

Science and Technology Committee

Oral evidence: [Forensic Science Strategy](#), HC 501

Wednesday 6 July 2016

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Members present: Nicola Blackwood (Chair); Victoria Borwick; Chris Green; Dr Tania Mathias; Graham Stringer

Questions 105-173

Witnesses: **Professor Bernard Silverman**, Chief Scientific Adviser, Home Office, and **Dr Julie Maxton**, Executive Director, Royal Society, gave evidence.

Q105 Chair: I welcome you both to our second session on the forensic science strategy. We have already had some very interesting evidence given to us about the implications of the proposals that have been put forward and concerns about the absence, so far, of statutory powers for the regulator.

Could I start with you, Dr Maxton? Recently, the Royal Society announced the launch of a project developing primers to help with the interpretation of scientific evidence in courts and to assist with what is or is not good practice. Can you explain your motivation for that? I think Professor Silverman has also been involved in developing the proposal.

Dr Maxton: Thank you for inviting me to the Committee. Bernard Silverman had a part to play in the primer project; it is in his forensic science report of 2011. It also has part of its genesis in a Brain Waves report that the Royal Society did in 2011-12. The Lord Chief Justice has been interested in it since then. In fact, in his Kalisher lecture of 2014, he talked about how useful primers could be.

Part of the role of the judiciary is to act as gatekeepers for the admissibility of evidence. With that responsibility, in respect of scientific evidence, comes a necessity to know how robust the science is that underpins the type of evidence that is going to be presented to the trier of fact, which in a criminal case is the jury. We think that having short statements, in plain English, which are prepared under the authority of the Royal Society and the Royal Society of Edinburgh, will assist judges in that role of gatekeeper, because they will explain how far the science goes at any given time and what the limitations of the science are. A judge can then decide whether or not to admit it and, if it is admitted, what kind of weight can be placed upon it.

Q106 Chair: Professor Silverman, when you originally made the proposal in 2011, you used the example of patent law, where they already have these primers, but you said that you

thought it would be quite difficult to produce similar primers for forensics. Could you elaborate on what those difficulties might be and how we might seek to overcome them?

Professor Silverman: Yes. The origin of it, in my 2011 report, was that I had evidence from a future Lord Chief Justice—he was not Lord Chief Justice then—and I discussed it with him and his colleagues, particularly Lord Justice Hughes. The example they gave me was how these were used in civil cases, where both sides of the argument would decide, in advance of the case coming to court, what of the science they agreed on. Dr Maxton has been very helpful in placing the matter in the criminal law context and saying that ultimately of course it is the jury that matters.

Working through it in the way the Royal Society has done with the judiciary has been absolutely fantastic. I am very optimistic. I am not a lawyer, but Dr Maxton is a very distinguished lawyer. It is very good that this has been taken up. What I hoped in 2011 was that authoritative scientific bodies like the Royal Society—neutral, independent scientific bodies that would carry authority within the court system—would take this up. It is really excellent that it is happening.

Q107 Chair: How is it going to work? What are the subjects—the specific specialisms—that you are covering at the moment? Do you think they will reduce the number of expert witnesses in court or change the way in which forensic results are used? What is your definition of success?

Dr Maxton: Can I start with how it is going to work? I emphasise that it is a pilot project at this stage. It is untested, of course. The way we have set it up is as follows. We have a steering committee chaired by Lord Hughes, who sits on the Supreme Court. It has judges from the Courts of Appeal and First Instance in England, a judge from Scotland and a distinguished fellow from the Royal Society of Edinburgh, Muir Russell, who is on the judicial selection panel in Scotland. It also has fellows of the Royal Society and fellows of the Royal Society of Edinburgh. That is the overall steering committee.

The first topic will be DNA, because it is widely used in court, and we think it is one where we can test the temperature of the water on how this would work. To do that topic, we have set up an editorial board, which has on it Sir Paul Nurse and various others of that calibre. Then there is a writing group, who will write the primer. They will write about DNA in plain English. That will be ratified by the editorial board and it will then go to the councils of both the Royal Society and the Royal Society of Edinburgh, so that it has the imprimatur of both bodies.

