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House of Commons  
Science and Technology  
Committee

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**Forensic Science on  
Trial: Government  
Response to the  
Committee's Seventh  
Report of Session  
2004–05**

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**First Special Report of Session 2005–06**

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## The Science and Technology Committee

The Science and Technology Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Office of Science and Technology and its associated public bodies.

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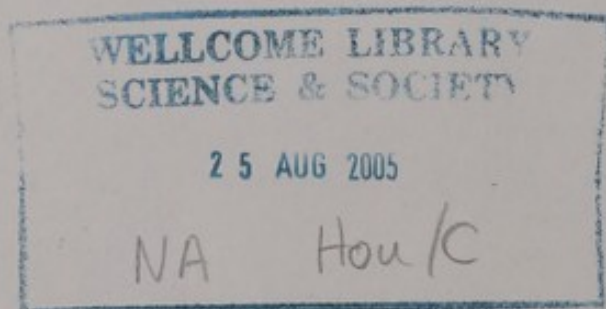
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### Committee staff

The current staff of the Committee are: Chris Shaw (Clerk); Emily Commander (Second Clerk); Alun Roberts (Committee Specialist); Hayaatun Sillem (Committee Specialist); Ana Ferreira (Committee Assistant); Robert Long (Senior Office Clerk); and Christine McGrane (Committee Secretary).

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# First Special Report

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On 29 March 2005 the Science and Technology Committee published its Seventh Report of Session 2004–05, *Forensic Science on Trial*. On 7 July 2005 the Committee received a memorandum from the Government which contained a response to the Report. The memorandum is published without comment as an appendix to this Report.

## Government response

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### Introduction

The Government welcomes the Science and Technology Committee's helpful and constructive report on forensic science and is grateful to the Committee for the detailed work it has undertaken in this area, which recognises the important contribution of forensic science to detecting crime and making communities safe.

Many of the recommendations made by the Committee in its report are consistent with the Government's own vision for the future of the Forensic Science Service (FSS) in what is now a dynamic market-place and in the face of rapidly developing technology. Many recommendations act as an endorsement of current policy by recognising the importance of maintaining quality and continuity of service, and they add timely impetus to ongoing work in this area. Crucial to the Government's vision is the ability of the FSS to be able to respond quickly and flexibly to the demands of its police and other CJS customers. As the Gershon agenda drives forward procurement reform within the police service, it is vital that the FSS has the powers, freedoms and commercial enterprise it needs to compete effectively with private sector suppliers if it is to maintain its position as a world leader.

The Ministerial statement of January 11th 2005 made clear the Government's intention to establish the FSS as a wholly owned Government Company (GovCo). Following a review of the FSS Transformation Programme and a thorough analysis of the work required to enable a successful transformation, Ministers have agreed that December 1st 2005 is a realistic target date for vesting the FSS as a GovCo.

Alongside these structural changes, the Government's ongoing commitment to high quality provision of forensic science services remains firm. Ensuring continuity of service and ever-improving performance requires a collective effort on the part of the FSS and its stakeholders both now and in the future.

One part of this drive to improve quality, the DNA Expansion Programme managed in partnership between the Home Office and ACPO, is acknowledged internationally as being unparalleled for focussed investment by central government in forensic science. It has been a catalyst for strengthening forensic and analytic capabilities within police forces, for encouraging modernisation in police working practices and for investment in the provision and automation of forensic testing. Following this success, from April 2005 the Forensic Integration Strategy will build on the achievements of the Expansion Programme by applying the lessons learned to forensic science more generally, for example in using forensic science intelligence more effectively to tackle cross-border crime.



A number of the issues highlighted by the Committee clearly fall outside the role of the Home Office. The Government's full response to individual recommendations to the Home Office follows below.

## **Responses to Recommendations**

### ***Chapter 2 - Background***

**1. The low visibility of the Home Office Chief Scientific Adviser is a source of concern, particularly in view of the history of weak scientific culture in the department. (Paragraph 7)**

The Committee's concern has been noted.

### ***Chapter 3 - Changing Status of the FSS***

**2. The Government's poor track record at managing PPP projects does not inspire confidence in its ability to make a success of developing the FSS as a PPP. (Paragraph 35)**

The immediate intention is to vest the FSS as a wholly owned Government company and for the new organisation to be given the opportunity to be a success in its own right.

A detailed review of the FSS Transformation Programme and analysis of what is required to deliver this objective has concluded that 1<sup>st</sup> December 2005 is a realistic date for vesting the FSS as a GovCo. In the interim, work is underway to ensure that FSS GovCo is set up with the appropriate powers, freedoms, structures and resources to enable it to operate on a robust and sustainable basis at arms length from the Home Office and also to ensure that the FSS has completed the business planning activity required to enable its success. Only after GovCo has been given the opportunity to succeed in its own right will the position with regard to moving to a Public Private Partnership (PPP) be reviewed. No irrevocable decision about the future shape and direction of the organisation will be made until at least December 2006.

