Randox Testing Services (RTS) – Written evidence (FRS0099)

Introduction

1. Randox Testing Services (RTS) were, between 2011 and 2017, an accredited private sector Forensic Science Provider (FSP) in the UK. Within that period RTS were contracted to conduct analysis for the majority of Police Authorities in England and Wales, specifically for forensic toxicology services, focussed on the testing of biological samples for drugs and alcohol in both Road Traffic cases and Criminal Casework. RTS scientists were involved in the Criminal Justice System from receipt of sample to evidence presentation in court. RTS forensic toxicology methods were accredited to ISO 17025 and, in the period in question, RTS processed in excess of 10,000 cases.

2. RTS entered the forensic marketplace in 2011, as a new entrant, and established a competitive market capability from scratch. To achieve capability RTS sought and employed experienced personnel, with both public and private backgrounds, from other ISO 17025 accredited laboratories, the Forensic Science Service (FSS) and the United Kingdom Accreditation Service (UKAS). A General Manager with an extensive Police background was also recruited. Laboratories were established in both Northern Ireland (Crumlin) and in NW England (Manchester).

3. In January 2017 RTS identified what has been alleged to be inappropriate manipulation of data, dating from 2013, and immediately reported the matter to the appropriate authorities – the Police, the Forensic Science Regulator (FSR), Home Office and UKAS. In Police terms the RTS whistleblowing resulted in a criminal investigation and at time of writing a small number of now ex-employees, all of whom were previously employed elsewhere in the sector, remain subject to that ongoing investigation. Subsequently, in consultation with the FSR and UKAS, RTS ceased providing services as an FSP in April 2017.

4. RTS are, and always have been, committed to the provision of quality within their processes and would not – and did not - compromise quality to gain any form of market or commercial advantage. The root cause of this issue does not involve a commercially driven quality compromise.

Current RTS circumstances

5. Since January 2017 RTS have been actively and fully supporting the Police investigation and have worked closely with the various stakeholders to facilitate the retesting of samples identified by the various Police Authorities concerned. A centralised Police operation has been established for this purpose. On direction from the Police, samples are dispatched by RTS to identified third party laboratories for retesting and the results resubmitted to the relevant Police Authorities for processing within the Criminal Justice System as appropriate. RTS have undertaken to fund the retesting of these samples, as a matter of good faith, and to minimise the related demands on the public purse.
6. In parallel, RTS have subsequently regained ISO 17025 accreditation for a number of testing methods to provide drug testing to the workplace sector and remain active in that sector. No decision has been made, within RTS, regarding future re-engagement as a potential forensic services provider.

7. RTS will be unable to comment further on the forensic toxicology issues raised above until the Police investigation, and any associated criminal case, has been completed. Other than to stress, clearly, that a compromise of quality due to commercial pressures was not a factor. In these circumstances it is also clearly inadvisable to arrive at any firm conclusions regarding cause until the investigation and legal process have been completed. Whilst some may wish to see this solely as an ‘RTS issue’ it is acknowledged that alleged inappropriate manipulation of data preceded RTS’s entry into the testing marketplace, in other accredited facilities. What occurred within RTS, in laboratories that had successfully completed the formal ISO 17025 accreditation process, may well be indicative of wider, more systemic weakness. It is too early to make any definitive statements regarding root cause or liability.

Issues

8. As part of the response for the Committee’s Forensic Science Inquiry RTS, from their previous experience as an FSP, do wish to comment on the following matters:

Procurement

9. The largest individual factor that influences the shape and form of the UK private sector forensic capability is the procurement process adopted by Police Authorities. Currently, working for the State accounts for some 95% of the forensic work undertaken by private sector providers in the UK. On the privatisation of some limited forensic services in 2012 the allocated spend to those services was in the region of £120 million. Today it is around £55m – a roughly 50% reduction. Furthermore, the largest FSP in the UK has claimed a 30% or 40% erosion in pricing over 6 to 7 years. These reductions, occurring during a period of significant austerity, indicate:

   a. A procurement approach that has focussed on driving down pricing with FSPs, and,

   b. A reduction in the numbers or types of test that are submitted for analysis.

10. Procurement pressure to reduce pricing has been manifest in a number of ways. Within tenders pricing will often account for 60%, or more, of the weighting factor. For example one particular Police Authority Forensic Procurement Consortium tender process in 2016 allocated a 75% weighting to ‘Price’ for a specific forensic service discipline, with 20% awarded for Quality/Service Provision and 5% for Supplier Capacity. Price,
therefore, on a percentage basis, outweighs both quality and capacity – provided a minimum standard has been shown to be met.

11. Tenders are also awarded for extended periods – 3 years, plus 2 optional one year extension periods are common, i.e. 5 years. Competitive pressure is added when a large percentage of available contracts become due at the same time – in late 2016/early 2017 it has been assessed that some 75% of Police contracts were out for re-tendering. Such a procurement process, with large elements based on a ‘winner takes all’ basis, the awarding of lengthy contracts and with pricing stressed as the key factor – will only move the market in one direction.

