Dr Sara Short – Written evidence (FRS0018)

1. I am part of the Small Business Division of the Chartered Society of Forensics Sciences (running a small business with two employees), have expertise in DNA and body fluids primarily and work on both sides of the Criminal Justice System, providing advice to the defence but also undertaking peer review as an external consultant at Eurofins Forensic Services.

The Contribution of forensic science to the delivery of justice in the UK and its strengths and weaknesses

2. I have seen huge improvements in the last decade on how Police Forces best target their resources towards fingerprints, digital and DNA as the most effective means of solving crime. I notice big differences between Police Forces but this may relate to the different requirements of each Police Force. There is a gap between the intelligence led work at the beginning of a case and the production of a case fit for evidential presentation. Police need more training in how to develop and present their evidence in Court. Many DNA cases I deal with get dropped prior to trial because the results are good for intelligence but not of any evidential value. For example, drugs possession/supply and firearm possession – DNA transfer can almost always negate the value of a DNA match.

3. The recent report from the House of Commons Justice Committee: https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-xii/301-xii.pdf indicates that serious underfunding in criminal legal aid has already caused issues. I concur with that finding: we have noticed an increasing number of Solicitors (criminal defence) going bust. We have already noticed that we have to spend more time mining through unused material - this is in part due to cuts to the funding for Solicitors to do this and also due to the SFR process. SFRs often only report results from one item; they are supposed to include a disclosure about all other items seized or, if not that full list of exhibits, then at least all other items sent to the lab(s). We find they don't and so we have to mine through unused to find out what other possible work might be on-going. Might it be possible for experts in cases to be given access to the digital court system to save them having to keep pestering their instructing Solicitors for the documents they need?

4. The Legal Aid Agency is not helpful to defence scientists: they often throw back prior authority requests for varied and inconsistent reasons. I have given up trying to justify the £90 per hour rate for a forensic expert and just go for extra hours at the £72 per hour rate for a DNA expert! They will not pay us direct, even when prior authority has been granted and a Solicitor's firm has gone bust without them having claimed our fees from the LAA the LAA still will not pay. We have also had no luck in getting liquidators to realise that funds Solicitors have obtained from the LAA for our fees should be considered ring fenced and payable to us not part of the liquidated funds of the firm. Why can't the LAA pay experts directly and immediately, say as soon as a Solicitor notifies them that they have received the piece of work for which prior authority had been sought and granted?
5. I see an increasing amount of Police money being spent on new technology such as advanced statistical evaluations (which FSPs are charging high rates for) when the fundamental issue in the case comes down to "activity" level considerations not "source" level. This is in part because the defence are entitled to run vague and multiple defences such as "it isn't my DNA, but if it is then it got there in an innocent manner." Also because of late serving of DCS and Crown's evidential statements.

6. We don't see Crown scientists being pro-active about suggesting the need for joint agreed statements, which is the recommended route in the Criminal Procedure Rules that Courts should go with expert evidence. GDPR has meant a reduction in Crown scientists' abilities to access emails while they are at Court or to have any sort of IT with them that would enable them to produce a joint agreed statement while at Court. Courts therefore need to be made aware that if they want a joint agreed statement the last thing they should do is summon the scientists to attend the first day of trial: it is much more efficient if the scientists can be left at their laboratories to bat drafts backwards and forward by email. Counsel on both sides can be copied in.

7. We are commissioning an increasing amount of forensic work ourselves rather than just reviewing existing work done by the Crown. This is actually due to the Police having a better understanding that they need only address the specific issues in the case and do not need to commission a FSP to do as much work as they might have done in the past: that's a good thing. But they aren't always addressing the defence case (most often because the defendant gave a no comment interview and only later gave an account that can sometimes be addressed by further work). The Police need to be open to commissioning more work later on in the case but still in good time before trial. The defence can do it but only if there is time, the CPS give their permission and the LAA grant the funds.

8. Almost every single defence examination we undertake is delayed as a result of the CPS failing to give their written permission to the FSP to allow the defence access to the case file and/or exhibits. Surely this could be improved? It would have a significant effect on timeframes for production of reports and our work life balance.

9. Why do Police Forces, such as Greater Manchester, Merseyside and the Met still re-type experts' statements when those FSPs have put a great deal of time and expense into the format and house style etc of their statements. In our experience, it has been a source of error creeping in when lay typists attempt to reproduce scientific statements.

The understanding and use of forensic science in the criminal justice system.

10. Streamlined forensic reporting was a great idea; it can and does save lots of Court time but there needs to be a greater understanding amongst defence and Crown lawyers about the idea of early identification of issues. Lawyers (Prosecution and Defence) need more training in the SFR process. There are too many attempts to take stage 1 SFRs to trial instead of stage 2 or 3 evidential statements being commissioned.
11. There is a massive need for training: the law is lagging seriously behind the science. For example, Prosecutors may use the Appeal Court ruling of R – v – Dlugosz, R – v – Pickering and R – v – MDS, EWCA Crim 2 [2013], to enable them to present DNA mixtures with no statistical evaluation, in evidence. But they do not seem to realise the range of different types of mixtures, the need for them to be able to demonstrate the quality of the mixture to the Judge. Prosecutors rarely seek advice from their scientist as to the evidential value (or otherwise) of what was originally an intelligence lead result. They often come to a case only just before trial and a lot of energy has been spent in dealing with results that actually are of no evidential use in the case: we have had many mixed DNA results and indeed whole cases dropped on the eve of trial once the CPS lawyers realise the weakness of their DNA evidence.

Standards and regulation.

12. The need for accreditation plus the need to keep up with new technologies such advanced statistical software for DNA mixtures, is going to place a huge burden on defence experts that will, in my view, considerably change the market and may reduce the ability of defence Solicitors to find experts of equal standing to the Crown experts. It maybe that FSPs will have to pick up the extra demand in the defence market if a number of small businesses decide not to go for accreditation. How is it envisaged that the Regulator will enforce accreditation, even if she is granted statutory powers? I cannot see that the small number of defence experts who have had critical Appeal Court rulings against them will be stopped by the requirement for UKAS accreditation; the defence can presumably still instruct whoever they wish or will the LAA not grant funds to un-accredited experts? Accreditation is hugely expensive and if some elements of the market get away without accreditation that could well put the few who go down the accreditation route out of the market. Accreditation did not prevent the Randox scandal or the Met issues over wrongful reporting of results. How is it proposed to ensure quality and sufficiency in the market?

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