**3. We believe that a decision to expand the duration of the GovCo phase from a matter of minutes to up to two years is a sufficiently drastic change of pace to constitute a change of policy. Furthermore, the statement of January 11 2005 which vowed to test the GovCo model for the PPP in its own right is not consistent with the original acceptance of the McFarland Review in July 2003, which invoked GovCo only as a precursor to PPP. The Government's presentation of the decision has been misleading and confusing. At a time when the FSS and its staff have been seeking reassurance and clarity over the future of the organisation, the mixed messages being sent out by the Government are regrettable and damaging. (Paragraph 41)**

There has been no change of policy. The Government has always been focussed on creating the right conditions to allow the FSS to compete effectively in a more dynamic forensic science marketplace and to continue to make an important contribution to the criminal justice system rather than on achieving a particular organisational status.



The recommendation of the independent McFarland review was for the FSS to be transformed into a Government owned company as a first step, with the aim of evolution into a PPP. This was endorsed by the Home Secretary in July 2003. However, the timeline for change has since been modified to allow GovCo to be given the opportunity to succeed in its own right.

The Government is sympathetic to the concerns of the FSS and its staff, but whilst every effort is being made to keep staff informed, the intricacies of the process have made it extremely difficult to specify precise timescales without fuelling unrealistic expectations.

**4. The Home Office's evidence clearly implies that, contrary to the impression given in its earlier statement, progression to PPP could indeed occur in the absence of agreement by all stakeholders that this is the best way to proceed. It is hard not to interpret the statement as an attempt to mollify those who opposed the PPP by using deliberate obfuscation. (Paragraph 42)**

The Government has engaged in full and ongoing consultation with stakeholders since the McFarland review and has not attempted to obscure its intentions in relation to decisions on the future of the FSS. Stakeholder agreement that conditions for change are favourable remains a key factor but it was never intended that there should be any form of individual veto. The views of all stakeholders will be taken into account when determining next steps, but the main focus will be on the interests of the business; the cost, development and availability of forensic science; and how best to maximise its potential impact on reducing crime.

**5. Other than the change in ministerial responsibilities, we have not heard any convincing reasons for the delay between the statement that the FSS would become a PPP and the announcement of further details on the plans to develop the FSS. This 18 month delay has been to the detriment of the FSS and its staff. It is also indicative of poor planning that, following this long delay, a very tight deadline was set for the FSS GovCo to come into being. (Paragraph 44)**

The Government has always recognised that the task of transforming the FSS would be a complex, time-consuming process demanding a composite range of skills and expertise. The primary objective has always been the establishment of a first class service to support the police and the wider criminal justice system, and to that end every aspect of the Government's original proposal has been subject to detailed scrutiny.

The Government has made every effort to listen to staff whilst planning for the future, including holding regular meetings with the FSS' Trade Union representatives and visits by officials to all FSS laboratories. It is recognised with regret that the extended timescale may have fuelled speculation within the FSS. However, it is clearly in the best interests of all concerned that sufficient time is allowed for this process to be planned and managed in the most effective way. Based on robust planning of the FSS Transformation Programme, we have now been able to communicate a realistic vesting date of 1<sup>st</sup> December 2005 to all FSS staff.

**6. It is worrying that the Government will have full responsibility both for designing the criteria by which the success of the FSS GovCo and the desirability of PPP will be assessed, and for making the assessment of whether those criteria have been met.**



Moreover, the Government, as sole shareholder, will have a significant influence over the management of the FSS through this transition; this in turn impacts on the chances of success at each stage. There is a pressing need for greater transparency and independent oversight of this process. We recommend that the Government make public the specific criteria that will be used for evaluating the success of GovCo and the need for progression to PPP. In addition, we recommend that the National Audit Office report on the Government's management of the transformation of the FSS in order to provide some level of independent scrutiny of the process. (Paragraph 46)

Government departments have a duty to ensure that the bodies they sponsor conduct their operations as economically, efficiently and effectively as possible with due regard to regularity and propriety and any financial objectives. Departments are accountable to Parliament for the manner in which they discharge this duty. The performance assessment criteria for FSS GovCo will be set and monitored within these overriding departmental responsibilities.

Specific measures to assess the performance of FSS GovCo are being developed as part of the ongoing business planning process. The Government has also defined Conditions Precedent for any potential future move to PPP as part of ongoing planning for the transformation. There is no intention to conceal any performance-related information, but it would not be reasonable to disclose any commercially sensitive information that could undermine the ability of FSS GovCo to operate competitively. In line with the Committee's request, and in the interests of transparency careful consideration will be given to which information it would be appropriate to place in the public domain.

The Government would welcome and fully co-operate with any scrutiny by the National Audit Office.

**7. Very clear evidence would be needed to justify a transition from GovCo status to a PPP. It should not be assumed that a GovCo is merely a transition step leading to a PPP and, if the FSS is successful as a GovCo, it should remain as such. (Paragraph 47)**

In the light of the FSS' performance as a GovCo, the Government will consider if further steps are necessary to facilitate the future growth of the business taking into account both the best interests of the organisation and the needs of the criminal justice system.

The Minister was open with the Committee in discussing the Government's issues surrounding additional capital investment in the FSS given current fiscal constraints. A transition from GovCo to PPP status is likely to bring real advantages for the FSS in that it will bring external investment which will allow the FSS to remain at the forefront of developing technologies. However, the Government accepts the Committee's recommendation that FSS GovCo should be given every opportunity to succeed in its own right.

