS management on a regular basis to ensure that they are kept aware of key issues of concern to the staff.

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817. Mark Q12 was found on a Marks & Spencer biscuit tin recovered by police from David Asbury's home. Mark Q12 was identified by SCRO fingerprint officers as having been made by Marion Ross. Following David Asbury's conviction for murder the identification was subsequently challenged by independent fingerprint experts. David Asbury lodged an appeal against his conviction in 2000. In light of the new fingerprint evidence, the Crown's view was that David Asbury's conviction could no longer be sustained. Accordingly the Criminal Appeal Court quashed the conviction. The Crown did not seek a retrial.

818. As previously stated in this report, the status of mark Q12 is relevant to an ongoing civil action and, as such, remains sub judice. Accordingly, the Committee is unable to comment further on this mark.

819. Another mark from the Marion Ross murder case, known as QD2, has also been the subject of dispute. Mark QD2 was found on a bank note in the Marks & Spencer biscuit tin and was subsequently identified by SCRO fingerprint officers as having been made by David Asbury. Following Mr Asbury's appeal against his conviction for the murder of Marion Ross, in July 2000 the Crown Office asked two senior Danish police fingerprint experts to check the identification. The Danish experts initially reported that QD2 did not originate from David Asbury.

820. In 2006, the averments prepared by Shirley McKie's solicitors in the civil action against Scottish Ministers, alleged that mark QD2 had been misidentified. This prompted Scottish Ministers to obtain another expert report on mark QD2. The report prepared by Michael Pass concurred with the SCRO fingerprint officers finding that mark QD2 had been made by David Asbury. Separately, the Danish experts, prompted by Arie Zeelenberg, revisited their examination and, having been provided with photographs of the mark which they had previously not seen, reversed their opinion. All parties now agree that mark QD2 was made by David Asbury and the identification is, therefore, no longer disputed.

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827. It would appear to the Committee that the SFS has no common procedures or even common terminology for dealing with disputes over identifications between fingerprint officers. As a single national service in existence for nearly five years, the SFS should by now have established consistent procedures for resolving disputes. The Committee considers this to be an extremely serious omission.

840. The Committee welcomes the steps taken by Mr Mulhern to establish such a strategy. The Committee considers it essential that there should be robust and defined processes to deal with external challenges which would give the staff confidence in exercising their professional expertise in difficult cases. *The Committee therefore believes that the new strategy should be*

*inserted into the Action Plan; and furthermore, recommends that the SFS puts in place a standing arrangement for an independent fingerprint bureau outside Scotland to carry out an independent verification of any disputed identification made by the SFS.*

850. The Committee notes that the establishment of quality assurance standards accredited to ISO 9001 within the SFS may not, in fact, provide the level of assurance attributed to it. ISO 9001 accreditation provides guarantees that processes are being complied with but does not guarantee the outcome from those processes.

*851. The Committee, therefore, considers that SFS needs to regularly benchmark its fingerprint identification procedures with fingerprint bureaux outside Scotland to ensure that they are fit for purpose.*

852. With the impending merger of the forensic laboratories with the fingerprint service, the Committee considers that there exists the potential for a clash of quality standards regimes which will be applied within the integrated Scottish Forensic Science Service. The Committee recommends that the Scottish Forensic Science Service reviews the quality assurance systems to be implemented by both the forensic laboratories and fingerprint bureaux in order to ensure compatibility.

*854. However, from its scrutiny of the Action Plan for Excellence and other evidence it has received, the Committee believes that the issues it has identified present serious risks for the successful reform and future development of the Scottish Fingerprint Service. The Committee considers that the Action Plan, as it stands presently, could potentially fall short in some important areas.*

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*864. The Committee supports the forthcoming merger between the SFS and the forensic laboratories to create the Scottish Forensic Science Service. However, this merger should not be seen as a panacea.*

*865. Given the extent of the integration issues that are still to be resolved by the SFS, the Committee considers that there is a danger that the merger could even be counterproductive – potentially exacerbating the existing problems within the SFS – rather than generating momentum for further reform and improvement. There must be a danger that if people’s energies are concentrated on driving through the merger then focus will be lost on addressing the existing areas of weakness within the fingerprint service. It is imperative that this does not happen.*

