Dr Gillian Tully – Supplementary written evidence (FRS0107)

Oversight Requirements for Forensic Science

I was asked by the Committee to consider effective governance for forensic science and any potential roles for a national body. In doing so, I have considered firstly the current oversight arrangements and my views on why they have not been sufficiently effective. I have then set out the specific oversight functions which I believe are required, prior to giving two alternative potential models for future oversight. I have finally considered, given the current status of forensic science in England & Wales, what role a national body could fulfil in the short term and the long term. Further detailed planning and consultation would be required in order to implement any of the proposed models.

1. Current Oversight

1.1 The Forensic Science Regulator

The role of the non-statutory Forensic Science Regulator includes:

a. establishing and monitoring compliance with quality standards in the provision of forensic science services to the police service and the wider Criminal Justice System;

b. ensuring the appropriate assessment against standards of those supplying forensic science services to the wider CJS through the police, including in-house police services and forensic suppliers;

c. setting and monitoring compliance with quality standards applying to national forensic science intelligence databases, beginning with the National DNA Database (NDNAD)® and the National Ballistics Intelligence System (NaBIS), and extending to others as they arise;

d. providing advice to Ministers, CJS organisations, suppliers and others as seems appropriate, on matters related to quality standards in forensic science;

e. dealing with complaints from stakeholders and members of the public in relation to quality standards in the provision of forensic science services.

The role has no power to mandate compliance with standards. Therefore, compliance with standards is lagging behind where it should be.

The Regulator has no mandate to secure continuity of service provision, to oversee the market or to ensure there is sufficient research or innovation. Continuity of service provision and the market are currently extremely fragile; innovation is patchy and the paucity of research in areas that would enhance interpretation limits the effectiveness of scientific evidence in some cases.

1.2 The Forensic Policy Steering Group

A Forensic Policy Steering Group (FPSG) was established by the Home Office in 2017. Its remit, in the latest terms of reference I was able to locate, is stated as follows:

*The FPSG provides overall governance of the forensic landscape, alongside those meetings run by other CJS partners, including policing.*
Collectively the Group is the governing body that oversees the delivery of the strategy and advises and provides challenge to the Home Office and other owners of actions within the Strategy on the direction the implementation should take.

The responsibilities of the FPSG are to:

- Support the implementation of the forensic strategy including development of a national approach to Forensic Science delivery within the CJS
- Review the Forensic Strategy Action Plan and provide expert advice and challenge to ensure that these commitments can be delivered
- Collectively own and manage risks relating to the policy regarding use of forensic science in the Criminal Justice System.
- Provide visible and sustained outward facing support for the implementation of the strategy, including representation at and presentation to the Forensic Policy Stakeholder Forum
- Provide a strategic steer for wider policy issues relating to forensic science in the CJS
- Raise any new or emerging policy questions which require cross-CJS coordination and support

Representation at the FPSG has developed over time but is currently as follows.

a. Director, Data and Identity, Home Office (Chair)
b. Representatives from Home Office: forensic science policy (Identity Management), Law Enforcement Transformation Unit, International Directorate, Forensic Information Database Service
c. National Police Chiefs’ Council Forensic Portfolio: Chair of the Portfolio and Chair of the Performance& Standards sub-group
d. Association of Police and Crime Commissioners
e. Director of Forensic Services, Metropolitan Police Service
f. Forensic Science Regulator
g. United Kingdom Accreditation Service
h. National Crime Agency
i. Ministry of Justice
j. Crown Prosecution Service Forensic Science Policy Lead
k. Transforming Forensics: Programme Director and Commercial Lead
l. College of Policing
m. Director of Forensic Archive Ltd.

This Group has not been successful in providing effective oversight, partly because the terms of reference are based on implementing a strategy which, in my view, is fundamentally flawed. Secondly, the group meets irregularly, with variable commitment and attendance from members. The Ministry of Justice is rarely represented and the judiciary is not involved, nor is the Legal Aid Agency or any research funding organisation.

2. Oversight Functions Required
Aside from quality standards, I consider the following aspects of forensic science provision to require oversight.

1. Securing the long-term resilience of high quality forensic science supply and expertise across a broad spectrum of disciplines. This would include ensuring:
   o that all approaches to delivery of forensic science promote long-term sustainability of provision and of skills;
   o that decisions regarding whether scientific work should be outsourced or insourced are scrutinised to ensure they support long-term resilience; and
   o that action is taken to protect disciplines and skills where the expertise is spread too thinly to be effective or which are at risk of being lost from England & Wales.

2. Ensuring that the rules governing admissibility of expert evidence and case management are working effectively in relation to scientific evidence, such that novel science is scrutinised, but groundless challenges are not repeatedly permitted.

3. Ensuring that appropriate forensic science, which is proportionate to the nature of a case and is applied to all reasonable lines of inquiry, is commissioned on a case by case basis to protect the interests of justice.

4. Ensuring that sufficient well directed research, development and innovation is undertaken to fulfil the current and future requirements of the justice system for reliable and effective scientific evidence.