**8. If the FSS becomes a PPP, the Government must put in place measures to ensure that the criminal justice system has continued access to the full range of forensic services at an affordable price—whether provided by the FSS or another supplier. We recommend that this be done on a force by force basis through agreements between police forces and suppliers, within the framework of the police procurement strategy. (Paragraph 49)**



This issue is being addressed jointly by the Home Office, ACPO and the APA who are working together to reform forensic procurement arrangements. The capacity of the police to act as an intelligent customer will be reinforced by the creation of the Centre for Procurement Excellence in the Police Service.

**9. It is now up to both the Home Office and the FSS management team to take positive action to address the concerns expressed by staff over their own personal future at the FSS and their wider apprehensions about the future of the organisation. (Paragraph 50)**

By agreement with the Home Office, the FSS is taking the lead on staff communication issues relating to the Service's change of status. An initiative has been launched to understand better staff concerns so that they may be effectively addressed. A comprehensive Communications Strategy and Plan have been developed. The plan will be executed throughout the transformation process and will include the use of staff bulletins, Chief Executive Notices, site visits by senior managers and Board members and presentations to staff. Appropriate feedback mechanisms have also been put in place.

The FSS recognises that it will need to work to allay apprehensions and help people to feel comfortable with the scale and pace of change as developments unfold.

**10. The Home Office appears to view a future global market in forensic services, where the UK provides an increasing proportion of services to other countries and foreign companies have an ever more significant role in the UK, as a natural extension of the status quo. We have seen no evidence that this view is based on a thorough analysis of the long-term implications of this scenario, either in terms of the realistic opportunities for the FSS (and other UK based companies) to gain a significant foothold in overseas markets, or in terms of whether extensive foreign involvement in the provision of services to the UK criminal justice system could jeopardise security or affect public confidence. We recommend that it undertakes such an analysis. (Paragraph 54)**

The Home Office, ACPO and APA are in the process of transforming the procurement of forensic science so that in future the purchase of forensic science services by the police will be wholly based on a competitive tender process. A strategic analysis of the market that draws on the lessons from the early pilot areas and informs the evolution of the tendering strategy is planned. This will include the implications of foreign involvement in the UK forensic market in relation to quality and security of supply and, in light of the Committee's recommendation, will also incorporate the security and public interest dimensions.

In the interim, quality of services and security of supply are tightly controlled by the terms of contracts with individual suppliers which include specifications for the output of each piece of work.

**11. At this time of transition in the forensic services market, the need for an independent regulator is becoming ever more critical. We recommend that the Government establish a Forensic Science Advisory Council to oversee the regulation of the forensic science market and provide independent and impartial advice on forensic science. (Paragraph 60)**



The Committee's recommendation has been noted. The Home Office, in conjunction with ACPO and the APA, have initiated a consultation exercise looking at quality regulation in forensic science.

**12. The Council would also be ideally placed to review, or to commission inspections of, the use of forensic science across the whole of the criminal justice system, and to propose improvements where necessary. (Paragraph 60)**

The Committee's observation is noted. The Home Office, ACPO and APA consultation includes consideration of quality accreditation and regular validation.

#### *Chapter 4 – National Databases*

**13. The arguments for the retention of DNA profiles of suspects who are not ultimately convicted in the interests of fighting crime need to be balanced against any potential infringement of civil liberties arising from this policy. (Paragraph 69)**

The Government is alive to the need to balance the interests of society against the right to privacy of the individual. It believes that the present arrangements are proportionate to the benefits they bring in protecting citizens against crime and bringing offenders to justice. The Government believes firmly that the measures taken to retain the samples and fingerprints of persons who have been arrested, albeit not convicted, for a recordable offence are proportionate and justified. That view has been thoroughly tested and supported by the Law Lords in the Case of *R v Chief Constable of South Yorkshire ex parte S and Marper*. The evidence given to the Committee of the number of samples which would previously have fallen to be destroyed but which were later found to match against stains found at the scenes of some very serious crimes bears out the value of retaining this information. Although we acknowledge that some persons who have not been convicted of an offence do sometimes feel aggrieved that this biometric information is retained, the Law Lords in the quoted case rejected the suggestion that this group of people are somehow stigmatised as a result. Persons who do not go on to commit an offence have no reason to fear the retention of this information.

**14. DNA evidence now represents a vital instrument for facilitating investigations and securing convictions. We believe that the recent expansion of the database would make a review of the impact of the NDNAD on the detection and deterrence of crime timely. (Paragraph 71)**

The Government has been evaluating the impact of expanding the collection of DNA by the police, the subsequent database growth and subsequent investigative impacts. To date, evaluation data and analysis has been used in the management of the Home Office DNA Expansion Programme. It has also been used in the development of police operational good practice. The Home Office will shortly be publishing a summary of what has been achieved through the Government's DNA Expansion Programme.

**15. Independent research should be undertaken to assess the public attitude towards retention of DNA samples (both from convicted criminals and others), and the evidence of benefits associated with this practice. (Paragraph 72)**



The need for further independent research of public attitudes is noted by the Government. Some items assessing the views of the public as to the value of forensic evidence were included in the 2003 Crime and Justice Survey and the Government will consider covering this specific point in further surveys.

**16. We do not understand why consent should be irrevocable for individuals who are giving DNA samples on a voluntary basis. (Paragraph 75)**

The rationale for not permitting a volunteer to withdraw their consent to their profile being retained on the national DNA Database is to avoid a return to the situation prior to the Criminal Justice Act 2001. Situations where consent had been given and then withdrawn, but for whatever reasons the profile remained on the database and was found to match that taken from a crime scene, could lead to arguments as to the admissibility of such evidence in any subsequent criminal proceedings. Withdrawal of consent could also be a precursor to future illegal activity. The information held on the database is only used if a stored sample is matched with a sample recovered from a crime scene. As with individuals acquitted of an offence for which DNA was taken and those whose prosecutions are not proceeded with, a law abiding person has nothing to fear from having their profile on the database.