*867. Despite the efforts of Mr Mulhern, the gap between management and staff of the SFS does not appear to be closing.* This was demonstrated to the Committee most strikingly when Robert Mackenzie, Deputy Head of the Glasgow Bureau, was questioned about the terms of the Action Plan. He stated that Mr Mulhern had specifically apologised for the wording he had used in the introduction to the Action Plan, in which he had referred to the ‘misidentification’ of mark Y7. Mr Mackenzie explained that the use of the word ‘misidentification’ had generated a high degree of anger among staff.

868. However, when Mr Mulhern returned to give further evidence to the Committee in September, he was keen to clarify his position. *He confirmed that he had met with Robert Mackenzie and Alan Dunbar on the day of the publication of the Action Plan as there was “real anxiety and concern among those two individuals and the other four experts that were involved in the McKie matter” about use of the word “misidentification” in the Action Plan. He continued—* *“I stress that I did not apologise for using the word ‘misidentification’ in the plan—indeed, I stand by that position. I* apologised, rightly—I do not regret having done so—for causing them anxiety and concern. After all, to do so was not the reason why I had used the word.”

869. Mr Mulhern confirmed that he accepted that there had been a misidentification of the McKie mark.

870. The Committee has deliberately chosen not to re-open the debate on the status of mark Y7. It does not consider that it is productive to do so. The Committee, therefore, considers it unfortunate that when asked to comment on how the Scottish Fingerprint Service could move on, Robert Mackenzie chose to focus, in part, once again on the McKie case.

871. Comments made by Alan Dunbar regarding the status of the Action Plan were also of serious concern to the Committee—

“The plan might have had that number of action points in it at some stage, but no longer: there might be seven or eight things we need to do. We would always want to take measures that would result in improvements because we like to think that we are a professional organisation that moves forward. If anyone can give us suggestions, we will consider them and try to incorporate them into best practice. However, I doubt that there are still 25 points on which we need to take action. We work to achieve improvements. I have seen many reports over the years and by the time they are published, we have often met a significant number of the recommendations. That was the case with the HMIC report. When the chief inspector of constabulary reported, we had already taken much of the action that he recommended. That is probably all I can say on the action plan.”

872. The Committee considers this statement by the quality assurance officer of the Glasgow Bureau and one of the most senior experts in the Scottish Fingerprint Service to be illustrative of the sort of attitude which, if left unchecked, will lead to an erosion of confidence in the standards applied by the SFS. The Committee also considers that such comments are symptomatic of a division between the staff and senior management of the organisation.

874. The Committee is in no doubt that communication and relationships between senior management and staff within the SFS have been ineffective in the past. The Committee acknowledges that relations have been strained as a result of various actions and statements by staff and management surrounding the McKie case and the response of senior management to these. The Committee is concerned that a culture of ‘them and us’ has become entrenched within the organisation, a culture which SFS management has not yet tackled effectively.

875. The Committee welcomes the commitment in the Action Plan to improve communication so as to develop a team-based culture. The Committee supports the initial steps taken by Mr Mulhern to foster this approach. However, the Committee does not believe that the culture of the organisation will be transformed through the production of strategies and plans alone, but rather through concerted efforts of managers to communicate and engage more effectively with staff on a day-to-day basis. The Committee urges SFS management to address this issue as a matter of the highest priority.

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881. At the end of its inquiry, the Committee still has major doubts as to whether today’s SFS can truly be recognised as being a national service. The Committee recognises the disparity in size between Glasgow and the other three bureaux and the difficulties that this may have caused. But, the Committee simply does not believe that this is an adequate explanation for the problems which have bedevilled the SFS since its inception.

882. During the course of its inquiry, the Committee has discovered continuing weaknesses in governance arrangements and management of the service. Although the majority of the ‘hard’ changes to processes and procedures have been implemented, it is clear that the necessary ‘soft’ changes to organisational culture have not kept pace. Communication problems and examples of inappropriate management styles have created a serious division between managers and staff.

