



THE GOVERNMENT RESPONSE TO THE
SEVENTH REPORT FROM THE HOUSE OF
COMMONS SCIENCE AND TECHNOLOGY
COMMITTEE SESSION 2010-12 HC 855

The Forensic Science Service

**Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty**

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THE FORENSIC SCIENCE SERVICE

INTRODUCTION

The House of Commons Science and Technology Committee published the report of its inquiry into the Forensic Science Service (FSS) on 1 July 2011.

The inquiry considered the Government's decision to manage the closure of the Forensic Science Service, focussing in particular on the following issues:

- The reasons for the FSS's financial difficulties and the Government's decision making process;
- The impact on forensic science research and development;
- The wider implications for the criminal justice system;
- The capacity of private forensic service providers; and
- The impact of forensic science services carried out by police forces.

This Command Paper sets out the Government response to the conclusions and recommendations in the Committee's report.

Why the FSS was in financial trouble

In many ways the creation of a market for forensic science has been a success - turnaround times are faster, prices are lower and quality standards have increased.

Unfortunately the FSS has been left with higher costs as a legacy of its previous status as a Government agency. As a result, the company has been unable to compete - its share of the market has reduced in every tender that has been held to provide forensic science services to the police.

Against this backdrop, the forensics market has been shrinking due to falling prices as a result of increased competition and more effective control of forensic submission volumes by police forces. This has put the FSS in serious financial difficulty, with significant operating losses and the prospect of further shrinkage in demand for forensics services as police continue to drive efficiencies in their use of forensic services.

Why a managed closure was the right decision

We are committed to ensuring the continued provision of forensic science services to the criminal justice system. Forensic science is a central pillar of our Criminal Justice System (CJS) and it was vital that we took clear and decisive action to protect it.

Without funding from the Government, the FSS would have entered administration in early 2011. This would have seriously damaged the forensics capability available to the CJS. We were not prepared to expose

the CJS to that level of risk. We are pleased that the Committee agrees with us on this point.

The managed wind-down of the FSS is the right choice, both financially and for the CJS. An orderly wind-down will ensure that the police and the CJS as a whole continue to have the forensics capability they need to protect the public and bring criminals to justice.

Managing the transition

We are working closely with key partners across the CJS during the transition. The Forensic Transition Board (FTB) is overseeing this process, and includes representatives from the Association of Chief Police Officers (ACPO) and the National Policing Improvement Agency (NPIA), with a wider advisory group whose members include the Forensic Science Regulator, the Association of Police Authorities, Crown Prosecution Service (CPS) and the Ministry of Justice.

Our primary objectives for the transition are:

- To ensure the continued supply of effective forensics to the CJS;
- To provide value for money for the taxpayer; and
- To create a stable, healthy and competitive market for forensics, that will provide cost effective and innovative forensic services to support the CJS.

Progress to date

Significant progress has been made since the publication of the Committee's report. As a result, the transition remains on schedule to complete by March 2012.

We believe that a mixed approach considering both procurement of FSS's work and the sale of parts of FSS's business and assets is the best approach to mitigate risks for all and ensure best value for money for the taxpayer.

ACPO and NPIA have re-procured forensic supply for the Eastern region, the East Midlands and West Midlands, following the earlier successful transfer of work for the West Coast Consortium of forces. As of 3 October 2011, new cases from these forces will be carried out by alternative forensic service providers under the re-procurement arrangements.

Separate arrangements exist to manage the transition for the Metropolitan Police Service (MPS) and forces in the North East region. The MPS has worked with FSS and commercial suppliers to develop bespoke arrangements involving the parallel in-sourcing of evidence recovery, interpretation and reporting of forensic science examinations, and tendering of analytical work. The in-house MPS forensic laboratory is accredited to the same ISO17025 standard as private sector forensic laboratories. Forces in the North East are exploring options for the FSS's Wetherby laboratory, which currently provides the majority of their forensic services, with a decision expected in the next few weeks.

As well as procedures for the handling of live cases, the police and CJS must continue to have proper access to forensic records to enable them to protect the public and bring criminals to justice. The Forensic Transition Board has agreed that the FSS archive will continue to operate after March 2012 from the two existing FSS archive sites in the West Midlands. This will ensure police forces and the wider CJS will continue to have access to the FSS archive both for use in court and in the investigation of cold cases.

What the transition means for FSS staff

This is a challenging time for FSS staff and we value the commitment they have shown throughout the transition.

We have provided funding for the company to run a voluntary redundancy scheme on the basis that this is both fair to staff and in the best interests of the UK taxpayer. We have been pursuing options to transfer elements of FSS business, including staff where possible, to avoid unnecessary redundancies and ensure the future market has sufficient capacity.

We will protect the FSS's historical pension liabilities and are working with the FSS, its staff and pension trustees to find a solution which both secures value for money and protects the interests of staff and pension recipients.

Providing a competitive environment where research and innovation can flourish

The FSS's financial difficulties had already limited the company's capacity for research and innovation. By creating a healthy market for forensics, we will provide an environment where research and innovation can flourish.