**17. Inviting a member of the Human Genetics Commission to sit on the NDNAD Board does not substitute for instigating proper arrangements for ethical and lay input. In failing to respond more positively to the calls for independent oversight of the database, the Home Office gave the impression that it was not a high priority. (Paragraph 77)**

The Government is discussing new tripartite arrangements for the governance of the NDNAD with ACPO and the APA. The tripartite bodies are also in discussion with the Human Genetics Commission about ways in which independent oversight of the NDNAD and the control of retained samples might be enhanced. The Government expects to be able to make an announcement about the results of these discussions early in the autumn.

**18. We welcome the fact that the Home Office is to revise the custodianship arrangements for the NDNAD, and in particular the decision to remove the custodianship function from the FSS. However, we have not heard any firm commitment by the Home Office to establish an independent body with full ethical and lay input to oversee the workings of the database, in accordance with the recommendations of the Human Genetics Commission and others. Failure to do this at this juncture would be a wasted opportunity. (Paragraph 80)**

See response to recommendation 17.

**19. We regret the Home Office's misleading representation of the position of the Human Genetics Commission and its failure to take on board the Commission's criticisms. (Paragraph 81)**

Evidence was given to the Committee by Home Office officials in good faith. The HGC's evidence on this issue submitted in February to the Select Committee was drawn to the attention of witnesses after the hearing in February at which this point was raised.



**20. It is extremely regrettable that for most of time that the NDNAD has been in existence there has been no formal ethical review of applications to use the database and the associated samples for research purposes. The recent initiation of negotiations with the Central Office for Research Ethics Committees is too little too late. (Paragraph 82)**

The FSS Custodian has maintained a log of research requests and such requests are subject to Database Board consideration, decisions being reported in the minutes of the meeting. Discussions about the new tripartite arrangements referred to in the response to recommendation 17 include how the existing arrangements might be further strengthened and subject to independent assessment.

**21. We are concerned that the introduction of familial searching has occurred in the absence of any Parliamentary debate about the merits of the approach and its ethical implications. (Paragraph 84)**

The Government notes the concern expressed. The Database Board carefully considered this issue and has authorised the use of the technique only after specific clearance by an officer of ACPO rank. This technique has been used around 80 times between July 2003 and June 2005. Its value was demonstrated in identifying the person responsible for the murder, 30 years ago, of three teenage girls in South Wales. It was also successfully used in the investigation into the murder of Michael Little, a lorry driver who was killed in March 2003 when a brick was thrown from a bridge through his windscreen.

**22. Any future extension to the applications for which the data in the NDNAD can be used must be subject to public scrutiny. (Paragraph 85)**

See the response to recommendation 17.

**23. We recognise that adventitious matches are extremely unlikely under the current regime. Nevertheless, we find Professor Sir Alec Jeffreys' warning that the "consequences of even one false match leading to a conviction that was subsequently overturned could be severe for the DNA database and its public acceptability" sufficiently persuasive to merit a thorough investigation of the benefits and risks of staying with the current 10 marker system and moving to, for argument's sake, a 16 marker system. We therefore recommend that the Government commission a cost-benefit analysis for this move. (Paragraph 88)**

The Government has every confidence in the system presently in use, but recognises that it should keep its reliability and level of discrimination under review. Hence, discussions have taken place with Professor Sir Alec Jeffreys about some of the issues that were raised by the Committee, particularly in relation to the number of markers used. A note of this meeting has been submitted to the Committee. This will result in discussions with manufacturers and the validation by European scientific DNA working groups (European Network of Forensic Science Institutes/ European DNA Profiling Group) of arrangements for a new system. Once this is achieved the Government will consider the benefits for changing to it, which would include a full cost-benefit analysis.

**24. The Government should continue to make funding available to enable the upgrading of SGM profiles currently stored in the NDNAD to SGM Plus profiles. We**



**further recommend that cases where DNA evidence has been used to convict someone who continues to protest their innocence should be kept live so that if another profile is added to the NDNAD that matches that used in the conviction of the individual, it will be spotted and acted upon. (Paragraph 89)**

The Government supports and contributes centrally towards the cost of current policy which is to upgrade profiles involved in a match where they are not at 'full SGMplus' standard. This assessment is made on a case-by-case basis. When 'new' profiles are loaded to the database they are routinely searched against all profiles (including those of convicted persons found to be identical to a crime scene sample, although the crime scene sample itself could have been deleted) already on the database and any duplication (through alias, multiple-sampling or adventitious/chance matching) will be reported to the forces concerned.

**25. The police and the Home Office must ensure that they give adequate attention to the access and custodianship arrangements of other national forensic databases and put in place mechanisms for data sharing between suppliers where required. (Paragraph 90)**

The key principle for both forensic procurement arrangements and the allocation of FSS Trading Fund assets is that these should ensure that data sharing between suppliers takes place when required and in a manner that does not confer an unfair advantage on any party.