Bernard instanced the patent cases. Generally, clients in patent cases want more resources than clients in criminal cases. One can understand what happens in patent cases, because people get together and can organise what they agree about. It is rather different in the criminal world, although what we are doing will not necessarily be limited to the criminal world. It would be helpful, as scientific techniques develop, and develop quickly, for judges to have an understanding of where we are with the science. With DNA, we get examples of mixed profile DNA, which is complex, and surface-to-surface DNA, which is much more complex than just a little piece of DNA. The further you go down that trio of issues, the more complex it is and the more difficult it is to explain to juries how robust the science is that underpins it.

We think that, by doing that, we can help judges. I stress that this is demand-led; it is not something that we have invented. It has come through discussions with the judiciary. We need to see whether it will help the judges. It is only a pilot. DNA is our first one. We are also looking at doing gait analysis. Apparently, in courts judges spend quite a lot of time looking at CCTV pictures of how people walk. We are looking at that, but we have not yet set up the groups. As to other topics, it depends on the steering committee, who are the ones who speak to judges at the coalface. We will pick it up from there.

What does success look like? If the judiciary were to feed back to us that the primers were written in helpful language and gave them some guidance as to the robustness of the science that underpins some of the techniques, but also emphasised its limitations, we would be quite pleased.

Q108 Chair: You would be on the way. Professor Silverman, I have a final question before I pass to members of the Committee. This started with patent law. It is moving on to forensics. Do you think it is a technique that could be applied to new technologies as they come forward?

Professor Silverman: In forensics?

Q109 Chair: Not just in forensics, but throughout. I am thinking of digital.

Professor Silverman: Digital will be part of it, if it is digital forensics. That is within the current consideration. I have to say that what has been described is the dream outcome. In my view, the very top scientists and lawyers in the country getting involved in the primers is the dream outcome of the recommendation. Of course, it has taken a while, and it is only one, but the idea that there should be genuine, agreed scientific authority is really excellent. The slightly cautious approach we are taking—one thing at a time, to see how it works out—will pay off in the long run. It is very encouraging.

Q110 Dr Mathias: Dr Maxton, what do you think are the main barriers to understanding and interpreting forensic evidence in court? Is it the lawyers and judges, is it juries, or is it both?

Dr Maxton: Probably, it is understanding the science that underpins it and explaining the science to the juries. That is the key thing in the criminal field. In the civil field, you still have to understand the science, if you have scientific evidence in front of you, but you can always use expert witnesses. I do not think that the existence of the primers will necessarily cut down the need for expert witnesses, but it might limit the field over which the expert witnesses disagree.

Q111 Dr Mathias: Professor Silverman, do you agree with that?

Professor Silverman: Yes.

Q112 Dr Mathias: Do you think that lawyers and judges need any extra training?

Dr Maxton: That is not any part of what we are doing.

Q113 Dr Mathias: Understood. But do you think they need it, if the concern is understanding on the jury side?

Dr Maxton: I do not know whether the issue is training; it is just having science presented in a way that is accessible. There is probably a dearth of places where anybody can go to see what the current state of the science is. The way in which science works, as an iterative process, can lead to a clash of cultures on what is certain. All of science is really about “as far as we know.” Scientists use concepts of certainty, and lawyers use concepts of certainty and proof, so you sometimes get a clash of cultures. Presenting science in a way that is accessible to judges and usable by judges, so that it is neither too complex nor too simple—because it has to explain the limitations—would perhaps be helpful. I do not know whether it is to do with training; it is more about giving them access to things they already need to go to.

Q114 Dr Mathias: Do you agree, Professor Silverman?

Professor Silverman: Yes. To me as a scientist, it is obvious that it is really good that people who are using science should understand it and be aware of it. Julie is being a bit modest. Documents like this one will naturally be things that lawyers and judges want to read and they will naturally form part of their training. It is not that one has to mandate that they should do this sort of training. If simple, easy documents are out there, everyone will want to read them. That is a strength.