We are working closely with the police, the FSS, the CPS and other forensics providers to look at how we can help the industry to build on existing expertise and continue the innovation for which the UK has become globally renowned.

The Home Office also commissioned the Home Office Chief Scientific Adviser, Professor Bernard Silverman to carry out a review of research and development in forensic science. The review was published on 30 June. We welcome Professor Silverman's findings, which, amongst other things, underline our view that forensic science providers should undertake appropriate research and development to support their role in the CJS.

Strong, independent regulation of quality standards

Forensic service suppliers in England and Wales provide some of the quickest turnaround times and highest quality forensic science in the world. We are committed to ensuring robust quality standards are maintained. We have recently reappointed Andrew Rennison as the Forensic Science Regulator to provide strong, independent regulation of quality standards.

GOVERNMENT'S RESPONSE TO THE COMMITTEE'S RECOMMENDATIONS

The Committee reached a number of conclusions and highlighted recommendations for action by the Government. In this response the recommendations are identified according to the paragraphs in which they appear in the conclusion of the report. Some responses are grouped together where they relate to the same issue.

THE FORENSICS MARKET

1. Given that the Government expected private forensic science providers (FSPs) to pick up the FSS's 60% share of the external forensics market, it is disappointing that the Government does not appear to have gathered any market intelligence on the capacity and commercial willingness of private forensic science providers to take on the FSS's work. (Paragraph 42)

The Home Office considered information from PwC and ACPO about the state of the market in general before the decision was made to manage the closure of the FSS. ACPO have been clear from the outset that the forensics market could cope with the managed closure of the FSS.

2. The apparent lack of transparency over the size of the forensics market is unacceptable and we see no reason why the FSS and other forensic science providers should have been unaware of police forensic expenditure figures. The levels of police expenditure on internal and external forensics should have been published, and we recommend that they are published in detail in future. If the Government expects the private sector to pick up the FSS's market share, it must be clear with private forensic science providers about the size of the market and anticipated future trends. (Paragraph 43)

As we stated in our written submission to the Committee, *"The Home Office does not compile details of police expenditure as it is up to individual Police Authorities and Chief Constables to decide how best to spend their money"*. The Chartered Institute of Public and Finance Accountancy (CIPFA) do publish some information on police forensics expenditure in their Police Objective Analysis (POA).

We were very clear when we announced our decision to manage the closure of the FSS that police spend on external forensic suppliers would "continue to fall over the next few years". There is a clearly defined timetable for future forensics procurement.

3. The Minister's lack of awareness that private FSPs have concerns about police expenditure on forensic science is worrying. The Government must now ensure that the views of private FSPs are sufficiently taken into account during the transition period; it runs the risk otherwise of having unrealistic expectations about what private FSPs can deliver in a shrinking market. (Paragraph 44)

Reductions in the size of the forensics market have not been driven by increases in police in-sourcing. As NPIA set out in their evidence to the Committee, police internal expenditure on forensic science is primarily on work that is not carried out in the private sector.

The Home Office, ACPO and NPIA have engaged with FSPs throughout the transition period, both in terms of the procurement of FSS's work and the sale of parts of FSS's business and assets.

4. In our view, collecting data on police expenditure is not at odds with enabling the police to have operational independence. We are concerned that neither ACPO nor the Home Office could provide us with the full cost of internal forensic science activities. We recommend that ACPO and the Home Office gather and publish data on the full police expenditure on internal forensic activities, including capital, training and skills, forensic testing and administration over the last five years, and continue to publish this information in future. If the Government's policy of a market in forensic science services is to operate effectively, it is important that the full costs of internal forensic expenditure are fully and accurately reported. In addition, we consider that the statement given to Parliament on 14 December 2010 was inadequate as the information on police expenditure, on which it was based, was incomplete. (Paragraph 49)

As we stated in our written submission to the Committee, "*The Home Office does not compile details of police expenditure as it is up to individual Police Authorities and Chief Constables to decide how best to spend their money*". The Committee can submit a request to the Chartered Institute of Public and Finance Accountancy (CIPFA) led Working Group that agrees the data-collection questionnaire that goes out to forces if it wants information on police expenditure on internal forensic activities to be collected in future.

The Written Ministerial Statement given to Parliament on 14 December 2010 was not inadequate. The Statement set out that "*the police have advised us that their spend on external forensic suppliers will continue to fall over the next few years, as forces seek to maximise efficiencies in this area*". Police internal expenditure on forensic services has had very little impact on the wider forensics market.

5. Given the marked decrease in the external forensics market in 2010-11, it is reasonable to expect that the market may shrink to £110 million or less before 2015, particularly given that spending cuts have yet to bite on police budgets. While we agree with the Minister that it would be wrong to speculate, we recommend that the Government re-evaluates the future of the forensics market in light of the cuts to police budgets and planned withdrawal of the FSS from the market. (Paragraph 52)

It would be premature to re-evaluate the future of the forensics market before the transition is complete.