**26. Increasing the connectivity of different databases, whether at the national or international level, may have significant ethical implications. The Government must take this into account when considering the linking or cross-referencing of forensic databases. (Paragraph 91)**

This issue is being addressed by the Government during both its EU and G8 presidencies. In addition to technical and business process issues, the Government will ensure that the ethical, legal and privacy implications are addressed in discussions about how the exchange of DNA data internationally can contribute to combating cross-border crime.

## ***Chapter 5 – Education and Training***

**27. The two largest employers of forensic scientists in the UK are the police and the Forensic Science Service, responsibility for which falls within the remit of the Home Office. It is disappointing that, in view of the concerns expressed to us by the police and the wider forensic science community over standards in forensic science education, the Home Office has taken no action to communicate the existence of these problems to colleagues at DfES. We regret this lack of co-ordination between the Home Office and DfES. (Paragraph 95)**

The Home Office is not responsible for Higher Education. However, Professor Wiles (the Home Office Chief Scientific Adviser) will raise this matter with Professor Sir Alan Wilson.

**28. We trust that the Forensic Science Society will take on board the criticisms of major providers of forensic science courses in the further development of its accreditation scheme. (Paragraph 97)**



This is a matter for the Forensic Science Society.

**29. Although we recognise the need for some kind of quality control system to be put in place, the fact that the two main employers in the forensic science sector will not give preferential treatment to graduates of accredited courses somewhat undermines the value of the Forensic Science Society's scheme. Furthermore, it sends out a confusing message to students and may give them the erroneous impression that opting for an accredited course will automatically increase their chances of subsequent employment in the sector. (Paragraph 98)**

The FSS' preferred option for recruiting scientists at trainee Reporting Officer level is to employ graduates who have had a thorough grounding in a relevant basic science such as chemistry, biology, biochemistry, genetics, etc. The proliferation of courses offering teaching in 'Forensic Science' has been a cause for concern for some time given that many of these courses do not teach basic science to graduate level.

The new accreditation scheme focuses on the 'forensic' component of a degree course and is not designed to offer assurances as to the quality of the underpinning science content. If in time the scheme is able to develop to address this issue, the FSS would no doubt feel more assured regarding the scientific ability of graduates of Forensic Science Society accredited courses.

The fact remains, however, that like other employers the FSS considers applications from graduates on their individual merits in the spirit of fair and open competition. Such an approach, which the FSS believes is the correct one, discounts and guards against recruitment practices tending to preferential treatment. Recruitment information on the FSS website (at [http://www.forensic.gov.uk/forensic\\_t/inside/career/opp\\_1.htm](http://www.forensic.gov.uk/forensic_t/inside/career/opp_1.htm)) explains the position in greater detail for those considering a career in the FSS.

**30. There is an opportunity to harness the excitement surrounding forensic science to promote interest in science more generally. Academically rigorous and scientifically sound joint honours degrees in forensic science and chemistry, biology etc. could build on the appeal of forensic science while providing students with the analytical skills and scientific background required by employers. These degrees need to be developed in close collaboration with the main employers in order to ensure that graduates would be well qualified for the roles for which these organisations recruit. (Paragraph 100)**

The Committee's useful comments are noted. The Home Office will examine these issues in its discussions with the Forensic Science Society and other professional bodies.

**31. We recommend that the Forensic Science Society, SEMTA and the main employers work together with the Royal Society of Chemistry to promote an understanding of the value of chemistry as a route into forensic science. This could be done, for example, through visits into schools by practising forensic scientists. (Paragraph 101)**

The Home Office accepts the view that the relevance of chemistry to this field should be promoted. The Royal Society of Chemistry (RSC) as the professional body should take the lead but we are happy to work with the RSC and have contacted the RSC in relation to this matter.



32. We welcome the actions taken by ACPO to improve police training in forensic science and urge it to continue, and enhance, these efforts in the future. Forensic science is not just a means of proving someone's guilt or innocence. If used properly, forensic techniques can serve as vital intelligence tools to underpin the entire investigative process. Forensic science has a key role to play in enabling the intelligence-led approach to policing embodied by the National Intelligence Model. It is thus essential that police training in forensic science is delivered within the context of the National Intelligence Model. This should help to ensure that forensic awareness becomes embedded in the wider police force, rather than being confined to those in specialist roles or who have had specific training. (Paragraph 107)

This is a matter for consideration by ACPO.

33. We recommend that the Home Office, ACPO and the Association of Police Authorities ensure that regular seminars are held to keep those Chief Officers with responsibilities for forensic matters in a force up to date and active. (Paragraph 108)

The ACPO Council will shortly be reviewing the arrangements for ensuring that their members are fully abreast of forensic issues. This recommendation has been drawn to the attention of Mr Lake (the Chief Constable of Lincolnshire and ACPO lead for Forensic Science) and he has agreed to consider it within that process.

34. The multiplicity of organisations involved in identifying and disseminating good practice in forensic science to the police is unhelpful and wasteful. We support ACPO's view that there is a need to rationalise the functions of these bodies and recommend that a single organisation be given overall responsibility for co-ordinating best practice in forensic science for the police. This should be done without delay to prevent further duplication of effort and expenditure. (Paragraph 110)

This issue will be addressed in the development of the quality regulation framework and the National Policing Improvement Agency.

35. The Forensic Science Advisory Council will be essential for ensuring that the police continue to have access to independent and impartial expert advice on forensic science in a competitive marketplace. (Paragraph 115)

The Committee's observation has been noted.

