

GOVERNMENT RESPONSE TO THE LORDS SCIENCE AND TECHNOLOGY SELECT COMMITTEE REPORT: FORENSIC SCIENCE AND THE CRIMINAL JUSTICE SYSTEM: A BLUEPRINT FOR CHANGE

Introduction

1. The Government welcomes the Lords Select Committee inquiry into this complex issue and the recommendations it has produced.
2. The immediate priorities of this Government are to give statutory powers to the Forensic Science Regulator and to ensure market stabilisation. We have already set up a specialist team for policing to manage and develop the market (see paragraph 7) and are actively seeking to introduce legislation at the earliest opportunity. Home Office Science is also working with UK Research and Innovation (UKRI) to scope out work on a new research and development model (see paragraph 23).
3. The Government agrees that the 'delivery of justice depends on the integrity and accuracy of evidence' and agrees with the Forensic Science Regulator that change is needed. It was for this reason, that the Minister for Policing commissioned the *Review of the provision of forensic science to the criminal justice system in England and Wales*¹ (aka the 'joint-review') which was published on 23 April 2019. The Government believes that implementation of the joint-review will significantly improve many of the areas identified by their Lordships. However, we will carefully evaluate their Lordships' recommendations in partnership with stakeholders and plans will be amended where there is a strong business case to do so. This work will be overseen the Forensics Policy Steering Group.
4. The Government agrees that there needs to be a joined-up approach to forensics policy between the Home Office and the Ministry of Justice. Following the appearance of ministers from the two Departments before their Lordships, there has been much closer cooperation. The Ministry of Justice now co-chairs the Forensics Policy Steering Group with the Home Office, and the Home Office presented to the Criminal Justice Board in early July on the state of forensics provision.

Theme: Oversight, leadership and responsibility

We recommend the creation of a Forensic Science Board as an arm's-length body to be responsible for the coordination, strategy and direction of forensic science in England and Wales.

¹ <https://www.gov.uk/government/publications/joint-review-of-forensics-2018-and-implementation-plan>

The Forensic Science Board should work with the newly expanded role of the Forensic Science Regulator, the National Institute for Forensic Science proposed by this report, and wider stakeholders to create and deliver a new forensic science strategy which focuses on greater coordination and collaboration. The strategy should aim to promote proper understanding of forensic science in the criminal justice system. The Board should also consider levels of funding and the value for money in the forensic science market. The Forensic Science Board should set England and Wales on track to regaining its world-class status in forensic science.

The Board should be chaired by a retired senior judge with experience of criminal casework. Membership should include the Director of the new National Institute for Forensic Science proposed by this report, a senior academic, and a senior police officer. The Home Secretary and the Secretary of State for Justice should be jointly accountable to Parliament for the Board.

Government response

5. The Government agrees that the Home Office and the Ministry of Justice must provide leadership in forensic science and that governance needs to inspire effective collaboration and co-operation across operationally independent bodies. The Government has sought to do this by creating a steering group that is jointly chaired by the Home Office and the Ministry of Justice. However, we are reviewing the objectives, membership and constitution of this group. In consultation with the Criminal Justice Board, we will also determine whether this group should take on formal Board status. When we are satisfied that this group has the correct representation, it will consider whether the Government's existing Forensic Science Strategy (2016) provides adequate direction and commission new work accordingly.
6. In due course, we expect this group to include representation from whatever body is appointed to co-ordinate research and development for forensics (see paragraph 23 for detail regarding investment in and co-ordination of research and development).

Theme: The forensic science market

We recommend that the Forensic Science Regulator's remit and resources be reformed and expanded to include responsibility for regulating the market.

The expanded role of the Forensic Science Regulator should review the structure of the market for forensic science in England and Wales and, in particular, the procurement process for commissioning private sector providers alongside provision by police forces. The objective should be to determine a procurement model which balances price, quality and market sustainability; ensures a level playing field between private and public sector providers; avoids undue shocks to the market, such as the clustering of contracts in any one year; and which maintains the capabilities of small providers in niche disciplines.

