JUSTICE 1 COMMITTEE

AGENDA

17th Meeting, 2006 (Session 2)

Tuesday 23 May 2006

The Committee will meet at 2 pm in Committee Room 2.

1. **Items in private:** The Committee will consider whether to take items 4 and 5 in private. The Committee will also consider whether to consider the main themes arising from the oral evidence sessions on its inquiry into the Scottish Criminal Record Office in private, at future meetings, in order to inform the drafting of its report.

2. **Scottish Criminal Record Office inquiry:** The Committee will take evidence from—
   
   Shirley McKie, Iain McKie and Andrew Smith QC
   
   and then from
   
   Hugh Ferry, Former Director of the Scottish Criminal Record Office

3. **Scottish Criminal Record Office inquiry:** The Committee will consider whether to delegate to the Convener responsibility for arranging for the SPCB to pay under Rule 12.4.3, any expenses of witnesses in relation to the inquiry.

4. **Scottish Criminal Record Office inquiry:** The Committee will consider whether to accept written evidence received after the deadline for submission of written evidence.

5. **Scottish Criminal Record Office inquiry:** The Committee will consider the main themes arising from the evidence sessions to date on the inquiry, in order to inform the drafting of its report.

Callum Thomson
Clerk to the Committee
Papers for the meeting—

Agenda item 2

Note by SPICe (PRIVATE PAPER) (to follow) J1/S2/06/17/1

Letter from SCRO following on from the Justice 1 Committee meeting on 26 April J1/S2/06/17/2

Letter from ACPOS following on from the Justice 1 Committee meeting on 26 April J1/S2/06/17/3

Letter from Convener to Minister for Justice, 15 May 2006 J1/S2/06/17/4

Letter from Convener to Lord Advocate, 15 May 2006 J1/S2/06/17/5

Members are reminded to bring with them copies of the report of written submissions received on the Committee’s inquiry into the SCRO. The report can be found at the address below:

http://www.scottish.parliament.uk/business/committees/justice1/reports-06/j1r06-05-00.htm

Agenda item 4

Late Written Submission (PRIVATE PAPER) J1/S2/06/17/6

Forthcoming meetings—

Wednesday 24 May, Committee Room 4;
Tuesday 30 May, Committee Room 2;
Wednesday 31 May, Committee Room 5;
Wednesday 7 June, Committee Room 1;
Wednesday 14 June, Committee Room 6.
Dear Mr Donald,

**JUSTICE 1 COMMITTEE ENQUIRY INTO THE SCOTTISH CRIMINAL RECORD OFFICE**

I refer to the evidence given by myself and SCRO colleagues to the Justice 1 Committee on Wednesday 26 April 2006 and to your subsequent letter dated 27 April 2006 confirming that I had agreed to provide members with “(1) copies of an ICAS report; (2) information on the processes that were followed by the Scottish Fingerprint Service in 1997 and information on its current processes; and (3) further information on incidences of misidentification”.

(1) **ICAS REPORT**

The ICAS Employee Assistance Programme is currently used by a number of organisations in Scotland including the Strathclyde Joint Police Board. It provides a 24/7 confidential helpline, telephone support, face-to-face support and lifetime management advice. In view of the media and political attention which SCRO was experiencing in February 2006 and the resultant increase in absence levels it was decided to engage ICAS to undertake a particular piece of work to support staff. The remit provided to ICAS was to assist the management of SCRO and the Scottish Fingerprint Service to identify and understand current issues and concerns, to identify what support staff would find useful and also to provide them with an opportunity to input to the change management process in preparation for the organisational changes proposed for 2007.

At this stage no report has yet been received from ICAS and this is not expected until later on in May. It will be used to provide information for management to consider so far as additional support can be made available and it will also provide input for those planning for changes to take place during the next year.

I trust that this is of assistance in explaining the ICAS involvement with the Scottish Fingerprint Service. The Report will be forwarded on to you when it has been received from ICAS.

(2) **PREVIOUS AND CURRENT BUSINESS PROCESSES WITHIN THE SCOTTISH FINGERPRINT SERVICE**
Firstly, in this regard I can advise you that there were no formal written procedures in 1997 for processes within the bureaux which now make up the Scottish Fingerprint Service. The attached paper by Mr Innes, Head of the Scottish Fingerprint Service details the procedures which existed in 1997 and those which are practised today.