## *Chapter 6 – Research and Development*

36. At this time of heightened security, it is unacceptable that so many opportunities to develop technologies that could assist in the battle against crime and terrorism are being squandered due to a lack of information for researchers and poor management of the research process. We recommend that the Home Office, Police Science and Technology Strategy Group and the Research Councils examine ways to resolve this. (Paragraph 123)

This issue will be addressed in the forthcoming analysis of the Science and Technology Strategy and the Forensic Integration Strategy.



**37. The Home Office has published a high level Police Science and Technology Strategy and developed complex vehicles for its delivery. Yet it has singularly failed to engage with the scientists and engineers working in academia whose research is so essential for meeting the objectives identified in the Strategy. (Paragraph 124)**

The Home Office has developed very valuable links with academic institutions particularly via the Forensic Science and Pathology Unit, Forensic Science Service and the Home Office Scientific Development Branch. We are keen to increase our interactions in this area.

The Home Office's Chief Scientific Adviser Professor Wiles has already written to the scientists who appeared before the Committee to arrange a meeting to discuss their concerns.

This issue will be examined in more detail by the Strategy Group and the Home Office Chief Scientific Adviser.

**38. We recommend that the Home Office introduce fast-track grants for moving promising technologies from the proof-of-concept to the market-ready stage. In addition to funding, these grants should incorporate support to expedite the technology transfer process. (Paragraph 125)**

The Home Office is not well placed to manage this form of grants system. There may however be mechanisms in place within the Research Councils' work which could be adapted for such a programme. The Home Office already has good links with a number of the Research Councils and the Chief Scientific Adviser will arrange to explore with the Councils how we can ensure that good research has access to the right funding regardless of the discipline.

After consultation with those who reported concerns, discussions will be held with the Research Councils to investigate the possible use of such systems.

The forensic science suppliers, as those with a clear understanding of the requirements, should also be in a position to work in collaboration with academics to develop new techniques.

**39. It is not possible to predict with any certainty the impact that development as GovCo and possibly as a PPP will have on the amount of R&D undertaken by the FSS. We are concerned that this impact could be negative. Should there be any significant fall in the percentage of R&D conducted by the FSS, the Government may need to introduce incentives to stimulate R&D in this sector. (Paragraph 127)**

The Committee's concern is noted. Changes in the market are expected to increase the investment in R&D. This position will be monitored.

**40. The IPR that has been developed within the FSS must remain freely available to the police once the FSS becomes a GovCo and potentially a PPP. (Paragraph 129)**

The FSS Transformation programme is evaluating which IPR assets should be transferred to the FSS as part of the ongoing vesting process. ACPO will be consulted on any proposals made in order to ensure that future arrangements will not adversely affect police access.



## ***Chapter 7 – Use of Forensic Evidence in Court***

**41. The CRFP must itself be subject to regular independent auditing of the assessment processes used to grant accreditation and renewal of accreditation, as well as the disciplinary procedures. It is essential that the CRFP is, and is seen to be, transparent, accountable and independent. It must also be seen to exercise its duty of care by vigorous and appropriate actions in respect of malpractice allegations about registrants. (Paragraph 135)**

The governance of the CRFP is a matter for the Council. However, the involvement of the CRFP in the CJS is dependant on it maintaining the confidence of the key stakeholders, who are represented on the Council. The issue will be discussed with the Council.

**42. As the community of registrants grows in an emerging specialism, the problems associated with the small number of possible assessors should diminish. In the meantime, CRFP must take care to monitor the assessment process carefully, if necessary using the services of overseas experts with appropriate experience and expertise. (Paragraph 136)**

This is a matter for the CRFP.

**43. Providing that the current problems with the Register can be resolved, as the percentage of registered practitioners in the mainstream specialities increases, there will be a strong case for CRFP registration being made mandatory for experts in those specialities presenting evidence to the courts. (Paragraph 139)**

It would not be appropriate for the Government to mandate registration with a private organisation. The criminal justice system must have access to appropriate expert testimony to ensure it reaches the correct decision. The use of a mandatory registration scheme would prevent appropriate experts from giving testimony in a number of circumstances, for example where the required expert does not normally work within the forensic arena and is therefore not registered. Another example might be that the required expert may work within the forensic arena but, perhaps due to working in research and development, does not carry out sufficient casework to be registered. The required expert may not work within the UK, or expertise may be required in a subject which rarely comes before the court. It therefore seems more sensible to have a scheme whereby the registration is voluntary. Where someone seeks to appear as an expert witness in an area where registration is available but they are not registered, this will highlight to the judge the need to consider carefully whether their testimony should be admitted and, if so, on what basis.

**44. The Forensic Science Society should also consider making CRFP registration a condition of membership for active practitioners in order to stimulate uptake of accreditation. (Paragraph 139)**

This is a matter for the Forensic Science Society.

**45. We are disappointed to discover such widespread acknowledgement of the influence that the charisma of the expert can have over a jury's response to their testimony, without proportional concomitant action to address this problem. If key players in the**



criminal justice system, including the police and experienced expert witnesses, do not have faith in a jury's ability to distinguish between the strength of evidence and the personality of the expert witness presenting it, it is hard to see why anyone else should. There is clearly no easy answer to this problem, but that does not justify the complacent attitude of the CPS. (Paragraph 142)

This is a matter for the CPS.