NATIONAL FORENSIC FRAMEWORK AGREEMENT

6. It is our understanding that some areas of forensic science provision, particularly complex, interpretive analyses, are not profitable under the current procurement strategy, although this does not make them less important to criminal justice. In considering the proposed closure of the FSS and development of a future procurement strategy, the Government must recognise and address this issue. (Paragraph 62)

We are committed to ensuring that the police have access to the forensics services they need to do their jobs effectively – that includes access to complex forensic techniques. As the Committee heard from David Richardson of LGC Forensics, existing providers are already offering end to end case work services to forces, whose individual components may be of variable profitability.

7. The risks of fragmentation cannot be managed if the extent of fragmentation and the reasons for it are unknown. It is the responsibility of the police to monitor whether fragmentation, whereby crime exhibits from the same crime are sent to different providers, has been occurring. ACPO and the NPIA (or its successor) should conduct a survey of police forces to determine the extent to which fragmentation has occurred under the National Forensic Framework Agreement, and reasons for any fragmentation. This should be fed into future forensic procurement frameworks and continually monitored. (Paragraph 68)

As Dr. Gary Pugh and Chief Constable Sims said in their evidence to the Committee, it is not general police practice to send exhibits from the same crime scene to different providers. There are a very small number of exceptions in rare cases where a highly specialised piece of analysis is only offered by a niche provider. In such cases, care is taken to ensure continuity is maintained. Roger Coe-Salazar from the CPS confirmed that if fragmentation were taking place *“it is not creating an operational delivery problem”* from CPS’s perspective.

8. The expiration of the current procurement strategy provides an ideal opportunity for the NPIA, ACPO and the Home Office to review the successes and failures of the National Forensic Framework Agreement. We recommend that the following questions are answered and resolved: (i) whether all forensic services, particularly complex interpretations, are adequately valued; and (ii) whether the procurement strategy has encouraged fragmentation of casework. (Paragraph 72)

We will take on board any lessons from the current National Forensic Framework Agreement when developing the next procurement framework.

We believe that all forensic services are adequately valued - the framework delivers the market price for services, whether complex or not. Fragmentation of casework is not general police practice and has not been encouraged by the current procurement strategy.

FINANCIAL POSITION OF THE FSS

9. The Government announcement that the FSS was losing £2 million a month was not the full story. It should have been made clear that (i) the figure did not take into account the savings expected to be delivered by the transformation programme; (ii) it did not account for potential further declines in business; and (iii) while some monthly losses may have been £2 million, the average monthly loss over the past year was lower. As a result, evaluation of the proposal to close the FSS from the taxpayer's perspective was difficult. (Paragraph 80)

The announcement was accurate. The FSS was losing approximately £2m a month in the 9 months prior to December 2010 when the decision was made to manage the closure of the company. A cashflow forecast received from the FSS at the end of February 2011 confirmed that substantial monthly operating losses would continue to be incurred if business as usual continued without further Home Office intervention. Since then, the company's monthly operating losses have fluctuated as work is transferred to other suppliers and FSS sites have closed.

10. We are dismayed that the FSS was not privy to information on the forensics market. There has clearly been a persistent failure to communicate information to the FSS about the market environment in which it was expected to find a way to thrive. The PwC report on the state of the forensics marketplace and figures on police expenditure should have been available. (Paragraph 86)

We have had ongoing engagement with FSS about the market environment, including extensive discussions with FSS management before the decision was made to manage the closure of the company.

11. If the Government wants a competitive market in forensic services it must ensure that the market is not distorted by the police customer increasingly becoming the competitor. Otherwise the ambition for a truly competitive market is fundamentally undermined. We consider that the Government's ambitions for fully privatised forensic science provision are jeopardised by its complacent attitude towards police forensic expenditure. (Paragraph 91)

12. We are concerned that there are no measures in place to curb further in-sourcing. We recommend that the Government introduce measures to ensure that the police do not further in-source forensic science services that are already available from external providers through the National Forensic Framework Agreement. Regulations should apply to any successor frameworks. We disagree with the Minister that the FSS transition period may not be the right time to put these measures in place - given the fragility and uncertain future of the market it is the ideal time to do this. (Paragraph 92)

The Government does not have a complacent attitude towards police forensic expenditure.

Due to the need to maintain flexibility in delivering the transition programme the mandation of the service regulations for forensics has been put on hold. The Government will decide whether to proceed with the services regulations after considering the implications in the context of the managed closure of FSS and the future shape of the forensics market.

To date there has been limited police in-sourcing of those forensics services which are provided by external forensics providers e.g. by setting up their own laboratories. As such, in-sourcing has had very little impact on the forensics market.

There are a number of factors which have played a part in the reduction of police spend on external forensics services:

- The police have reduced their forensics spend by realising efficiencies such as bringing certain processes in house to be more cost effective and better controlling submissions to reduce cost of unviable samples being sent;
- The reduction in demand can also be attributed to the levelling out of a market that was artificially inflated by the previous Government's DNA Expansion Programme, which did little to enhance charge summons rates for those offences most likely to benefit from DNA detections; and
- As the NPIA explained in their written submission to the Committee, the introduction of competition into the market has driven down the cost of forensics services.