12. Within the two prevalent procurement processes – Managed Service Contracts, and what can be referred to as a ‘Commoditised Market’ for individual services based on price - the RTS experience is largely with the latter. In these contracts there are additional service credits or penalties applied if key performance indicators are missed and, in our experience, inflationary indexing was routinely suppressed – leading to significant real-value reductions over time.

13. This procurement approach has potential significant consequences:
   a. FSPs will be increasingly driven by efficiency measures as margins decrease.
   b. Market capacity will remain under pressure and is likely to decrease over time – with FSPs likely to pare their capacity to just meet commitments - seeking more profitable returns elsewhere from their resources.
   c. R&D and innovation are disincentivised and resources reduced.
   d. New entrants will be discouraged from the marketplace. It should be noted that RTS were only able to sustain entry through support from the parent company.
   e. FSPs may ultimately elect to leave the sector – either in a controlled manner or, potentially, as almost happened with Key Forensic Sciences – as a catastrophic ‘crash-out’.

14. The procurement approach undertaken may well result, through market pressures, in a monopsonist buyer dealing with a monopoly provider.

15. A review of procurement process is clearly required in order to re-energise the market. Factors that may usefully be considered, in our view and if RTS were to consider re-entering the market:
   a. Purchaser consultation with industry to assess indicative pricing that would represent value and sustainability for both parties, and review Police budgets accordingly.
b. Reduce the weighting of pricing within tender evaluation, to no more than 40%.

c. Introduce procurement programming to ensure around 20% of contracts are re-tendered and awarded each year.

d. Promote multiple awards within contracts, ideally directly to suppliers rather than through a Tier 1/Tier 2 arrangement.

**Accreditation**

16. ISO 17025 accreditation, which covers forensic toxicology services, is managed and awarded by UKAS, the sole national accreditation body for the United Kingdom. UKAS is appointed by Government as the national accreditation body by use of Accreditation Regulations 2009 (SI No 3155/2009) and the EU Regulation (EC) 765/2008 – and only one such national accreditation body is permitted for forensic accreditation by these regulations.

17. The achievement of ISO 17025 accreditation is a pre-requisite for provision of forensic toxicology service contracts tendered by UK Police Authorities. Currently all private sector companies providing forensic toxicology services for the Police must show proof of accreditation for those services - accreditation for other forensic activities within Police facilities is progressing. It is accepted that accreditation is critical to provide assurance to users in the area of forensic toxicology, in that, ‘UKAS accreditation not only provides authoritative assurance of the technical competence of a laboratory to undertake specified analyses but also reviews particular aspects relevant to the Criminal Justice System, for example, continuity of evidence, management of casefiles, storage of exhibits’. (UKAS website)

18. Accreditation can be both a costly and lengthy process, and clearly demonstrates a commitment to quality. Between 2015-18 RTS were charged over £110,000 for UKAS visits and inspections. Additionally, from the initiation of a project to establish a new forensic method, to the achievement of accreditation, can take in the region of 12 months. The performance and management of UKAS in the assessment and awarding of accreditation has raised a number of issues:

a. There is a significant contrast between the claim that UKAS accreditation provides authoritative assurance of the technical competence of a laboratory and the reality that an accreditation audit is only, as stated by the FSR, a ‘sampling exercise’. It is RTS experience that there is a marked differential between the claim of authoritative assurance and the reality, which could usefully be addressed. To an extent this capability gap should be assisted by the FSR’s Codes of Practice and Conduct.

b. In the experience of RTS, UKAS lack experienced, active forensic practitioners to be used as Technical Assessors within some forensic disciplines. By way of example, since July 2015, RTS have not
experienced a UKAS audit with a UKAS assessor with forensic toxicology practitioner experience of biological specimen drug testing. There have been 11 site visits by UKAS Technical Assessors since this date.

c. ISO 17025 accreditation is provided in the UK by a single organisation. The singular relationship of the laboratory with the accreditation service – and the critical requirement for accreditation within the provision of services – has the potential to result in an unbalanced relationship.

d. RTS would argue that any monopoly provider of services may tend toward inefficiency and, even as a ‘not for profit’ organisation, lacks competition-based incentive to innovate. There is limited evidence to demonstrate improvements in the services offered by UKAS and, post departure from the EU, the UK could benefit from introducing competition in this field.

e. Within the Criminal Justice System there can be a varied view of the importance of accreditation. As stated, FSPs providing forensic toxicology services to the Police must maintain ISO 17025 accreditation for all services provided. There does not appear to be an equivalent obligation or requirement placed upon those providing for the defence. RTS have experienced occasions where the defence instructed a non-ISO 17025 accredited facility to perform blood alcohol analysis under the Road Traffic Act (1988). Despite the fact that the defence laboratory was not supported by ISO 17025 accreditation and the method used was not validated, maintained or performed under accreditation, the defence evidence was given equal standing and has led to acquittals. A consistent approach to accreditation by those practicing across the Criminal Justice System would be helpful.