46. The training of expert witnesses in the general principles of presentation of evidence to courts and the legal process is essential. For independent forensic practitioners and those who would not otherwise receive such training, the Department for Constitutional Affairs should make funding available to ensure that they do have access to this training in advance of their appearance in court. (Paragraph 144)

We do not accept that the DCA should be responsible for funding the training of expert witnesses. Such training is the responsibility of the professions to which expert witnesses belong, and a variety of training in this area is already available.

47. There is a need for clear guidelines to be issued setting out the acceptable areas of training for witnesses. These guidelines must also take into account the special status of expert witnesses, as distinct from ordinary witnesses. In addition, the guidelines should clearly differentiate between the roles of experts in the family, civil and criminal courts. (Paragraph 145)

Guidelines on the acceptable areas of training for witnesses are already set out by case law. However the case law may not be as accessible as it should be. We are looking at ways of disseminating case law through the CRFP and other appropriate bodies, and the Crown Prosecution Service has distributed national policy guidance on training for witnesses, prepared in the light of recent case law.

48. Pre-trial meetings to identify areas of agreement and disagreement between experts must be held as a matter of routine; it is a false economy not to allow enough time for full discussion at this stage. We trust that the Criminal Case Management Framework and Criminal Procedure Rules 2005 will help to ensure that this happens in future but the Judicial Studies Board should ensure that its guidance emphasises the importance of this to the judiciary. (Paragraph 152)

The Criminal Procedure Rules Committee has been informed of this proposal. It is actively considering the adequacy of the relevant procedural rules in the light of the Committee's comments, whilst bearing in mind that those new rules only came into force on 4 April.

The JSB does not issue guidance per se but rather part of its objective in training is to highlight best practice based on recent decisions, statutes, directions and the like. Continuation training in particular would enable the discussion of the merits and drawbacks of issues such as this, subject to what is required by any authorities and rules. However it is not possible to cover each and every topic and items and issues of significant change will inevitably take first priority.



**49. We urge the Legal Services Commission to implement Lord Justice Auld's recommendation to provide for automatic authorisation of funding where a judge is of the view that an expert should be instructed. (Paragraph 156)**

The Legal Services Commission does not accept this recommendation. Where there is a judicial recommendation to instruct an expert, authorisation of funding should not be automatic. If this were to happen there would be no incentive for those representing clients to seek out not only the most appropriate but also the most cost effective expert since searching for better value, i.e. cheaper experts, is a time -consuming activity. If there were to be a guaranteed authorisation of funding following a judicial recommendation to instruct an expert, then suppliers would be likely to instruct the first suitable expert that they find, having little regard to costs of the same. This in turn could lead to a general increase in the fees that experts charge if their selection no longer relies upon any cost-based criteria. This could lead to a significant increase in the Criminal Legal Aid Budget.

**50. We are of the view that there is significant room for improvement in the way that statistical evidence, including risks and probabilities, is presented to juries. In order for this to occur, there needs to be a better understanding of the forms of wording and presentation that are easiest to understand, and least misleading, to members of the general public. We do not make a judgement about which form of wording is most apposite for the presentation of DNA evidence but recommend that the decision be informed by research. (Paragraph 162)**

The Home Office is considering the issues raised with regard to DNA evidence and have arranged a meeting with Mr Cooke, appropriate officials from the department, the Crown Prosecution Service and the Forensic Science Service to establish the issues which need to be addressed. Once the issues have been clarified the Home Office shall, in conjunction with key stakeholders in the CJS (particularly the Crown Prosecution Service), determine the appropriate method of addressing them.

On the wider issue of the use of statistics in the criminal justice system Prof. Wiles (the Home Office's Chief Scientific Adviser) has written to the Royal Statistical Society to arrange a meeting. The purpose will be to consider how best to ensure that statistics employed within the criminal justice system are accurate, properly applied and presented in an understandable manner.

**51. The absence of formal and permanent channels for forensic scientists and experts to give feedback on their courtroom experiences seems to us to represent a serious flaw in the criminal justice system. We recommend that the Home Office establish a forum for Science and the Law, which meets at least every six months. If the recommendation to set up a Forensic Science Advisory Council is adopted, the forum should be subsumed into this body. (Paragraph 163)**

The Home Office, ACPO and APA have initiated discussions about quality regulation, with the aim of undertaking a broader consultation with stakeholders and interested parties in the criminal justice system. The wider issue of quality improvement will be considered as part of this consultation, and this will include the option of establishing a forum.



**52. Jury research is vital to understand how juries cope with highly complex forensic evidence. Jury research would also be instructive for understanding differences in the way that jurors respond to oral and written reports by experts, and how easy they find interpretation of these reports. We recommend that section 8 of the Contempt of Court Act be amended to permit research into jurors' deliberations. (Paragraph 166)**

This issue is being addressed in the context of the current Department for Constitutional Affairs consultation exercise on jury research. The closing date for responses was 15 April 2005, and the results of the consultation are expected to be published in the autumn of 2005.