I trust this will provide sufficient information for the Committee.

(3) INCIDENCES OF MISIDENTIFICATION

You will recollect that Mr Neil made references to further “misidentifications” by the Scottish Fingerprint Service and asked for me to confirm if there had been any other “misidentifications”. You will recollect, and the official minute shows, that I commented “I am not sure of the exact wording that the Minister used or whether what was said about the marks is completely resolved. I would like to check on that before I come back to you”

I think it is interesting to note that Mr Neil in his verbal questions at the Committee made reference to “misidentifications”, while the Parliamentary written question and answer which he mentioned (Reference S2W-23601) was to “ask the Scottish Executive how many cases there have been where fingerprint evidence prepared or presented by the Scottish Criminal Record Office has been withheld or withdrawn in the last ten years”. The response by the Justice Minister is “fingerprint evidence is prepared at the request of the Crown Office and Procurator Fiscal Service (COPFS). The decision about the use of this evidence is a matter for COPFS. The Scottish Criminal Record Office knows of two cases in the last ten years where the reliability of identification was such that the evidence was not used in court”. I can advise the Committee that in relation to the first case, this occurred in June 2000. It came to the attention of SCRO following a request from COPFS to prepare evidence for court. Then, internal checking of the print by SCRO experts not initially involved led to doubt being cast on the original identification. The disagreement was brought to the attention of the Procurator Fiscal who subsequently decided to take no further proceedings.

The second case refers to a 2003 case. Here the identification provided by the Scottish Fingerprint Service Glasgow Bureau was challenged by independent experts and the Crown decided not to lead the Scottish Fingerprint evidence in court. My understanding of the 2003 case is that the SCRO officers made an identification with 11 points of sequence and agreement and no points in disagreement that could not be explained. This case was submitted to the Procurator Fiscal as a dire and crucial case. It is my understanding that the independent expert’s report agreed with 8 points in sequence and agreement but concluded that the identification could be unsafe. This is clearly a case of an independent expert feeling that there were insufficient details at 8 points of
agreement while SCRO officers felt there was an identification at 11 points. This is not a case of misidentification.

Given the comments I have made above I trust that the Committee will understand why I hesitated to answer questions about misidentifications when indeed these were not what was asked in the Parliamentary Questions to the Justice Minister.

I should also correct Mr Neil on the point that he made that the two “misidentifications” occurred after the changes to the Scottish Fingerprint Service had been made. This is factually incorrect as referenced above one case occurred in 1999 and the second in 2003.

I trust this information is of assistance to the Committee.

Yours sincerely,

John McLean
Director
IDENTIFICATION/VERIFICATION PROCESS 1997 AND CURRENT PROCESS

Introduction

It has not been possible to establish definitively the identification processes that were being operated by the separate Force fingerprint bureaux and the SCRO Fingerprint Bureau in 1997. This is due to an apparent lack of written procedures at that time. Nonetheless, the Change Management Review Team (CMRT) Report of October 2000 has looked at this issue and appears to be a reliable reference for that point in time and for 1997.

It would appear that the only significant change between the description of the process in 2000 and that which was extant in 1997 is the fact that the practice in 1997 was for an identification expert to be followed by 3 expert verifiers and by 2000 this had been reduced to the identifying expert and 2 expert verifiers. This was in line with the operating practices of other fingerprint bureaux in the UK.

The procedures adopted by the SCRO Fingerprint Bureau in the identification of marks in 197 similar to those of other UK bureaux.

1997 Identification/verification Process

- The photographs of fingerprint marks taken by Scenes of Crime Officers are received by clerical staff into the bureau from the Identification Bureaux of Dumfries and Galloway Constabulary, Northern Constabulary and Strathclyde Police accompanied by a form containing the details of the Crime Scene. This information is placed into a case envelope.

- The tenprint forms of suspects and/or eliminations submitted by the investigating officer are also received by the bureau.

- The fingerprint officer who is to conduct the examination of a mark receives a case envelope from clerical staff, which contains a photograph of the mark or marks to be examined, and details of any suspects or persons to be compared. A form (Form 13B), submitted by the scenes of crime officer (SOCO) who collected the marks, is attached to the front of the envelope giving details of the scene examination and any suspects or elimination prints.