Government response

7. The Committee report rightly identifies instability within the forensics market as an important issue. In recent years the amount of money in the forensics market has reduced as police forces looked to secure the best possible value for money from contracts, whilst efficiency gains were made in some areas. Insufficient coordination of procurement activity also contributed to the market becoming too small, too quickly. It was for this reason that the Home Office helped the National Police Chiefs Council (NPCC) set up a specialist team for policing within the Forensics Capability Network (FCN) during the Autumn of 2018, to manage and develop the market. With increasingly strong co-operation across police forces, this team will now manage commercial strategy; manage contracts; co-ordinate capability building and provides long-range demand forecasts. In consultation with forces, providers, CJS stakeholders and the Forensic Science Regulator, this team will also lead the reform of procurement policy so that it is more conducive to market sustainability, innovation and collaboration.
8. We recognise that there is a strong relationship between price and quality and therefore there is an argument to be made for specific market regulation in addition to the regulation of quality. We agree with the ends set out in their Lordships' report, but the model proposed requires significant consideration, not least because of the significant impact implied regarding control of police budgets, which are set by Police and Crime Commissioners. We will study other models of regulation and consult other bodies that may be better placed than the Forensic Science Regulator to perform the necessary functions.
9. We think that investment in the FCN and legislation to give the Regulator statutory powers, which will make compliance with her codes of practice mandatory, is highly complementary to the objectives set out in their Lordship's report. The Government is also committed to providing all budget holders with data and measures to assess the impact of forensics spend on outcomes in the criminal justice system. A joint project between policing, the Home Office and the Ministry of Justice has been established to provide this data to stakeholders, which include Police and Crime Commissioners, the Legal Aid Agency and local Criminal Justice Boards. We do not consider this a replacement for regulation, but it is an important component of any model, given the necessity of demonstrating the impact of forensic science and facilitating collaboration between budget holders to optimise spend on the right forensics.

Theme: Ensuring trust in forensic science

The Forensic Science Regulator should work with UKAS to find a proportionate way to reduce costs of accreditation for niche and smaller private providers. Exemptions from accreditation should exist for providers using new or non-standard techniques which could not yet be accredited, but the court should be made aware of this.

The Forensic Science Regulator should review the current regulation framework and make any necessary changes to ensure that it promotes good practice.

While we are not recommending an accreditation process for individual practitioners of forensic science, an independent tribunal mechanism should be established within the Forensic Science Regulator with the power to prevent individuals from providing expert testimony in court where the individual has been found to have presented misleading or insufficiently evidenced opinion. This debarment should apply until the tribunal is satisfied that the individual has demonstrated their competence to resume giving expert testimony. The Regulator should also have powers to issue fines and improvement notices to individuals who do not deserve debarment and those individuals should have the right to appeal to the tribunal.

The Forensic Science Regulator should also maintain a register of forensic science practitioners who have been debarred from giving evidence in court.

The Government should introduce statutory powers for the Forensic Science Regulator. Private members' bills cannot be relied on to do this. The Government should demonstrate its commitment to this issue by introducing a Government bill giving the Forensic Science Regulator the following properly funded statutory powers:

- *The power to issue improvement notices and fines*
- *The power to prevent individuals from providing expert testimony to courts with a corresponding appeals process*
- *The power to investigate a forensic science provider and take enforcement action.*
- *The power to rescind a forensic science provider's accreditation.*
- *The power to inspect, without notice, accredited forensic science providers.*

The Forensic Science Board, with input from the College of Policing and the Chartered Society of Forensic Sciences, should develop a strategy for the ongoing training of all forensic science practitioners, with a particular focus on maintaining competence in niche disciplines and providing expert evidence in a legal setting.

Government response

10. The Government is committed to giving statutory powers to the Regulator by bringing forward legislation at the first opportunity. It has been frustrating that the Private Members Bill has been stymied for reasons unconnected with the content of the Bill itself, and we face unique political pressures which have curtailed Parliamentary time available. However, we are actively exploring bringing forward a government Bill to deliver this as parliamentary time allows.

11. The Private Members Bill was drafted after consultation with the sector and completion of an impact assessment. We have also worked closely with the Regulator to ensure that the Bill provides her office with sufficient powers to ensure requisite quality standards in forensic science are met, whilst being mindful of the

need to maintain a collaborative relationship between the regulator and providers of forensic science. For this reason, the checks and balances in the Bill are important.