We are working closely with the police to ensure that any decisions to in-source forensics capability are made in the best interests of the CJS.

QUALITY STANDARDS AND IMPARTIALITY

13. In the transition period to 2012, the Government must ensure that none of the FSS's work is transferred to a private forensic science provider that has not achieved accreditation to ISO 17025. (Paragraph 100)

14. We have seen no evidence to suggest that private forensic science providers would be less impartial than the FSS, but they must be accredited to at least the same standards. (Paragraph 114)

We can confirm that any of FSS's work that is transferred to private forensic service providers will only be transferred to companies that are accredited to ISO 17025 standard.

15. We have serious concerns about the potential transfer of the FSS's work to non-accredited police laboratories. We agree with the FSR that the transfer of work from the FSS to a non-accredited police environment would be highly undesirable, as this would pose significant and unacceptable risks to criminal justice. If a sufficient match in quality standards cannot be met elsewhere, the Government should, at the least, reconsider the 2012 closure deadline. The needs of criminal justice must come before considerations of financial convenience. (Paragraph 109)

16. No quality standard or code of conduct can guarantee impartiality. However, we consider that adherence to ISO 17025 and the Codes of Conduct being developed by the Forensic Science Regulator would be a good place for police forensic laboratories to start. Compliance with ISO 17025 is already planned, albeit on a generous timetable. We recommend that existing police forensic labs also commit to the FSR's Codes of Conduct. (Paragraph 123)

17. We agree that a nebulous fear or perception of impartiality is insufficient reason to condemn police in-sourcing of forensics, although the perception of impartiality is crucial to the courts and public confidence in the criminal justice system. However, given that so few police forensic laboratories have been accredited to ISO 17025, a standard that demands a level of impartiality, we must express concerns about the risks to impartiality of forensic evidence produced by non-accredited police laboratories. We reiterate our previous recommendation that if the FSS closes, transfer of work from the FSS to a non-accredited police environment would be highly undesirable. (Paragraph 124)

Any police laboratories taking on FSS's work will need to work to the same standards as private sector providers. The Metropolitan Police Service, Greater Manchester Police service, West Midlands and Derbyshire has already received accreditation for their in-house forensics laboratories and other forces are already in the process of seeking accreditation.

ACPO recognises the need for quality standards for forensics processes and evidence and has put in place a process of accreditation to meet the framework set out by the Forensic Science Regulator. The Regulator is discussing plans with ACPO to roll out the framework across the whole of the police service. All forces have been written to by the ACPO leads (Deputy Chief Constable John Fletcher and Gary Pugh), stating that laboratories must become accredited. The Forensic Science Regulator is working closely with Deputy Chief Constable Fletcher who leads for ACPO on the roll-out of standards and provides the Regulator with information on force plans for accreditation of in-house facilities.

18. The introduction of bias based on selective forensic examination of exhibits, arising from the need to make savings is a different risk. We are concerned that the risk may be exacerbated by recent cuts to police budgets and we urge the Government to monitor the situation. Police forces must work closely with forensic science providers to ensure that any selectivity is scientifically justified. (Paragraph 125)

We agree that the selective submission of exhibits for forensics testing must be based on sound scientific and investigative processes. As mentioned above, ACPO and the Forensic Science Regulator are committed to ensuring the correct processes are in place.

THE FORENSIC SCIENCE REGULATOR

19. The Forensic Science Regulator (FSR) has a crucial role in ensuring high quality standards are maintained, and this role will become more important during the transition period. It is time for the Forensic Science Regulator to have statutory powers to enforce compliance with the quality standards and Codes of Conduct that he has developed through what appears to be a robust process. The Government should bring forward proposals to provide the FSR with statutory powers immediately. (Paragraph 129)

We are committed to ensuring robust quality standards are maintained. We have recently reappointed Andrew Rennison as the Forensic Science Regulator to provide strong, independent regulation of quality standards.

The Regulator has received support and cooperation for his quality standards from the laboratories, professional bodies, prosecuting authorities, the judiciary and ACPO, and to date has not been hindered in dealing with any complaints about quality standards. This position will be kept under review and the creation of powers will be considered if that is appropriate.

20. It is unacceptable that the Home Office failed to consult with the Forensic Science Regulator when considering the future of the FSS, as he was a key stakeholder who could have offered a useful, independent perspective. (Paragraph 131)

The FSR does not provide commercial or legal advice to Ministers. The Regulator has been closely involved in discussions throughout the transition to ensure accreditation issues are properly addressed.

FSS WORK, STAFF AND ARCHIVES

21. We are deeply concerned about the practicalities of transferring the FSS's work and staff to other FSPs by the transition deadline of March 2012. The FSS Transition Board must ensure that, whatever the outcome, forensic scientists employed by the FSS are retained within the profession and within the UK to the benefit of the criminal justice system. Transfer of staff to other forensic science providers must be conducted under TUPE regulations and in addition, care is needed to ensure that pension provision is adequately protected. (Paragraph 146)

TUPE Regulations are a legal requirement and we fully expect that the obligations arising from them will be met as service provision changes during the transition.