These failures, coupled with continuing speculation and allegations surrounding the McKie case continued to undermine confidence both within the SFS and more widely. The Committee considers this to be a deeply troubling situation.

883. Beyond these cultural issues, the Committee considers that the general public will be even more troubled about the lack of common operational standards across the SFS. For example, on an issue as fundamental as the approach to an identification and verification of a fingerprint, there is still not one single system for the whole of Scotland. Indeed, up until very recently, there were three. Put simply, the Committee considers that this is unacceptable.

885. It is clear that the Scottish Fingerprint Service still faces considerable challenges if it is to become a 'recognised centre of excellence in its field'<sup>520</sup> as everyone would wish it to be.

886. The Committee supports the measures contained in the Action Plan for Excellence and welcomes the progress towards its implementation.

887. The Committee believes that SFS senior management has, in the past, consistently failed to recognise the size of the task it faces in securing meaningful reform of the organisation. The Committee considers that it must seize this opportunity to tackle the underlying problems within the service. It is imperative that urgent action is taken to bridge the gap between management and staff, heal the rift between Glasgow and the other bureaux and learn the lessons of the McKie case to ensure that it will not be repeated.

888. If such change is to be truly meaningful it is vital that all management and staff of the SFS accept that there are lessons to be learned from the McKie case. The Committee considers that management must take action to address fundamental weaknesses which have seriously impaired the efficiency and effectiveness of the SFS. With this acceptance, the Committee believes that the Scottish Fingerprint Service can finally move on.

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900. The Committee also sought from Colin Boyd the then Lord Advocate, a copy of the police report prepared by Deputy Chief Constable James Mackay following his criminal investigation into the actions of SCRO fingerprint officers in the McKie case. The Lord Advocate agreed only to release a synopsis of information from the report which related to matters such as organisational culture, processes and standards within the SCRO Fingerprint Bureau.

901. While the Committee referred to the synopsis provided by the then Lord Advocate, it has been wary of placing too much emphasis on the information contained within the synopsis as the extracts could not be considered in the context of the full report. Given the scope and nature of the Committee's inquiry, the Committee considers that it would have been in the public interest for this report to have been disclosed in its entirety. In particular, this would have allowed the Committee to scrutinise the report and closely question Mr Mackay on its contents when he appeared before the Committee to give evidence. On this basis, the Committee considers that the then Lord Advocate was wrong to withhold the full Mackay report.

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907. It was not appropriate for the Committee to pass judgement on any allegations of criminality and certainly not to allege criminality on the part of any individual. Likewise it was not appropriate for the Committee to act as a disciplinary tribunal for SCRO officers or, indeed, anyone else. Neither was it appropriate for the Committee to re-try Shirley McKie.

908. The Committee considered it important to go into considerable detail in ascertaining why witnesses either did or did not consider that mark Y7 was made by Shirley McKie. This was done

in the full knowledge that it has been acknowledged by HMIC, ACPOS, the chief executive of the Scottish Police Services Authority and Scottish Ministers that a misidentification was made.

911. The Committee found it staggering that respected and highly experienced experts could have such widely divergent professional opinions on the identification of mark Y7.

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921. It is clear to the Committee that, at best, the case highlighted inconsistencies in the identification and verification procedures within the SCRO Fingerprint Bureau. Procedures, in so far as they were written down at all, appear not to have been properly followed or to have been ignored. Furthermore there appear to have been a number of instances when ad hoc procedures were adopted.

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944. Since one of the stated objectives of the Executive was to draw a line under the issue, the Committee is clear in its view that the absence of an agreement for there to be no further comment on mark Y7 following the settlement was a serious omission. In the absence of such an agreement, it is arguable whether a final settlement should have been reached. The Committee considers that the Executive should have insisted on the inclusion of an agreement for no further comment to be made. The Committee considers that such an agreement should have been achievable.

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Full Report:

<http://www.scottish.parliament.uk/business/committees/justice1/papers-06/FinalPDFversion-volume1.pdf>

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