12. Having carefully considered responses from the public consultation, we consider granting the Regulator the power to issue compliance notices and prevent non-compliant providers from providing evidence to court to be sufficient. Further, the Regulator cannot be granted the power to rescind a provider's accreditation as UKAS, rather than the Regulator, is the awarding body.
13. With respect to the costs for smaller providers, their Lordships will understand that our top priority is to prevent miscarriages of justice. Providers that have invested in accreditation recognise it as an investment in basic quality management and it is important that providers play on a level playing field. This means removing the opportunity for providers to be undercut by those who have not demonstrated this competency to UKAS.
14. The Government also wants to promote innovation and we note that the Regulator is working with UKAS and the Chartered Society to determine how to reduce the costs of accreditation for niche and smaller private providers. We do not wish to pre-empt this work but will consider any support the Government can offer as part of this process as it progresses. For example, Home Office officials will explore whether grant funding can be found for this purpose. It is also important to note that the Regulator's codes are drafted with reference to an Advisory Council, which includes representation from small and niche providers. The Forensic Science Regulator Bill also includes a right of appeal for those served with compliance notices.
15. We will ask the Forensics Policy Steering Group (referenced at paragraph 5) to consider the requirements of a strategy to ensure the ongoing training of all forensic science practitioners, with a focus on maintaining competence in niche disciplines and providing expert evidence in a legal setting. This is something that will require consultation with key stakeholders and customers, and we will revert to their Lordships for further input.

Theme: The use of forensic science in the criminal justice system

We recommend that the Legal Aid Agency liaise with the market-regulation arm within the expanded role of the Forensic Science Regulator to set new pricing schemes, properly funded by the Ministry of Justice, for forensic testing and expert advice for defendants.

The new Forensic Science Board should have ultimate responsibility for ensuring ongoing guidance to the judiciary and the legal professional about the accurate scientific position on the main types of forensic science. Although this must be a matter for the Board, there is clear benefit in continuing the work that has produced primers on key topics, albeit at an increased pace and with a broader scope. They should be

responsible for enabling dialogue and sharing of best practice, and responding to new developments as they arise.

We recommend that all advocates practising in the criminal courts should, as part of their continuing professional development, be required to undertake training in the use of scientific evidence in court and basic scientific principles such as probability, scientific inference and research methods.

There needs to be a better understanding among legal practitioners of the timescales involved in interrogating and analysing digital evidence where modern technology is not used; this must be built into the pre-trial process.

The Ministry of Justice and the Home Office should invest in research of automation techniques for data retrieval and analysis to reduce the resources and time taken to process and analyse digital evidence and thus reduce delays in the criminal justice system. In doing so, they should assess the use of these techniques in the civil court system and consider what other examples of best practice could be replicated.

We recommend that the Government works urgently to build capacity and resilience in digital forensics. The new role of the Forensic Science Regulator should take into account the need for digital forensic capacity in the course of regulating the market.

Government response

16. The Government is not aware of legally aided defendants being denied access to forensic testing and expert advice for funding reasons. However, the MoJ will keep the rates prescribed for legal aid experts under review to ensure that remains the case². Ongoing review will be aided by the development of data and measures to assess the impact of forensics spend on outcomes in the criminal justice system (referenced at paragraph 9).
17. The Government will ask the Forensics Policy Steering Group to consider whether it should have responsibility for ensuring there is adequate guidance for the judiciary and legal profession on the main types of forensic science. The Royal Society has already produced two primers³ which are of excellent quality, and we will look to the Forensics Policy Steering Group to facilitate the production of any further primers without prejudice to where they might originate from.

² Expert witness costs are claimed from the Legal Aid Agency by Legal Aid service providers as ‘disbursement’ costs. Disbursements may be claimed where it is in the best interests of the client to do so and it is reasonable to incur the disbursement for giving legal advice to the Client and the amount of the disbursement is reasonable. The maximum rates paid for expert witness services in Legal Aid Crime matters are set out in the Criminal Legal Aid (Remuneration) Regulations 2013 (as amended). Those rates may be exceeded where the expert’s evidence is key to the client’s case, and: (i) the complexity of the material is such that an expert with a high degree of seniority is required; or (ii) the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence.

