Contribution of forensic science to the delivery of justice in the UK and its strengths and weaknesses in doing so.

1. The government took a secret decision to close the Forensic Science Service (FSS) in 2010 after consulting ACPO. The secrecy meant that The Lord Chief Justice and the Judiciary, the Government’s Chief Scientific Officer, the DPP, The Attorney General and even the Forensic Science Regulator (FSR) had no idea this was being done. Further, at no time has the government sought to consult either branch of the legal profession. The FSR stated that he would have wanted to be consulted before the decision to close the FSS was made and would expect to be consulted on any future significant decision on Forensic Science, as he told the House of Commons Science and Technology Select Committee (S&TSC). It made the point that the Home Office has failed to recognise that the decision to close the FSS should not have been taken purely on commercial grounds, but on scientific grounds. ‘I’ve not heard a single person say that closing the FSS was a good decision,’ said Ann Priston, President of the Forensic Science Society. ‘On the whole, the closure of the only state-funded forensic provision was, I think, an ill-conceived, ill-thought out and hasty decision.’

2. England and Wales are now the only countries in the world in which forensic science (FS) entirely in the hands of either the police or private forensics science providers (PFSP) whose principal customer is the police. The Government expected PFSP’s to pick up the FSS’s 60% share of the external forensics market but had no basis for that assumption.

3. HMG has stated that all police in-house FSS work must be carried out to the same high standard as accredited private sector laboratories. The FSR in her report dated January 2017 stated that forensic science standards were at “significant risk” and that many entities would fail to meet the deadline for reaching the required standards in October 2017. She also expressed concern at the number of contamination related issues that were surfacing. She stated that further cuts to the forensic science budget would compromise quality and damage the British justice system.

4. In January 2018 the FSR said” “Only 17 out of 46 police forensics providers had “any sort of accreditation by the time the [October 2017] deadline passed” for digital forensics—an “impressive” increase from only one police force 18 months before, but “with around 46 legal entities within law enforcement requiring accreditation, there is a long way to go”. This compares with 100% compliance by the large PFSPs. Those failing to meet the accreditation standards were police and government entities. In-house police laboratory work has increased massively since the FSS was closed.
5. The PFSP’s were comprised of 3 large companies and a number of small entities with skills in limited areas. Of those 3 large companies LGC Forensics, the largest PFSP in the UK forensics market, has been acquired by Eurofins Scientific (EUF1.PA), a European leader in Forensic DNA and Toxicology testing in France, Germany and Belgium. Key Forensic Services almost collapsed before being bought by CorpAcq (not a PFSP but a corporate acquisition company), and the police had to pay to keep it operational for a three-month period while outstanding contracted work was completed. Orchid Cellmark Inc (a US company) was acquired by Laboratory Corporation of America Holdings (LabCorp) and is now called Cellmark Forensics, Inc.

6. In January 2017, Contract Traces Ltd, a company providing textile fibre forensic analysis, went into liquidation. In April 2017, digital forensics supplier, Forensic Telecommunications Services, ceased trading. Its founder claims that one of the very police forces it was helping brought about its ruin by copying its closely guarded phone-cracking codes, then publishing them online. FTS was run by senior ex-police officers. The Forensic Archive took possession of some of the company’s test-result material temporarily.

7. PFSP’s depend on contracts with the police for work. Consequently, more in-house work will deplete the market and as commercial entities these companies must take a view on whether to continue to provide services to the police (and the CJS). The market has contracted. PFSP’s providers have not taken on all the workload of the FSS, simply because they do not offer the same range of analytical tests something that did not occur to the government. The price competition has led to an increase in police FS facilities. NAO found that police laboratories could be operating cheaply because they are not meeting internationally recognised accreditation standards (AS) (ISO 17025) and therefore can undercut the PFSP’s. To comply will cost the police forces money that they can ill afford when faced with the present difficulties in funding and the failure to meet the AS is proof of this. Worse, it means that there are 2 standards operating in FS with control by the FSR over only one. The less profitable forensic areas, such as the analysis of trace evidence, have tended to fall by the wayside. The fact certain forensic tests are no longer being done may not be having a detrimental effect on criminal investigations, but no one really knows. The cuts to police funding have fallen largely on civilian police workers such as crime analysts. The NAO were concerned that police were tailoring their requests for forensics rather than doing a range of tests.

8. Concerns have been raised, including by the S&TC, that the forensic tests carried out by police forces may not as rigorous as those that were conducted by the FSS or are by private companies especially as some police forensic units have not obtained the AS, that private providers are required to have before they can conduct forensic work for the police. To allay these concerns, the Forensic Science Regulator, set up to regulate the quality of forensic science services in the UK, stated that all police forces conducting forensic studies should achieve this accreditation. The date by which they had to do so has repeatedly been pushed back from 2012 to 2017.
9. Even if the tests are carried out correctly, they still need to be interpreted properly. This kind of interpretation requires just the kind of expertise that has been lost with the closure of the FSS. 80% of the 1600 scientists employed by the FSS failed to find another job. The government was unable to tell the S&TSC how many forensic scientists were lost as a result of the closure of the FSS. HMG accepted that the loss of experienced scientists means that they cannot be replaced easily but told the S&TSC that the MPS has carried out due diligence and consulted with the CPS on their future needs for forensic science services and both the MPS and ACPO have assured HMG that they have the necessary capability, capacity and expertise. They were not able to offer any such re-assurance about other forces.

