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Forensic Science and Criminal Justice in England and Wales

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Introduction

Forensic science is pivotal to the working of the criminal justice system and the operation of the rule of law. Justice rests on the integrity and accuracy of evidence as well as its reliability and robustness. It is an area that is cross-cutting across from the world of science and proof to the world of law and probability- in fact, to establish evidence beyond a reasonable doubt in criminal cases. Trust lies at the heart of the system, for victims, juries, prosecutors and Judges. Historically, the Forensic Service in England and Wales was held in high esteem and provided the bulk of forensic provision. Today forensic services are divided between several private providers and the police. Currently, the Forensic providers are under strain. The Home Office and Ministry of Justice, the two government departments responsible have undergone considerable political and administrative changes. Forensic services have suffered. Budget cuts and re-organisation of structures within the Forensic Service providers have been problematic. The House of Lords Science and Technology Select Committee have published their 3rd Report (session 2017-9), Forensic Science and the Criminal Justice System: A Blueprint for Change¹.

The Context and Background

The 2011 closure of the state run and mainly public financed Forensic Science Service (FSS) that used to be run by the Home Office, opened- up a niche for private sector providers. The result is that there is a mix of privately funded and publicly funded providers. This is an example of cost-sharing between the sectors. Private providers as well as the police are free to develop their own services. Regulating forensic scientists has to cut across both public and private entities and while there are opportunities to

develop new strategies, their co-ordination and organisation needs to be carefully monitored. The importance of uniform and fully accredited forensic services includes the need for proper resources, training, appropriate processes, and integrity in setting benchmarks and accreditation schemes. There is an International Standard ISO 17025 which sets the competence levels for testing and accreditation of laboratories. Since 2008 forensic science regulation has been in the hands of a single independent regulator, appointed since February 2008. The appointment of the regulator is run through the Home Office and is a public appointee whose main function is to ensure adequacy in the provision of forensic sciences services to the criminal justice system and that there is an appropriate regime of scientific quality standards. The regulator has no statutory powers. There is a separate and independent Forensic Science Society that is the professional body for forensic practitioners. It is largely supportive of the work of the regulator and operates a full range of related services. There is a Society's Membership and Ethics Committee which applies strict criteria for membership, engages in supervising CPD activities and ensures that there is supervision of the Chartered Forensic Practitioner status. It holds workshops and conferences and seeks to enhance the education of forensic scientists. There is also considerable EU regulation over forensic science with an EU Framework Decision requiring DNA and fingerprint laboratories to conform to ISO/IEC 17025. There are various drafts and guidance issued by the Regulator including the draft Codes of practice and Conduct for forensic science providers and practitioners in the criminal justice system (2010) and various attempts to build into the regulatory structure the main components of ISO 17025 (2011).

¹HL Paper 333. (1st May 2019)

²House of Commons, The Forensic Science Service, Science and Technology Committee (2011), para. 127

The Main Findings of the House of Lords Select Committee

The Independent Forensic Science Regulator in her annual report has concluded that there is a need for “profound changes to funding and governance.”³ This finding is consistent with the House of Lords Select Committee’s report. The major finding is that there is a “serious deficit of high-level leadership” between the Home Office and the Ministry of Justice. Current oversight and accountability are “piecemeal” and there should be a Forensic Science Board for the delivery of a new forensic science strategy for England and Wales. The current forensic science service is a market that is “dysfunctional” and is susceptible to market forces which may force some to go out of business. A further complication is the way each individual Police Authority (there are 43 in total) make decisions on how to deliver forensic services. This has resulted in a mixture of in-house provision and out-sourcing to private unregulated providers. The House of Lords Committee recommends that the Forensic Science Regulator should be given statutory powers to ensure that there is much needed trust in the delivery of forensic science. Defendants struggle with reductions in legal aid, especially when forensic evidence is in dispute. Additional challenges arise with the need for digital forensic evidence and the absence of substantial resources to tackle the growth in such evidence. There is also a need for legal practitioners to be better educated and experienced in this growing field of importance. The

House of Lords Select Committee concluded that forensic science was “under-resourced and uncoordinated.” Education and training are similarly neglected and requires attention. It is clear that the use of valuable police resources will be ineffective, unless fully supported by an adequate forensic science service.

Conclusion

The House of Lords Select Committee has made a valuable contribution to the analysis of the delivery of forensic services. The Government responded in July 2019, accepting many of the recommendations and a commitment to “giving statutory powers to the Regulator by bringing forward legislation at the first opportunity”. There is the possibility that this can be achieved by a government supported Bill or a Private Members Bill. It is accepted that there should be greater liaison with the private and public sectors including better funding of the service. It will remain to be seen whether the opportunity for improvements will be taken forward.

Acknowledgement

None.

Conflict of Interest

No conflict of interest.

³Forensic Service Regulator, Annual report November 2017-2018 (15th March 2019).