The application of TUPE to any particular situation is complex. We have been pursuing options for transferring elements of FSS business, including staff, where appropriate to ensure the future market has sufficient capacity. Ultimately police authorities hold these contracts and we will work with them to seek to avoid unnecessary redundancies.

We realise that staff will want to know what managed closure will mean for their pensions as soon as possible and will keep any uncertainty to an absolute minimum. We value the FSS staff and it will be important to maintain their goodwill during the challenging transition process.

We will protect the FSS's historical pension liabilities and are working with the FSS, its staff and pension trustees to find a solution which both secures value for money and protects the interest of staff and pension recipients. We will also need to consider State aid issues, which we are discussing with the European Commission, as any Government contribution or guarantees are likely to be classed as State aid. In the meantime, FSS continues to support the pension scheme.

22. We cannot see any benefits to breaking up the FSS's archives, including case files, retained materials, research and validation papers and the intellectual capability supporting the archive. Whatever the future of the FSS, the existing archives must physically remain as a single, accessible resource, supported by suitably qualified and experienced experts. This would be in the interests of the criminal justice system. (Paragraph 159)

The police and the wider CJS must continue to have proper access to forensic records to enable them to protect the public and bring criminals to justice.

We have agreed that the FSS archive will continue to operate after March 2012 from the two existing FSS archive sites in the West Midlands. This will ensure the CJS will continue to have access to the FSS archive both for use in court and in the investigation of cold cases.

We are considering long term options for the operation of the FSS archive. The case files and materials in the archive will continue to be owned by police forces and other CJS organisations and will be kept under the guardianship of the Home Office.

23. There may be benefits in developing the FSS's archives further into a comprehensive national resource. The custodianship of the archives should be agreed in the context of the NPIA's wind-down as well as the FSS transition. We recommend that private FSPs contribute suitable documents and materials to what we would term the "National Forensic Archives". (Paragraph 160)

Ensuring continuity for the CJS is our immediate priority. We do not think it is appropriate during the transition to design a completely new archiving system encompassing material from private FSPs. We will consider long term options for the archive following the closure of the FSS in March 2012.

24. Section 17 of the Criminal Appeal Act in 1995 may have been sufficient to enable the Criminal Cases Review Commission (CCRC) to obtain materials when the FSS, as a public body, was the main provider of forensic services to police forces. Although this appears not to have been a problem to date, the increasing penetration of private FSPs into the forensics marketplace means the CCRC's statutory powers are becoming increasingly ineffectual. Whatever the future of the FSS, we

recommend the Government consider extending the powers of the CCRC to obtain materials from private forensic science providers. (Paragraph 165)

We will ensure that contracts with private FSPs include the requirement to allow CCRC to access files, materials and samples upon request. The Government will give consideration to extending the CCRC's powers should this arrangement prove to be unsatisfactory.

FORENSIC SCIENCE RESEARCH AND DEVELOPMENT

25. A Departmental Chief Scientific Adviser (CSA) has unique independence and is therefore, rightly, expected to provide a crucial challenge function to the Department. It may not be within the CSA's remit to advise on legal and commercial matters, but it is certainly within his remit to advise on scientific matters relating to the closure of the FSS, a Home Office-funded centre of scientific excellence. We consider the CSA's satisfaction with his exclusion from the decision-making process and his failure to challenge the decision to be unacceptable. This is a further demonstration of the ongoing weak scientific culture in the Home Office. (Paragraph 171)

We needed to find a commercial and legal solution for the serious financial difficulties facing the FSS. The Home Office Chief Scientific Adviser does not provide commercial or legal advice to Ministers. The role of the Home Office Chief Scientific Adviser is to provide independent, impartial advice on science, research and statistics to the department; leading science and research for the department and its agencies; and, oversight of scientific advisory and regulatory frameworks. We strongly reject the criticism of his role.

We refute the suggestion that the Home Office has a poor attitude towards science. Science has a vital role in underpinning the Home Office's work, both in policy and operations, including in fighting crime, protecting the public from terrorist threats and protecting the border. The Department employs, under the leadership of its Chief Scientific Adviser, Professor Bernard Silverman, a significant team of social and physical scientists, engineers and statisticians and commissions research externally to support the full range of Home Office interests. We greatly value the contribution, both to the Department's activities and to its culture, made by Professor Silverman and his colleagues.

26. We are concerned that no formal assessment was made of the impact of closing down the FSS on forensic science R&D before the decision was made and announced. We have not seen any evidence of an informal assessment. We are very concerned and disappointed that the Chief Scientific Adviser to the Home Office was not consulted prior to the decision to wind down the FSS. (Paragraph 175)

We did consider R&D as part of the decision making process. We were concerned that the FSS's financial difficulties had already seriously limited the company's resource and capacity for research and innovation. That is one of the reasons why we commissioned Professor Silverman to conduct a review into forensic science research and development.