10. The destruction of the FSS has led to the creation of small companies offering forensic science skills. This together with the multiplicity of police in-house facilities is encouraging the fragmentation of forensic work, in which the police send evidence from the same case to different providers for different tests both for cost reasons and because smaller providers tend to have specific areas of expertise. But there are inherent dangers in this approach not least the failure of any FSP to know the whole story and to be able to put their work in context. There is real potential for evidence to be lost because if an exhibit goes to one provider and it is examined for one thing and then it moves on to somewhere else and the new examiner does not know what has gone on before or has not got an overview of the whole situation then things can be missed and go missing as well as the potential to affect the integrity of the exhibit.

11. The National Audit Office warned in January 2015 that forensic science standards were slipping as work was transferred to in-house police laboratories and private firms. The NAO was concerned that many in-house laboratories did not meet accreditation standards and the absence of statutory powers vested in the FSR meant that enforcement was impossible. Further, they said, “if suppliers did pull out of the market this could present a risk of service interruption, and a lack of capacity could hold up criminal cases or cause them to collapse.” The NAO was concerned about the lack of effective Home Office oversight and the absence of data on forensics spending by police forces because the Home Office only collected figures on forensic services procured through a tendering system (the National Forensic Framework) which is not compulsory and thus there is no information on darter for services procured outside that system. The bottom line is that no one can be certain about the provision of forensic science or where the benefits are which the government have contended would be obtained by privatisation.

12. Research into new forensic techniques has been seriously damaged by the closure of the FSS, which spent some £3–5 million a year on research. Research conducted by the FSS was instrumental in setting up the world’s first national DNA database, while just before its closure it was developing new ways to extract information from digital devices, prevent sample contamination and rapidly capture DNA. It was also involved in applying new analytical technology,
such as DART (direct analysis in real time) mass spectrometry, to forensic work. The government asserted that private providers would take on much of this research. But only the largest private providers have the resources to conduct research and even then it is focused on research that provides them with a competitive advantage, rather the on the kind of fundamental research available to all conducted at the FSS. Moreover, any intellectual property gained from their research would be jealously guarded as it gives them a competitive advantage. FSS could engage in blue sky thinking but commercial companies would avoid this as it does not bring in the financial returns. The contraction of the forensic market is now limiting how much private providers can or are willing to spend on research. The FSR in her latest Annual Report in January 2018, highlighted that with forensics providers exiting the market there were risks for the security of exhibits and data, as well as a loss of forensic skills, and that “the level of resilience is very low”.

13. Universities are not stepping up to provide the much needed research as forensic research is poorly funded in the UK and very difficult to get. The Home Office published a report on forensic research in 2011, which called on the research councils to establish forensic science as a strategic research priority and to establish a forensic science special interest group on the Technology Strategy Board but this entity has a very wide remit and FS is comparatively insignificant in its considerations.

14. Mistakes in forensic analysis are more likely to occur because of the failure outlined in this document, leading to potential miscarriages of justice. In 2011 DNA contamination at an LGC Forensics laboratory in Teddington resulted in an innocent man being held for five months on a charge of rape. In February 2017, two staff at a private-sector toxicology forensics lab—Randox Testing Services in Manchester who handled 80,000 cases a year —were arrested for manipulating test results. The company provided analysis of blood, saliva and hair samples and toxicology to police forces across the UK. More than 10,000 toxicology tests are had to be repeated by a team of forensic experts assembled by the PCC, the FSR, the CPS and the Home Office. In a letter from FSR to S&TSC the FSR stated that a large number of criminal cases would be affected, along with civil court cases, by the malpractice and that systems for regulating the quality of forensics work would have to be reassessed. Moreover, the time taken to re-test would be long because of the limited number of skilled expert forensic scientists.

15. On the issue of the Forensic Archive the Minister said: “We have determined that the archive will be operated by a residual part of the Forensic Science Service, operating from two sites in the west midlands that are currently owned by the FSS. We are developing the business plan around the work of the archive. Obviously, there is further consideration that we are giving to the archive. What I mean by that is whether it should become a central repository of all forensic records, from private service companies as well as the historical archive from the FSS, so there is a separate policy issue that we are considering around that in the context of the transition process. Which way we will go on
that has yet to be finalised and determined, but it is something we are very much considering.”

16. In fact, HMG formed the Forensic Archive Ltd (FAL) in 2012. It is a Government-owned company formed to retain and manage casefiles from all investigation work previously undertaken by the FSS, which on the direction of the Government, ceased to provide operational casework services in March 2012. HMG has refused to allow any additional casefiles to be added to the FAL since the closure of the FSS. This means that every individual force has to decide what to do about retaining these files. Some may be held by the PFSP that carried out work for a force. Inevitably this means that there is fragmentation of the records and the ability to detect crime is seriously hampered especially in relation to serial offenders, cold case reviews and to uncover and right miscarriages of justice. The shortsightedness of this approach was challenged frequently by various entities and individuals but HMG has remained steadfast. The only reason for this attitude is the consequent cost that HMG would have to bear. Previously this was part of the service provided by FSS. FAL’s website states it “provides a service to the criminal justice system enabling access to casefiles and retained items linked to historic cases.”

17. The Home Office review of FAL in 2016 came to the conclusion: “FAL should remain the public body which delivers these functions for a further four years until 2020 at which a point a further review should be conducted to include an assessment of whether the volume of FAL’s archive, and the frequency of access requests, justify the costs of running it.” Belatedly the same review suggested that a common protocol for the storage, retention and destruction of forensic records and materials should be produced by December 2016. This should list the type of case files and materials that should be retained, including those which are both recovered and generated by a case. It should include information about storage conditions, standards, retention periods and destruction protocols. That common protocol has still to be produced. FAL’s website states it “provides a service to the criminal justice system enabling access to casefiles and retained items linked to historic cases.”

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