Introduction

1. The Criminal Cases Review Commission (the Commission) is the body responsible for investigating possible miscarriages of justice in England, Wales and Northern Ireland. It was established in 1997 by the Criminal Appeal Act 1995. The Act sets out that the Commission can refer a criminal conviction, verdict, finding or sentence to the relevant appeal court when it considers there is a real possibility that it will not be upheld.

2. The Commission makes effective use of modern forensic science methods in much of its casework and is keen to contribute to the development of strategy and policies for forensic science whenever it can be of assistance, for example through contributions to the Home Office Forensic Archiving Group, and continues to support the work of the Forensic Science Regulator through membership of the Regulator’s Forensic Science Advisory Council.

3. The Commission is grateful for this opportunity to contribute to the work of the Committee and to provide comments, where relevant to the Commission’s work, on the use of forensic science in the Criminal Justice System.

Statutory Powers

4. In his review of efficiency in criminal proceedings\(^1\), Sir Brian Leveson stated “...the vast majority of serious cases, and a significant proportion of all Crown Court cases, now include presentation of one or more types of forensic evidence\(^2\).” He went on to comment that statutory powers for the Forensic Science Regulator are now necessary\(^3\).

5. The Commission echoes Sir Brian’s comments. It receives many applications containing submissions regarding forensic science and often, in the absence of such submissions, will still review the science evidence. By the nature of its work the Commission looks back across a range of recent and historic forensic issues. Looking forward, and with a view to cases the Commission will receive in the future, the Commission takes the view that forensic science used in all stages of the criminal investigation and trial processes should be based on common quality standards underpinned by statutory requirements.

6. The government consulted on statutory powers for the Forensic Science Regulator in November 2013, the outcome was a commitment in July 2015 to take this forward. The 2016 Forensics Science Strategy\(^4\) committed to achieving “...a clearer statutory role for the Forensic Science Regulator.”

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\(^1\) Review of Efficiency in Criminal Proceedings by The Rt Hon Sir Brian Leveson, President of the Queen’s Bench Division, January 2015.
\(^2\) Ibid paragraph 223.
\(^3\) Ibid paragraph 228.
\(^4\) Forensic Science Strategy: A national approach to forensic science delivery in the criminal justice system, Home Office March 2016
7. The Strategy provides a clear and unambiguous commitment to consistent quality management and standardisation across police forces. There is, however, still a lack of clarity about any statutory role for the Regulator or statutory underpinning of the Regulator’s standards. This may become clearer as the Forensic Science Regulator Bill progresses through parliament.5

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Digital Technology

9. The 2016 Forensic Science Strategy quite rightly commented on the growing and ever present use in modern times of digital technology, aligned with the importance of ensuring that those responsible for our protection continue to have the capabilities to investigate crime in this technological age.

10. The Commission has raised its concerns about lapses and failings in the disclosure of unused material by the police and CPS, and is increasingly aware and concerned about the amplification of this problem in the context of digital technology, which is manifesting itself in collapsed cases as and when relevant material comes to light that was always available but buried in the vast amounts of digitally stored data that is becoming common in everyday cases. What of the cases where buried material that might undermine a prosecution or be of benefit to a defence case has not been exposed? The Commission is aware of anecdotal evidence of data being missed through incomplete downloading of data from mobile telephones despite assurance that all data has been recovered.

11. The recovery of digital data in criminal investigations is most often through the use of methods that fall under the umbrella of digital forensics, an area that is moving towards better regulation and quality standards but still lags behind biology, chemistry and other more traditional forensic disciplines.

12. The rapid shift of digital forensics to the forefront of modern day criminal investigations alongside the vast amounts of digital data produced have stretched to breaking point the capabilities of those tasked with investigating and prosecuting offences.

13. The Commission would like to see the commitments made in the 2016 strategy being delivered through research and the development of methods and techniques, within a statutory quality standards framework, that rise to the challenges of modern day life and in the digital age.

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5 A Bill introduced under the Ten Minute Rule and expected to have its second reading debate on 26 October 2018
6 A Bill introduced under the Ten Minute Rule and expected to have its second reading debate on 26 October 2018
7 Chair’s Forward to the CCRC Annual Report and Accounts 2016/2017
The Commission welcomes the publication of the Home Office Biometrics Strategy and within that the oversight and standards role provided by The Biometrics Commissioner, The Surveillance Camera Commissioner, The Forensic Science Regulator and The Information Commissioner’s Office. The Commission wishes to stress the importance of regulation and quality standards across all digital and biometric technologies used in the criminal justice system and equally stresses the importance of regulatory frameworks staying ahead of the technology so that, for example, investigators retain the ability to manage cases in the context of ever advancing technology.

Conclusions

15. The Forensic Science, Biometrics Strategies, and the Forensic Science Regulator Bill are steps in the right direction. But there is already evidence within the criminal justice system of miscarriages of justice occurring because technology in the digital age has moved ahead of our ability to regulate and manage it.

11 September 2018

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