27. We were given various reasons for the timing of the Home Office Review of R&D. The Chief Scientific Adviser implied that one reason may have been a preservation of confidentiality and that the Review may have been prompted by the attention drawn by the closure of the FSS. The Minister told us that a lack of time was the driver. The reasons for the timing should be clarified. (Paragraph 176)

The Minister for Crime and Security did not inform the Committee that a lack of time was a driver for the timing of the review. It would not have made sense to commission a review while the forensics landscape was shifting. The impact of the closure of the FSS on R&D is only one part of the Review, which highlights some important recommendations which are valuable for all those involved in forensic science.

28. The relationship between recommendations made by the Home Office Review of R&D and the work of the FSS Transition Board, set up to oversee the wind-down of the FSS, must be made clear. (Paragraph 177)

The Home Office will facilitate the implementation of the recommendations in the Review where it can. However, it is important that the forensic science community take stronger ownership of developing their research and co-ordinating their priorities – as happens in other research fields.

We fully accept the recommendation that the Forensic Transition Board should pay specific attention to the section of the Framework Agreement for FSPs that sets out the requirement for providers to carry out appropriate research and development.

29. Although private FSPs invest in R&D, it is probably unreasonable to expect private companies to increase their investment in some areas of forensic science research, particularly in fundamental research, at a time of market uncertainty. Private companies do, however, have a key role to play in development and application of research and ongoing validation of methods. (Paragraph 194)

We do not believe that is the case. It will be in the commercial interests of private companies to increase their investment in forensic science research as their market share grows following the closure of the FSS.

The Home Office Review of Forensic Science Research and Development shows that research and development is already an integral part of the work of any commercial forensic science provider and that there are natural links between casework and research.

30. Although we are hesitant to call for increased research funding in the current economic climate, the case for increased public funding specifically for forensic science research is compelling. We consider that the Home Office and Research Councils have an interest in the health of the forensic science research base and should develop a new national research budget for forensic science. The views of the forensic science community should be sought when determining the size and scope of the budget and details of its administration. (Paragraph 195)

We agree with the recommendation in the Home Office Chief Scientific Adviser's Review that consideration should be given to the establishment of forensic science as a strategic research priority for the Research Councils. We will work to facilitate contacts between Research Councils UK and academics, industry and end users to explore establishing forensic science as a strategic research priority.

31. The FSS appears to have worked in a manner that was not conducive to collaboration and coordination of research efforts. The pressure to act as a commercial organisation appears to have been a key factor. (Paragraph 200)

The FSS has been operating as a commercial organisation since it became a Government owned company in 2005. The evidence to the Chief Scientific Adviser's Review demonstrates a wide variety of collaborations involving commercial forensic providers.

32. Coordination and collaborations leading to exchange of knowledge are vital to the health of any scientific discipline. We expect that the Home Office Review of R&D will examine this matter in more detail and that it will bring forward detailed recommendations on this. (Paragraph 201)

We agree with the need for better "join-up" of what can be a somewhat fragmented landscape, and better communication between researchers, providers and users. This is the focus of many of the recommendations of the Chief Scientific Adviser's Review.

33. Although we acknowledge the difficulties in tracking the movements of scientists in the UK and abroad, it is important that the impact of the FSS's closure on its forensic scientists is monitored. The FSS and Government should ensure that the first destination of all forensic scientists that are made redundant or leave the FSS as a result of the proposed wind down are recorded. We request an update on this matter by June 2012. (Paragraph 207)

We are actively monitoring the impact of the managed closure on FSS staff including the transfer and recruitment of FSS staff to other forensic service providers and would be happy to update the Committee in June 2012.

THE DECISION TO CLOSE THE FSS

34. We must state our disappointment at the historical inadequacies in government decision-making that brought the FSS to its current dire financial situation. While we have been critical of the current Government's actions, it must be put on record that we consider much of the responsibility for the current problems facing the FSS to lie with previous administrations. The changes made to the FSS since it became an Executive Agency in 1991, coupled with a subsequent lack of Government understanding of the nature of the growing forensics market, meant that problems inevitably arose. (Paragraph 208)

It is unfortunate that the FSS was left with higher costs as a legacy of its previous status as a Government Agency which left the company unable to compete in a shrinking forensics market.

35. It appears that the Attorney General was first engaged only through the clearance processes, that is, the process by which Government-wide confirmation was obtained, after the initial decision had been made by the Home Office to wind down the FSS. We are surprised that the Director of Public Prosecutions, the head of the CPS, was not directly consulted. The Criminal Cases Review Commission does not appear to have been involved at all. This is unsatisfactory and unjustifiable given the impact the closure of the FSS could have on the work of the criminal justice system. It should not need to be stated that forensic science is a service for criminal justice, not just policing. (Paragraph 215)

The Home Office needed to find a commercial and legal solution for the serious financial difficulties facing the FSS. Once a way forward had been identified and tested with ACPO, the Home Office consulted across Government to ensure the wider interests of the CJS would be protected. The Attorney General and the Ministry of Justice were both consulted as part of this process and did not raise any concerns from the CPS or the Criminal Cases Review Commission.