- An initial assessment is made of the marks to establish if they are of sufficient quality to individualise. If they are not, this is recorded and no further action is taken with them.

- If a mark is identified, the fingerprint expert indicates on the photograph which finger the mark relates. After examination of all case material, the case envelope is endorsed with details of the marks identified against...
each suspect, details of which other marks contain insufficient detail for identification, marks eliminated, and those still outstanding. If they were viewed on the comparator (a projection device to view marks enlarged), this is noted on the case envelope. Within SCRO Fingerprint Bureau, historically the Special Cases Section (dedicated to serious crime) made use of a diary page and also made brief notes on a Major Incident Worksheet. This practice was later extended to other sections in SCRO Fingerprint Bureau. Elsewhere, however, very few fingerprint officers in Scotland made notes during the identification process other than the minimum required to record identification.

- The case envelope containing the photograph of the mark, the Form 13B, the tenprints of any identified person and the diary page, if one has been used, are then forwarded for verification of the identification. The Special Cases Section passes it to the Section Supervisor to allocate for verification but the other sections have a more ad-hoc arrangement, either passing it to someone sitting nearby, or to the Section Supervisor for allocation depending on individual preferences. In the case of a non-expert (trainee) making the initial identification, four fingerprint experts are required to undertake the identification process.

- The fingerprint expert who conducts the first verification does so knowing who carried out the initial identification, the individual who has been identified and the finger or fingers the identification relates to. They will also see the diary page, if one has been initiated.

- If verified, the fingerprint expert will sign the case envelope.

- The same process is repeated when the first verifier forwards the envelope and contents to a second fingerprint expert for verification.

- If verified the second expert endorses the case envelope accordingly. The Special Cases Section usually use the Section Supervisor as the second verifier but this practice is not adopted rigorously in the other sections.

- Until 2000 the same process would again be repeated for a third verifier.

- Written notification (or in urgent case a telephone call) is made to the Force concerned

- Marks identified as relating to elimination prints were not subject to verification apart from in the Special Cases Section.

Three areas of process integrity were addressed in response to HMIC’s Recommendation 23 – that “practices be reviewed with a view to introducing a
system which increases the independence within the Identification/Verification Process”. These are:

- The verifications were carried out with the verifiers having available the notes and diary pages of the preceding experts – that is a potential that the verifiers comparison is not independent.

- The verifiers will know the identity of the preceding experts - that there was no anonymity in the process.

- There was no organisation hierarchical cognisance within the process – that is idents could be made by a Principal Fingerprint Officer and the experts asked to verify.

2006 Current Process – Glasgow Bureau

- The photographs of fingerprint marks taken by Scenes of Crime Officers are received by clerical staff into the bureau from the Identification Bureaux of Dumfries and Galloway Constabulary, Central Scotland Police and Strathclyde Police accompanied by a form containing the details of the Crime Scene. This information is placed into a case envelope.

- The tenprint forms of suspects and/or eliminations submitted by the investigating officer are also received by the bureau.

- The expert who conducts the initial comparison receives the case envelope containing the photograph of the mark, any suspect or elimination tenprints that have been submitted by the investigating officer, and the information on the mark as supplied by the Scenes of Crime Officer.

- If the expert’s comparison results in an identification he/she completes diary page and case envelope, noting the identification of the mark.

- The case envelope is passed to an Administration Officer who will retain the case envelope, withdraw the photograph of the mark and the tenprint and pass them to the appropriate Team Supervisor for allocation to an expert for verification.

- The verifying expert only receives the mark and the tenprint and carries out his independent comparison.

- On completion of his/her independent comparison and having completed his/her diary notes regarding the identification and signing case envelope the verifier returns these to the Administration Officer.
• If the verifier’s comparison contradicts the initial identification the Administration Officer passes the case to the QA/Performance Team who will facilitate a discussion between the identifier and the verifier. Should no agreement between the experts be reached the identification will not be declared.

• If the verifier’s comparison agrees with the identification the Administrative Officer again withdraws the photograph of the mark and the Tenprint from the case envelope and passes them to the Verification Team. This team comprises Principal Fingerprint Officers who carry out all second and final verifications.