³ <https://royalsociety.org/news/2017/11/royal-society-launches-courtroom-science-primers/>

18. It is for the independent regulators to define and oversee the training regime of legal professionals. The legal profession in England and Wales is independent of government. Under the framework established by the Legal Services Act 2007, legal professionals are regulated by respective approved regulators, which set the training requirements for their members, as well as the appropriate standards, practice rules, conduct rules and disciplinary arrangements. For example, solicitors are regulated by the Solicitors Regulation Authority, whilst barristers are regulated by the Bar Standards Board. There is also an independent oversight regulator, the Legal Services Board, responsible for ensuring that the approved regulators comply with the regulatory objectives set out in the 2007 Act. The Government can encourage these regulators to consider these recommendations and we will consider whether they should be represented at the Forensics Policy Steering Group but is unable to accept these recommendations as binding on the government.
19. We recognise the Committee's call for "better understanding among legal practitioners of the timescales involved in interrogating and analysing digital evidence." The Attorney General's published his 'Review of the efficiency and effectiveness of disclosure in the criminal justice system' in November 2018. The implementation of these recommendations is ongoing. This review also noted the challenges posed by increasing volumes of digital material and the need to consider possible amendments to pre-trial timeliness as a result; recommendation 4B stated: *"It is recommended that the Criminal Procedure Rule Committee consider proposals for amending the rules around extension of Plea and Trial Preparation Hearing (PTPH) for good reason beyond the current 7 days and consider amending the PTPH form to support the Disclosure Management Document (DMD) initiative."* Implementation of this recommendation should address the concerns raised by the Committee, and the Criminal Procedure Rule Committee will be considering this in due course.
20. The Government agrees with their Lordships' conclusion that the fast pace of innovation poses distinct challenges for UK law enforcement. We are determined to assist policing in building the capacity and capabilities it needs and the Forensic Capability Network (FCN) is creating a five-year roadmap to prioritise rapid development in key areas such as DNA and digital innovation.
21. With regards to digital forensics, while the Government acknowledges that a lot of work remains to be done to ensure policing has the capability it needs to meet demand, we would like to assure their Lordships that we are working closely with the National Police Chiefs Council and police forces to deliver digital forensic capabilities that meet the changing and growing demand. Digital capabilities will also be a high priority for the next spending review.
22. Through the police-led Transforming Forensics Programme, we expect national digital forensics capabilities to improve significantly. The Programme is developing detailed plans to ensure quality and resilience of provision through sharing of expertise and best practice, investment in people and technology, and increasing

collaboration across law enforcement. The Transforming Forensics and Digital Investigation and Intelligence (DII) programmes are also developing a roadmap and national procurement plan to close capability gaps and invest in new technology to enable the extraction, analysis, storage and sharing of digital data. The Forensics Policy Steering Group will monitor the impact on outcomes for the criminal justice system and evaluate strategy accordingly.

Theme: Research and development

We recommend that UK Research and Innovation urgently and substantially increase the amount of dedicated funding allocated to forensic science for both technological advances and foundational research, with a particular focus on digital forensic science evidence and the opportunities to develop further capabilities in artificial intelligence and machine learning.

We recommend the creation of a National Institute for Forensic Science within the UK Research and Innovation family, to set strategic priorities for forensic science research and development, and to coordinate and direct research and funding. This body should work closely with the police, the judiciary, universities, private forensic science providers and the Forensic Science Regulator to fulfil these duties. It should be accountable to UK Research and Innovation who should submit an annual report on the activities of the National Institute for Forensic Science to the Forensic Science Board.

Government response

23. The Government will ensure that policing and the CJS benefits from advances in science and technology by developing and implementing new forensic techniques more coherently. The Home Office and the Ministry of Justice are focussed on developing an even stronger working relationship with UKRI as we work with them and other strategic partners to develop and set strategic priorities for forensic science research and development. We will carefully consider the business case for a National Institute, but we consider work in progress to represent a significant step in the right direction and will monitor progress at the Forensic Science Policy Steering Group.

Conclusion

24. Through implementation of the joint-review of forensic science and its ongoing consideration of their Lordships' recommendations, the Government expects the provision of forensic science into the criminal justice system to be significantly strengthened. The Home Office and the Ministry of Justice are jointly responsible for bringing about the collaboration, investment and oversight required to make this happen.

25. The Government published its implementation plan following the joint-review, but we recognise that significant interest in this work demands ongoing communication

and engagement with a broad range of stakeholders, including the Science and Technology Committees in both houses of Parliament. We will consider how best to do this proactively through further development of the Forensics Policy Steering Group's terms of reference, as described above.

26. The Government thanks their Lordships for their recommendations on this matter and we will provide the Committee with regular updates on progress where we have committed to specific actions and further consideration.