Forensic Science Regulator (FSR)

19. The FSR has an important and key role to play and RTS are fully supportive of the defined role: ‘to advise Government and the Criminal Justice System on quality standards in the provision of forensic science. This will involve identifying the requirement for new or improved quality standards; leading on the development of new standards where necessary; providing advice and guidance so that providers will be able to demonstrate compliance with common standards, for example, in procurement and in courts; ensuring that satisfactory arrangements exist to provide assurance and monitoring of the standards and reporting on quality standards generally’.

20. RTS note that there is currently no means to enforce compliance with common standards or to immediately stop dangerous practices – and are supportive of statutory powers to issue a prohibition notice if the FSR is of the view that work from a company or an individual presents a significant risk to the CJS. Clearly such a decision needs to be evidenced with a review process and an appeal methodology. A critical question arises
regarding how the functions of the FSR are monitored and policed. Assuming that the FSR will not undertake an inspection function it is assumed that role will fall to UKAS. If so, the concerns raised in the Accreditation section above apply.

21. For all other functions - identifying the requirement for new or improved quality standards; leading on the development of new standards where necessary; providing advice and guidance so that providers will be able to demonstrate compliance with common standards, for example, in procurement and in courts; ensuring that satisfactory arrangements exist to provide assurance and monitoring of the standards and reporting on quality standards generally – RTS would wish to see a more nuanced process. For these matters a more collegiate approach, with the FSR in an influencing and cajoling role whilst engaged with sector societies such as the United Kingdom and Ireland Association of Forensic Toxicologists (UKIAFT) and the Association of Forensic Science Providers (AFSP) may assist in the development of considered and balanced policy development. Statutory powers could be used to impose new quality standards, but only after a defined consultative process has been completed. The development and introduction of the FSR Codes of Practice and Conduct indicates the usefulness of such an approach.

Coordination issues in practice

22. A number of example events are presented below as being indicative the requirement for improved coordination for the delivery of forensic outputs within the CJS service provision.

   a. Streamlined Forensic Reporting (SFR). SFRs were introduced in 2012 with the aim of delivering forensic evidence proportionate to the needs of each case. The SFR has the capability of saving court time, reducing unnecessary forensic and prosecution work whilst better enabling the defence to focus on the real issues and appropriately advise their clients. However, despite MoJ direction inefficiencies remain due to the lack of a consistent approach from all parties within the CJS – particularly in the application of these reports and how defence challenges should be managed. The aim of achieving efficiencies within the CJS through SFRs is not fully achieved.

   b. Road Traffic Act (1988) Section 5A Implementation. This Act was amended in March 2015, to include Section 5A - Driving or being in charge of a motor vehicle with a concentration of a specified controlled drug above specified limit. Leading up to implementation, FSPs providing forensic toxicology analytical services to Police Authorities in England and Wales were involved in establishing drug uncertainty budgets for use with this Act, whilst attaining ISO 17025 accreditation for this test method ahead of the implementation date. Uncertainty budgets were applied to standardise a common reporting threshold to ensure that a result outcome was appropriate (i.e. above or below a prescribed limit), irrespective of which service provider has analysed that specimen. These budgets were
established at the request of the multiple agencies involved in the Act amendment, namely the Office of the FSR, Department for Transport and the Centre for Applied Science and Technology. It became evident during this process that the guidance provided to the FSPs to establish this uncertainty budget was poorly defined and subject to interpretation. This led to delays in establishing the uncertainties and thus had a knock-on effect to method accreditation and implementation.

c. Court evidence presentation via video-links. There has historically been a variable approach within the Magistrates’, Coroners’ and Crown Courts across England and Wales to the presentation of evidence via video-links. A consistent approach, supporting the delivery of forensic evidence via video-links, will provide efficiencies.

Conclusion

23. As a new entrant to the sector RTS note, with disappointment, their experience regarding the employment of experienced staff from elsewhere in the sector, and the limitations of external oversight.

24. RTS have never compromised quality due to commercial pressures, and the withdrawal of RTS from forensic toxicology activity was as a result of unrelated activities, which remain the subject of a police investigation.

25. Nevertheless, from the perspective of FSPs, RTS believe that the current system for the procurement of forensic toxicology services in England and Wales is probably not sustainable – and RTS would currently be very wary of re-entering the sector. The recent focus on price rather than value has reduced capacity in the market to a critical level and impacted on the resources available for research, development and innovation. The single most critical procurement issue links funding and procurement practices, and must be addressed as a matter of priority to rebalance the market in a manner that adds value to both customer and supplier. If action is not taken it will be unsurprising if the end result is a monopsonist buyer dealing with a monopoly provider.

26. Beyond that, RTS have concerns about the concept of a sole provider for forensic service accreditation and would recommend consideration of competition in this marketplace. RTS are in no doubt of the value the FSR adds to this sector and are supportive if the introduction of some statutory powers, provided that policy includes the introduction of sufficient safeguards for appeal to ensure effective consultation and engagement across the sector.

27. The delivery of forensic services, and evidence, across the CJS is a complex, multi-disciplinary undertaking. Improving coordination across all functions will add value.

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