• If the Verification Team disagrees with the identification then the QA/Performance Team invokes /Facilitated Meeting Procedure. Failure to agree by any of the three experts on the individualising results in the identification not being declared.

• If the Verification Team agrees with the identification and the first verification then the Identification is declared to the Investigating Officer.

Summary Scottish Fingerprint Service 2006 Process – Glasgow Bureau

This current process of verification addresses the three process integrity concerns in that:

• The comparisons carried out by the two verifiers are independent with no access to the previous expert’s diary pages.

• The anonymity of the process is intact with neither of the experts knowing the identity of each other.

• The potential organisation hierarchical influences are removed with the Principal Fingerprint Officer performing all second/final verifications.

Current 2006 Process – Aberdeen, Edinburgh, Dundee Bureaux

In the Bureaux at Aberdeen/Edinburgh/Dundee the independent comparison section of the process between the identifier and verifier is in place however, in those bureaux with only 4 to 5 experts the achievement of anonymity and creating a separate Verification Team is not practicable.
Mr Douglas Wands  
Senior Assistant Clerk  
Justice 1 Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP  
By Email: Douglas.wands@scottish.parliament.uk

Dear Mr Wands

JUSTICE 1 COMMITTEE: CALL FOR WRITTEN EVIDENCE – SCRO INQUIRY

I refer to your correspondence dated 27 April 2006 in connection with the above subject and, in particular, seeking comment on the Action Plan for Excellence for the Scottish Fingerprint Service.

In general, the thrust and direction of the Action Plan is welcomed, as it represents a real opportunity to further encourage continuous improvement within the Scottish Fingerprint Service.

However, whilst members support the concept of an integrated Forensic Science Service, they have some concern regarding the timing of the accelerated transfer of the Scottish Fingerprint Service to this arena. It is essential that strong leadership is sustained within the Scottish Criminal Records Office to successfully oversee the implementation and delivery of the Action Plan.

Members also highlight the necessity for the availability of sufficient resources to manage the cultural and organisational change, whilst continuing to meet the needs of the service it delivers. The resource that is necessary to ensure an effective transition is not yet evident in detail.
The following comments relative to the specifics of the Action Plan are also provided under the respective paragraphs to which they relate.

**Paragraph 3.15**
Following reviews of the independent verification processes introduced in the Dundee and Edinburgh bureaux, the Aberdeen bureau introduced a similar process in April 2006.

**ACTION POINT 9 – ACPOS agreement will be sought for the integration of scenes of crime examiners into the Scottish Forensic Science Service.**

While members are generally supportive of the integration of Scene Examiners into the Scottish Forensic Science Service, and some feel that this is a prerequisite for success of the whole initiative, there remains a concern on the part of some members that centralising the provision of scene examiners may adversely affect the service delivered to smaller communities.

ACPOS recommends that further consideration be given to the practical implications of this action point.

**Paragraphs 4.7 and 4.8**
Members consider that the 'fingerprints' focus of the Report misses the real importance of the Submissions Units, which is to act as the force side of the gateway into the Scottish Forensic Science Service. The purpose of the 'submissions unit' is to assess the overall forensic requirements of the case. This includes the police investigative requirements, other non-forensic evidence, COPFS requirements and timescales, cost-effectiveness, overall prioritisation on behalf of the police force, and to ensure timely delivery and retrieval of productions. A second major purpose is the 'capture' and feedback into forces of any generated scientific intelligence, including DNA database hits, and fingerprint identifications. Somewhere among these key functions lies the fairly sophisticated task of determining cost effectiveness of fingerprints and DNA examination of individual items, prioritising and sequencing these examinations, and responding appropriately to the results.

The submissions unit model needs to be progressed as soon as possible. Unless it is in place close to the inception of the new service, we will remain in our present position of unregulated demand chasing scarce resources. Work is in progress in relation to this matter through the ACPOS Investigations Sub-Committee.

**Paragraphs 5.5 and 5.8**
The move to develop a common purpose within the SFS where staff from all four bureaux have equal opportunity to be involved in the development of the organisation’s objectives and strategies, is seen as a positive move and will undoubtedly be welcomed by all staff.