36. We are pleased that the FSS appears to have had ongoing engagement with the new Government, but concerned that these discussions were limited to senior management and did not involve less senior staff and the trade unions. It is disappointing that the staff of the FSS should have been so disempowered and disengaged from the process. (Paragraph 219)

FSS's senior management were very closely involved in discussions about the future of the FSS. Under the circumstances, wider discussions with staff were not possible until after the decision to manage the closure of the company was announced. Following the announcement, we have met with representatives from Prospect Union and we continue to support FSS in discussions with staff. The Minister for Crime and Security has personally responded to letters to the Home Office from FSS staff.

37. The Government should clarify whether the NPIA was consulted on the decision to close the FSS before the decision was made, and when. (Paragraph 221)

The Forensics21 team in NPIA worked with ACPO to give the ACPO view on the impact of the closure. The NPIA was informed of the decision to manage the closure of the FSS before the announcement but were not formally consulted as an organisation.

38. We are disappointed that the Home Office carried out minimal consultation before making its decision on the future of the FSS. There is a tangible difference between consulting before a decision has been made and consulting on transition arrangements after the decision has been made. It should not have been difficult for the Government to seek the views of key parties other than ACPO. With such limited

consultation, and particularly the lack of scientific input, it is difficult for us to have confidence that the Government fully considered all available options for the future of the FSS and the likely impacts of its closure. (Paragraph 222)

We do not agree with the Committee on this point. As we set out in our written evidence to the Committee and in the Minister for Crime and Security's oral evidence session, we carefully considered all the available options to resolve the financial difficulties facing the FSS and the impact on the CJS. We note that the report does not question the basic decision to close the FSS in a managed way.

39. We have serious concerns about the role of the Chief Scientific Adviser (CSA) at the Home Office and the limited information on which the decision to close the FSS was based. We do not consider that the Government's decision fully took into account the best evidence available and we are concerned that the CSA was disengaged from the decision-making process. We recommend that the Government Office for Science review whether there is a systemic problem with the Home Office's use of scientific evidence in policy-making. (Paragraph 223)

There is not a systematic problem with the Home Office's use of scientific evidence in policy making. Science has a vital role in underpinning the Home Office's work, both in policy and operations, including in fighting crime, protecting the public from terrorist threats and protecting the border. The Government Office for Science reviewed science in the Home Office in 2007, as part of its routine review of government departments. This highlighted many areas of good practice in the management of science across the department.

The Department employs, under the leadership of the Chief Scientific Adviser, a significant team of social and physical scientists, engineers and statisticians and commissions research externally to support the full range of Home Office interests. We greatly value the contribution, both to the department's activities and to its culture, made by the Chief Scientific Adviser and his colleagues.

COSTS OF CLOSING THE FSS

40. The Government should clarify how costs associated with the FSS's transition were originally calculated, particularly given that the transition process was, and remains, not fully known. If it emerges through the transition process that additional public money is required for the wind-down of the FSS, including from sources other than the Home Office, this information should be published with an explanation. (Paragraph 230)

A detailed analysis of the potential costs was conducted by the FSS, reviewed by PricewaterhouseCoopers and this formed the basis for the Home Office's cost estimate. The estimated cost of the transition is conservative and does not take into account any potential income from asset sales, and as such we do not anticipate additional public money being required.

41. The Government's explanations of the £70 million increase in provisions for the Crime and Policing Group lacked detail. We request a full financial breakdown of the £70 million provisions as well as an update at the end of the financial year on how much the wind-down has actually cost the Government in total. (Paragraph 231)

We estimate the likely total cost (in cash terms) of the managed closure is around £100m. The Government provided £29m of funding to FSS in 10/11 to cover operating losses and staff redundancies. There is a £70m provision in 11/12 which includes the costs of further staff redundancies; site closures/termination of leases; and meeting operational losses incurred throughout the transition period. We are working with all parties to manage and minimise these costs where possible through the sale of property, and through successful packaging of aspects of FSS activity for sale to the private sector. We have been pursuing options to reduce redundancies where appropriate through the transfer of staff. The National Audit Office reviewed the calculation of the Home Office's provision and are content that it is reasonable.

ALTERNATIVES TO CLOSURE

42. We agree with the Government that allowing the FSS to go into administration would have been undesirable, not only for the criminal justice system, but the employees of the FSS too. (Paragraph 233)

By managing the closure of the FSS we were able to prevent the company from entering administration. We are pleased that the Committee agrees that administration would have been undesirable for the CJS and FSS employees.

FINAL CONCLUSIONS

43. There are many factors to take into consideration when determining what has caused the dire financial position of the FSS. We consider the most significant factor to be the shrinking forensics market, driven by increasing police in-sourcing of forensic science and a forensic procurement framework that drove down prices and did not adequately recognise the value of complex forensic services. (Paragraph 239)

Whilst we agree that the shrinking forensics market has been a significant factor in the financial difficulties facing FSS, we do not agree that reductions in the size of the forensics market been driven by increases in police in-sourcing. As we stated in response to recommendation 12 above, to date there has been limited police in-sourcing of those forensics services which are provided by external forensics providers e.g. by setting up their own laboratories. As such, in-sourcing has had very little impact on the forensics market.