**53. Advancements in science and technology impact on both the techniques used by criminals and the approaches employed in fighting and detecting crime. It is, therefore, highly likely that the number of cases which depend on complex forensic evidence will increase. This is already happening with regard to digital evidence. The Home Office should undertake research to test whether there would be value in extending the arrangements for complex fraud trials to be tried without a jury to other serious cases that rest on highly complex scientific evidence. This research must also address public attitudes towards this possibility. (Paragraph 167)**

The appropriateness of using juries to deal with technically complex cases was explored by the Home Office in the consultation exercise preceding the introduction of the Criminal Justice Bill in November 2002. The bill originally included provision for the prosecution to apply, on grounds of length or complexity, for a Crown Court trial to take place before a judge sitting without a jury. This provision was amended during its progress through Parliament, and as enacted (at section 43 of the Criminal Justice Act 2003) it applies only to long or complex serious fraud trials. The Government has no plans to seek to extend the ambit of this provision.

**54. Expert witnesses have been penalised far more publicly than the judge or lawyers in cases where expert evidence has been called into question. These cases represent a systems failure. Focussing criticism on the expert has a detrimental effect on the willingness of other experts to serve as witnesses and detracts attention from the flaws in the court process and legal system which, if addressed, could help to prevent future miscarriages of justice. (Paragraph 170)**

The Committee's comments are noted.

**55. The absence of an agreed protocol for the validation of scientific techniques prior to their being admitted in court is entirely unsatisfactory. Judges are not well-placed to determine scientific validity without input from scientists. We recommend that one of the first tasks of the Forensic Science Advisory Council be to develop a "gate-keeping" test for expert evidence. This should be done in partnership with judges, scientists and other key players in the criminal justice system, and should build on the US Daubert test. (Paragraph 173)**

As noted earlier (in the response to recommendation 10), the Home Office, ACPO and APA are planning to consult with stakeholders on the issue of quality regulation in forensic science. The establishment of a regulator is one of the options to be considered, as is how the courts can be supported in appropriately weighing scientific evidence.



**56. The stance of the Bar Council, Home Office and CPS that the adversarial system provides sufficient safeguards so as to obviate the need for independent scrutiny of expert evidence is complacent and at odds with the views of the police. (Paragraph 175)**

The Committee's comment is noted.

**57. Even if problems are rare, the human cost and damage to public confidence in the criminal justice system caused by the miscarriages of justice associated with flawed expert evidence that have already occurred must be taken into account. Moreover, we believe that steps could be taken that would reduce the potential for such miscarriages of justices to occur. We recommend that a Scientific Review Committee be established within the Criminal Cases Review Commission. This Committee would be charged with handling complaints about expert evidence and, even where there are no grounds for an appeal, should work closely with the main forensic providers and the CRFP to address any problems identified with an expert's conduct. (Paragraph 176)**

The Government does not consider that an activity of the kind proposed, which would have a significant regulatory function, would fit appropriately alongside the Commission's statutory functions as an independent body investigating suspected miscarriages of justice.

**58. While we have no particular complaints about the quality of the guidance available to lawyers on the understanding and presentation of forensic evidence, it is of great concern that there is currently no mandatory training for lawyers in this area. In view of the increasingly important role played by DNA and other forensic evidence in criminal investigations, it is wholly inadequate to rely on the interest and self-motivation of the legal profession to take advantage of the training on offer. We recommend that the Bar make a minimum level of training and continuing professional development in forensic evidence compulsory. (Paragraph 180)**

Professional training is a matter for the governing bodies of the legal profession such as ILEX, The Law Society, The Bar Council and indeed employers of employed barristers (whether government or private firms). Members of the bar are obliged by the General Council of the Bar Code of Conduct to ensure that they are competent to accept briefs/instructions and so should not be in a position of accepting a brief if they do not understand the case. The Bar Council operates a system of compulsory basic training for all barristers. Compliance with Continuing Professional Development requirements are met by attending training courses offered by both the Bar Council and external providers, some of which cover forensic science.

The Committee is also referred to the response to recommendation 46.

**59. We recommend that judges be given an annual update on scientific developments of relevance to the courts. (Paragraph 182)**

The Judicial Studies Board (JSB) is responsible for the training of judges and judicial independence dictates that it will be for senior judiciary to determine any subjects that must form a core part of any training. Scientific evidence is potentially used in all jurisdictions (criminal, family and civil) and therefore it is unlikely that one annual update could suffice in any event. The best answer probably lies in providing the judiciary with access to any useful avenues of information available, and links to website materials with



appropriate disclaimers would be one such medium. The JSB would consider providing links for these through its own website.

The Home Office Science Group already assist the JSB in the provision of training to the judiciary and would be happy to assist the JSB in any new training they may wish to present.

**60. We recommend that the Home Office issue a consultation on the development of a cadre of lawyers and judges with specialist understanding of specific areas of forensic evidence. An additional benefit to this would be the creation of a small group of judges and prosecution and defence lawyers with the ability and current knowledge to act as mentors to their peers when required. (Paragraph 184)**

The Home Office accepts the value of having lawyers who fully understand the evidence placed before the courts. Having consulted other stakeholders in the criminal justice system it appears a number of judges and lawyers already have specialist knowledge of this kind, and can be identified through directories.

July 2005

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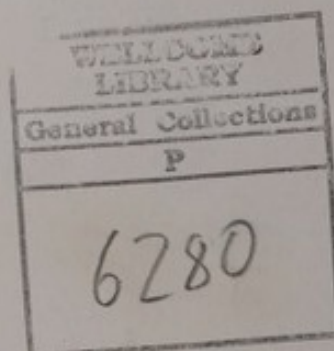
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