**Paragraph 6.6**
Members welcome the appointment of informed and impartial experts to provide critical, as well as supportive, input over a 12 month period. They will provide a neutral perspective and help facilitate the changes that will be introduced. At the end of the 12 month period, consideration should be given to ongoing regular and/or annual reviews.
Overall, the Action Plan provides an opportunity to build on the current positive aspects of the Scottish Fingerprint Service and its corporate identity. The public perception of the Service will be enhanced if the plan is delivered.

I trust that the foregoing is of assistance to you.

Yours sincerely,

Chief Constable
(Hon. Secretary)
Dear Cathy

Scottish Criminal Record Office and the Scottish Fingerprint Service

Thank you for your letter of 13 April 2006.

At its meeting on Thursday 4 May, the Committee agreed that I should continue to pursue with the Scottish Executive and Lord Advocate, the recovery of all documents relevant to the inquiry.

The reasons for seeking access to the two reports by John MacLeod and now also the one further report you hold, as acknowledged in your response to written question S2W-23155 from Alex Neil, can be found in the remit of the inquiry.

The Committee has noted the reasons given in your letter for your refusal to release the MacLeod reports. However, the release of these documents to the Committee remains at your discretion and is a matter of policy rather than being a legal requirement.

The Committee has decided to investigate certain matters in the public interest. It is the view of the Committee that the reports held by the Executive are of relevance to these matters and accordingly wishes to consider them. The outcome of the inquiry will be a report which will aim to contribute to improved public confidence in the Scottish Fingerprint Service and the wider Scottish criminal justice system.

I appreciate that this is a complex and difficult matter and that both of us would wish to reach a satisfactory resolution as quickly as possible. If it
would be helpful I would be happy to meet with you and our respective advisers in order to discuss the matter in greater detail.

I should also take the opportunity that this letter presents to make you aware that it is the intention of the Committee to invite Mr MacLeod to give oral evidence and perhaps also the author of the other report, should the person’s name become known.

A response from you by Friday 19 May 2006 would allow the Committee to consider the matter again at its meeting on Wednesday 23 May.

Yours sincerely

Pauline McNeill MSP
Convener, Justice 1 Committee
Dear Colin

Scottish Criminal Record Office and the Scottish Fingerprint Service

As you will be aware, the Justice 1 Committee is currently engaged in an inquiry into the Scottish Criminal Record Office and Scottish Fingerprint Service including the implications of the Shirley McKie case. The full remit for the inquiry is set out below—

To consider the efficient running of the Scottish Criminal Record Office and Scottish Fingerprint Service; the implications of the McKie case; the operation of SCRO and within that the fingerprint service and public confidence in the standards of fingerprint evidence in Scotland; to scrutinise the implementation of recommendations of Her Majesty's Inspectorate of Constabulary primary inspection report of 2000 and to ensure that their service is efficient and effective; and to scrutinise the Action Plan announced by the Minister for Justice for improvements in fingerprint and forensics services in Scotland.

At its meeting on Thursday 4 May, the Committee agreed that I should pursue with the Scottish Executive and Lord Advocate, the recovery of all documents relevant to the Committee’s inquiry.

The Committee is aware that you hold the report prepared by DCC James Mackay and DCS Scott Robertson following their investigation into the circumstances surrounding the identification of fingerprints from the Marion Ross murder scene by SCRO fingerprint experts. The Committee would like to receive a copy of this report and any other unpublished reports you hold which may be relevant to the inquiry. You will no doubt be aware that an
extract from the Mackay Report is already in the public domain and that the BBC has made it generally available on its news website.

The Committee wishes you to be aware that, in making this request, it will not seek to question the exercise of your judgement as to whether or not anyone should or should not have been made the subject of criminal proceedings. The Committee considers that it can only properly fulfil its remit by having before it all of the Reports which are relevant to its remit, otherwise it will not be acting in the full knowledge of the circumstances and the public interest will not best be served. The Committee also notes that, to the best of its knowledge, there are now no active criminal proceedings arising from the Marion Ross murder, the cases involving Shirley McKie and David Asbury having been completed.

I also wish to make you aware that it is the intention of the Committee to invite Mr Mackay and Mr Robertson to give oral evidence.

A response from you by Friday 19 May 2006 would allow the Committee to consider the matter again at its meeting on Wednesday 23 May.

Yours sincerely

Pauline McNeill MSP
Convener, Justice 1 Committee