The primers project is the tip of a larger iceberg of contacts between the scientific and judicial communities. Work is being done by the Isaac Newton Institute in Cambridge, which is running joint workshops. The Royal Society itself has run a number of very interesting joint seminars. To me, the fact that we are all working together in this way is very encouraging.

Q115 Dr Mathias: Excellent. Do you think that there have been any cases of misunderstanding dealing with forensic science that have led to a miscarriage of justice?

Dr Maxton: There is one case that nearly everybody knows about. It is the Jill Dando murder trial, in which a suspect called Barry George was tried and convicted of her murder. One of the key pieces of evidence was gunshot residue found in his coat pocket. On appeal, it was determined that it was no more likely that the gunshot particle came from a weapon fired by Barry George than from any other source of contamination. That was a long time after the event. His coat had been put on a mannequin and had been photographed; there had been all sorts of interventions. That is one example.

With your permission, Chair, could I supplement one of the points that Bernard made? We are doing other work. The other work that we are doing with the judiciary includes three seminars; one on memory, one on probability and the next one, in October, on mental capacity. We have a programme planned for next year as well. Further primer projects may well come out of some of those seminars. The other thing to say, of course, is that law

and science, while they have many commonalities, have a key difference, which is that law is jurisdictionally limited and science is not. If the primers are useful to the judiciary here, they might be useful to the judiciary elsewhere.

Q116 Dr Mathias: Are the seminars available webcast and online?

Dr Maxton: No, not at the moment. We start everything small.

Q117 Dr Mathias: Do you agree with what Dr Maxton said on miscarriages, Professor Silverman?

Professor Silverman: I am not qualified to talk about specific cases, but yes.

Q118 Dr Mathias: The forensics regulator is asking for forensic scientists and labs to be accredited. Do you think that that will help in the courtroom?

Dr Maxton: That is not really my area of expertise. I pass the question to Bernard.

Professor Silverman: If evidence is to be taken seriously, the process by which it is obtained has to be reliable. Accreditation is obviously an important part of that.

Q119 Graham Stringer: In April, Gillian Tully told us that there had been a diminution of research and development in forensic science since the Forensic Science Service finished. Do you think that that is a consequence of the failure to look at the scientific implications more widely when the Forensic Science Service finished, or of the fact that when you examined the R and D landscape in your review of 2011 the implications were not carried through?

Professor Silverman: Quantifying the amount of research in areas is always difficult. I do not have any comparative figures on what was done then. What I have tried to do is to keep an eye on what research has been going on and what is important. For example, I decided to look at fingerprint-related research. We have a project going on at the moment; we have given you the results in draft. You can see that all sorts of research is going on that may not be surfaced. I have tried to draw together a map of all the different academic groups in the country that are doing fingerprint-related research. You can see that it is quite a healthy group.

What comes through in the evidence that you have received, which I was very interested to read, is a mismatch between the experiences of those doing the research and the perceptions of the research councils in funding it. What is important going forward is that we should have clearer routes to the funding of research, so that those doing this important work understand that their proposals will be looked at. The important thing is that the right kind of research is done—that which has the most impact. I can expand on any of those topics.

Q120 Graham Stringer: A multitude of questions arise from that answer. Do you disagree with what Dr Tully is saying?

Professor Silverman: I cannot agree or disagree. I do not sense that it is the case that research has diminished in the last few years. Recently I went to a conference run by the Home Office at which a large number of posters were presented by young, enthusiastic researchers in all the different areas of forensic science. I was very pleased with that. I do not have a baseline to judge against. I cannot say that there is more or that there is less, but I can say that there is quite a lot of really interesting stuff going on.

Q121 Graham Stringer: The second question that follows from your answer relates to the debate we had in this Committee a few years ago about whether the ending of the Forensic Science Service would lead to more work being done in areas that were open to commercial considerations, such as DNA analysis and fingerprinting, because they were repeated processes, and contextual forensic science would be lost. Fingerprinting, the example you gave, is clearly one of those repeat operations. Do you think that there has been a loss in the contextual forensic science area?