We do not agree that the forensic procurement framework does not adequately recognise the value of complex forensic services. All forensic services are adequately valued - the framework delivers the market price for services, whether complex or not.

44. The stabilisation of the external forensics market is now of crucial importance. For this to be achieved, the Government must do two things. First, further police in-sourcing of forensic science must be curbed. Second, the National Forensic Framework Agreement, and any successor framework, must be revised to reflect that some forensic science services cannot be commoditised easily into products and ensure that the true costs of forensic services are reimbursed to providers. Without stability through regulation, a properly competitive market cannot be realised. A shrinking market provides no incentive for further investment or growth from any forensic science provider. The success of forensic science providers and their willingness to invest further in forensic science will be threatened if action is not taken to stabilise the market. (Paragraph 240)

The transition programme has laid the foundations for a stable, healthy and competitive market for forensics. ACPO has closely monitored the capacity and capability of forensic suppliers to take on FSS's work and remains satisfied that the forensics market can cope with the managed closure of the FSS. The transition of services to alternative forensic service providers is already underway and is on track to complete by March 2012.

The Forensic Science Regulator has been closely involved with the transition and will continue to ensure that forensic service providers comply with his robust and rigorous framework for quality standards.

It will be in the commercial interests of private companies to increase their investment in forensic science research as their market share grows following the closure of the FSS.

45. The process whereby the Government reached a decision on the future of the FSS was taken on legal and commercial bases. If legal and commercial grounds were the only relevant considerations, the Government's decision to close the FSS would be reasonable. However, it is clear that such a decision should not be taken on purely legal and commercial grounds. (Paragraph 241)

46. The Government did not consider enough evidence in its decision-making. The impacts on research and development, on the capacity of private providers to absorb the FSS's market share, on the future of the archives and on the wider impacts to the criminal justice system appear to have been hastily overlooked in favour of the financial bottom line. Examining the possible impacts of a decision after the decision has been made contradicts the concept of evidence informing policy. (Paragraph 242)

Before making the decision to manage the closure of the FSS we needed to be absolutely clear that continuity of supply of forensics services could be maintained. We sought advice from ACPO, who confirmed that they believed that the forensics market could cope with the transition without undue disruption to the CJS

As part of the decision making process we carefully considered a range of evidence including:

- Commercial advice from PwC on the future prospects for the forensics market which led to a clear view that the external forensics market was declining, and would not support the FSS in future; HMIC thought that this market decline was plausible.
- Discussions with ACPO about the operational issues associated with closure, leading us to take the view that all FSS functions could be delivered elsewhere following a transition process, but that it was necessary to avoid administration in order to protect the CJS.
- Financial performance data from the company, and its assets and liabilities.
- Discussions with other key stakeholders across the CJS

47. Proper consideration should now be given to what resources might be irretrievably lost to the UK with the closure of the FSS, including the FSS's archives and the intellectual wealth residing within its scientists. We have seen no detailed plan outlining the transition and the future of the FSS's staff, archives, work and assets. (Paragraph 243)

The transition programme will ensure that the police and the CJS as a whole continue to have the forensics capability they need to protect the public and bring criminals to justice. That includes important assets and resources such as the FSS archive, which will continue to operate after March 2012 from the two existing FSS archive sites in the West Midlands.

We have been pursuing options for transferring elements of FSS business, including staff, where appropriate to ensure the future market has sufficient capacity. Ultimately police authorities hold these contracts and we will work with them to avoid unnecessary redundancies. We are actively monitoring the impact of the managed closure on FSS staff including the transfer and recruitment of FSS staff to other forensic service providers.

48. While there would be merits in retaining the FSS as a completely public agency of the Home Office that focuses on R&D, training of forensic scientists, establishing quality standards and maintaining archives, we are not convinced that the separation of forensic science research and provision would necessarily be the ideal solution, because research efforts should feed into and improve service provision. In response to this report we ask for the views of the Government and Transition Board on this matter. (Paragraph 244)

We agree with the Committee that such a function would not provide an ideal solution. Bar the maintenance of the FSS archive, which will continue to operate after March 2012, the suggested functions already exist within private sector providers (e.g. training forensic scientists) or the public sector (e.g. the Forensic Science Regulator is responsible for establishing quality standards).

49. The transition deadline of March 2012 is extremely challenging and we are not confident that an orderly transition can be achieved by this date. The Government should extend this deadline by at least six

months. Extending the transition deadline would enable the Government to consult on, and determine, what its wider strategy for forensic science should be. The FSS should be supported during this period. The FSS transition should be carefully monitored to ensure that it does not further contribute to market instability or lead to a diminution of service to the criminal justice system. Continuing to support the FSS during this period may add additional costs to the public purse, but we consider that it should be seen as a price worth paying. (Paragraph 245)

Restructuring of FSS and the transfer of work to other suppliers has already commenced and excellent progress has already been made. The current transition timetable will allow sufficient time for the orderly transfer of capacity to alternative suppliers enable us to manage the operational risks to the CJS. The extension of the timetable would increase costs to the taxpayer and would lead to prolonged uncertainty for the forensics market and for FSS staff.



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