3. Possible Oversight Models

In order to be effective in securing long-term resilience, any oversight body would need a way in which to control national spending on forensic science. This would require that the oversight body:

a. had the power to define the minimum level of overall spending on forensic science required to maintain resilience and protect the interests of justice;

b. could centrally control the budget for forensic science, i.e. the budget would be “top-sliced” from police and potentially LAA budgets rather than being locally delegated to Chief Constables and Police and Crime Commissioners; and

c. had statutory power to set an appropriate pricing structure.

Although this proposal for control of spending may seem extreme, the fact is that for the last few years, successive reductions in forensic science funding have led to companies failing financially, to police forces failing to reach quality standards in a timely fashion and to failure to keep pace with demand for digital forensics. Worse still, at the time of writing, the potential for further major exits from the market and/or loss of a range of disciplines hangs in the balance; continuing to lurch from crisis to crisis is untenable.

3.1 Statutory Regulatory Body

In this model, the quality and broader oversight functions (1 - 4 from section 2 above) would be combined in a single regulatory body. It would have the power to issue prohibition notices, preventing an individual or company from providing forensic science unless/until it had addressed specified concerns. It would have
the power to set an appropriate pricing structure for provision of forensic science, to secure long-term resilience of supply. It would have the power to investigate complaints about the quality, presentation and/or suitability of forensic science undertaken in any case.

The responsibilities, duties and powers of the regulatory body would be set out in law. There would need to be duties on the regulatory body to, for example:

a. to protect the public interest and the effective administration of justice;
b. to have regard to the needs of policing, prosecuting authorities, defence lawyers, the judiciary and the Criminal Cases Review Commission (CCRC);
c. to promote increased understanding of the value of forensic science in the detection and investigation of crime and the administration of justice;
d. to promote increased understanding of the principles of forensic science.

Any such regulatory body would require an advisory board on which representatives of policing, prosecuting authorities, defence lawyers, the judiciary, the Criminal (and Family) Procedure Rules Committee, the Chief Coroner, the LAA, the CCRC, UK Research & Innovation (UKRI), forensic scientists and relevant professional bodies are represented.

The Science & the Justice System Forum has proposed a strategic coordination group to have oversight of research in forensic science; if that model is successfully implemented, the regulatory body need not have oversight of research, development and innovation but should work closely with the strategic coordination group to ensure that the aims are aligned.

3.2 Forensic Science Oversight Board
In this alternative model, the oversight of quality would remain with the Forensic Science Regulator, who would be placed on a statutory basis and given enforcement powers.

An Oversight Board would be created to be accountable for oversight functions 1-3 as set out in section 2. It would liaise closely with the strategic coordination group proposed to have oversight of scientific research in this area or would subsume the role of that group. The Oversight Board would have representation from:

a. policing:
   - forensic science lead for the National Police Chiefs’ Council (NPCC);
   - the Transforming Forensics Programme;
   - forensic science lead for the Association of Police and Crime Commissioners (APCC);

b. the Crown Prosecution Service, on behalf of all prosecution authorities, represented by the policy lead for forensic science;

3. The defence community, represented by the Chair of the Criminal Bar Association (CBA);

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1 The paper summarising recommendations from the Science & the Justice System Forum is being finalised and will be sent to the Committee when completed.

2 If the Oversight Board was also to have oversight of research, additional representation, for example from UKRI, would be required.
d. the judiciary, represented by:
   • a nominee of the Head of Criminal Justice;
   • a nominee of the President of the Family Court Division;
   • a nominee of the Chief Coroner;

e. the secretaries to the Criminal, Family and Civil Procedure Rules Committees;

f. the Director of Casework Operations of the CCRC;

g. the Chief Scientific Advisors to the Home Office and Ministry of Justice;

h. the Chief Executive of the LAA;

i. the Forensic Science Regulator;

j. representatives from the forensic science providers (the Association of Forensic Science Providers (AFSP) for large providers; to be determined for small providers)

k. the President of the Chartered Society of Forensic Sciences;

l. senior forensic scientists as required.

The Chair of the Oversight Board should be independent of Government and should have a scientific background, ideally with broader experience in policy and/or legal issues. One suggested Chair would be the Chair of the Home Office Science Advisory Council. This post is currently held by Sir Alan Wilson, Royal Society and Chief Executive of the Turing Institute.

In order to fulfil its functions effectively, the Oversight Board would need to gather evidence from, for example:

   a. forensic science units in the public and private sectors;
   b. courts; and
   c. commissioning bodies including policing and the LAA.

There is always a risk with high level boards that the individuals involved have too many other tasks as part of their “day jobs” to be able to devote the time and energy needed to ensure effective oversight. Therefore, the Board would need to be actively supported by a well-resourced, effective secretariat function, to ensure that it was provided with the information it required to fulfil its scrutiny role and that necessary action/intervention was carried out without delay. Given that the proposed Chair would be independent from any Government department and that the body would involve more than one department, clear and effective agreements regarding the support provided to the Board and its Chair from each department would be essential.

4. A National Forensic Science Body

4.1 Essential Roles for a National Body

For some forensic science disciplines, which are used at high volumes, transfer of services from policing and/or the private sector into a national forensic service of some kind would make little difference to quality or sustainability in the short or medium term, on the proviso that current efforts to stabilise the market are successful. However, for an increasing number of disciplines, transfer of services into a national forensic service may make the difference between survival of the disciplines in England & Wales or their loss from the jurisdiction.

When work transitions between different suppliers of forensic science as a result of procurement exercises, it is inevitable that some roles also must transfer.
However, roles are lost and skilled individuals are lost at each transition. As a single example of a much wider phenomenon, it is my understanding that following a 2012 contract award, in which LGC lost much of its chemistry work, the company concluded early in 2013 that it had no choice but to make the majority of its forensic chemists redundant. This included all of those at the Warrington site. Of the 7 forensic chemists made redundant from Warrington, only 2 gained full time employment for another forensic science provider, both on reduced salaries. A similar fate met those made redundant from the Culham site. Two gained one-year contracts and one, with 30+ years’ experience, did not have that contract renewed at the end of the year. A more junior colleague took a role at a different company and has been made redundant again since; I am unable to provide information on the remaining scientists but the picture is clear. The continual loss of skilled scientists as work transitions represents a major threat to ongoing forensic science capability in this jurisdiction.

For larger disciplines, there has thus far been sufficient volume of work in the system for contract changes between providers to have a relatively minor overall effect on each provider’s workforce in that discipline. However, an increasing range of disciplines is being used less over time and expertise has become thinly spread; one or more providers may have so few experts that the service is barely sustainable. Many forensic chemistry disciplines fit in this category.

There are other disciplines for which there is still a strong demand, but where either the expertise is mainly concentrated in one provider with others having little resilience (for example analysis and interpretation of gunshot residues) or where there is a total shortfall in capacity (for example complex toxicology; there are indications that drugs may also be in danger of a capacity shortfall). I have been told that a number of senior toxicologists are now unwilling to work in some companies because of the very limited time available for each case, as a result of contractual cost and timeliness requirements.

For all disciplines where skills are threatened and/or already insufficient, concentration of the expertise in a single national provider may be the optimal or indeed the only way to safeguard future provision and attract highly experienced scientists who have moved away from front-line provision of scientific services back to the profession.

For digital forensics, there may be a case for building national rather than local capability both to deal with the capacity shortfall and also to facilitate the rapid pace of innovation which is required. It would intuitively be less expensive and more efficient to develop and test methods centrally than the current situation, where there may be multiple units even within a single police force using different (and often untested) technologies in parallel. It is my understanding that the digital strand of the Transforming Forensics Programme will seek to centrally validate digital forensics methods within policing to allow more effective implementation of new technologies.

In disciplines where a national body attracts highly experienced scientists, there would be an obvious potential for research; this potential should be carefully exploited in order to maximise research impact through close integration with casework while not impacting negatively on academic or commercial institutions conducting effective research in the same areas. The national body could provide
access to scientific literature and a repository for data collections to support interpretation. It could have a role in effective validation and implementation of new technologies and in provision of scientific advice to the wider forensic science community and the oversight body. It could potentially provide the secretariat function for an Oversight Board as set out in section 3.2.

4.2 Basis of a National Body
The oversight requirements set out in the preceding sections would still be required if there were a national body, and there would be an additional need for the oversight regime to ensure economy and efficiency in a national provider, as it would potentially have a monopoly for the disciplines in which it operated.

In order to fulfil the aim of assuring that the few remaining skills in the relevant disciplines are not lost from forensic science, a national body would need to have regional sites; requiring all the scientists to move to a single location would have the opposite of the intended effect.

At the present time, despite best efforts from many committed individuals, policing nationally has not demonstrated that it is capable of giving the requisite priority to assuring forensic science quality or resilience. For this reason, in addition to the concerns raised about one part of the justice system (policing) having control over forensic science, a national forensic science body should not be part of policing. It is difficult to see how it could be a commercial entity, so would need to be at least owned by the public sector. This is not without current precedent. The Defence Science and Technology Laboratory, which is a non-police public sector organisation, currently conducts scientific analysis of explosives as well as analysis of chemical and biological agents.

4.3 Longer Term Considerations for a National Body
The current mixed market of police and private sector provision requires:
- a. a sizeable quality management infrastructure in each police force and each private provider;
- b. a sizeable procurement and contract management infrastructure within policing; and
- c. a sizeable commercial and contract management infrastructure within the private sector.

On the other hand, it is credited with achieving significant improvements in efficiency, timeliness and cost of forensic science provision. It provides choice for those commissioning forensic science on behalf of prosecution and defence, albeit the choice has focussed in recent years on cost to the detriment of stability.

If the national body proposed in section 4.1 for forensic science disciplines at risk proved to be successful in its aims and effective and efficient in its operation, it would be worth considering, at a later date, the potential for a longer term move for all forensic science into that body\(^3\). Such a consideration would need to

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\(^3\) Consideration of a move for all forensic science provision into a national body may need to happen imminently if current efforts to stabilise the market are unsuccessful and one or more companies exit the market or cease provision of services in certain disciplines.
balance all the costs and benefits each model with the ultimate aim of protecting
the public interest and the effective administration of justice.

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