Professor Silverman: The REF impact system—forgive me: the research excellence framework system; most members of the Committee probably know the acronyms—should, if it works right, ensure that the research that is done is contextually based. If it is not, it will not have the impact that it needs to have.

Q122 Graham Stringer: What impact do you think that the new UK Research and Innovation body will have on forensics research?

Professor Silverman: I think that the new UKRI will be very good, for two reasons. First—

Q123 Graham Stringer: I am sorry. I do not want to interrupt, but do you think that it will deal with the contextual analysis?

Professor Silverman: Yes, because of the importance that it gives to innovation, as well as research. Joining innovation and research together should certainly say—not just in this context, but in every context—that science is very good, and even better when it is in a context where it is put into useful operation.

Q124 Graham Stringer: If you were to come before the Committee in two or three years' time, would you have a baseline study so that you could show that?

Professor Silverman: The survey we have done on fingerprint research—we intend to do deep dives into other areas—might not provide a quantitative baseline, but it would provide a qualitative baseline.

Q125 Graham Stringer: Not just in single areas, but more generally.

Professor Silverman: If I am looking at forensics, I can look only within forensics. It is clearly one of the intentions of the strategy that the Home Office, and, therefore, the Home

Office's chief scientific adviser, should monitor and use convening power to see what is going on in the forensic science area.

Q126 Graham Stringer: There is a perception out there that it is difficult to get money for research into forensics. We have had evidence that, when police forces are working with academic partners, they submit bids but are not successful. Do you think the UKRI will solve that problem? Will it help? If so, how?

Professor Silverman: I hope the UKRI will solve the problem. The other thing that went on in the Nurse review was the idea of Departments producing statements of research need, which will be co-ordinated by Sir Mark Walport's office and passed to the research councils. The Home Office made sure that it got in early in that process. Our draft is with the Government Office for Science at the moment. Forensics are an important area, of course. I am hopeful about that aspect of the Nurse review—in other words, getting research councils and UKRI to make Government needs an important strategic part of research funding. We have done what we need to do to feed that in.

UKRI will be good for two other reasons. First, as I have already said, it will stress the importance of innovation. Secondly, it will facilitate strong cross-disciplinary work, while at the same time maintaining the disciplinary pillars on which that sits. The join-up within UKRI is certainly a step in the right direction.

Q127 Graham Stringer: Are there any areas in the forensic science strategy that concern you and where you believe there might be improvements?

Professor Silverman: The strategy itself articulates the biggest challenge—the need to respond to every aspect of digital technology. That will present both technical and ethical questions. Another area is the likely disruptive effect of cheap genome sequencing. The strategy is honest about the need to influence R and D through a complicated interlocking system. It states that “there is no national mechanism for setting research priorities for the CJS.” A key issue is that the UKRI needs to take seriously its aim of pulling through from research into innovation.

Q128 Graham Stringer: I will finish on the first question I asked. You did not really deal with the point about whether you regretted not doing a scientific impact study and giving advice to the Home Office when the decision was taken to finish the Forensic Science Service.

Professor Silverman: That is something the Committee has talked about before.

Graham Stringer: It is indeed.

Professor Silverman: Do I regret that I did not conduct a scientific impact study at the time? A scientific impact study of the changes in governance and the run-down of the Forensic Science Service would need to have been started long before I got into post. I do not have anything to add to anything I have said in the past about that.

Q129 Chris Green: Professor Silverman, we are looking at unconscious bias. In our previous session, the forensic science regulator saw “a major risk around unconscious bias” in forensic testing. How well are those risks understood by the police, lawyers, judges and juries? Is anything being done to increase that understanding?

Professor Silverman: We should talk about cognitive bias. Unconscious bias is something everybody is subject to. Some of the experts, such as Professor Itiel Dror, claim that there is no such thing as an unbiased position—that every position is biased in some way or another. I would refer to Gill Tully’s guidance, which is a really excellent piece of work. It is a very long document and shows clear engagement right across the piece. It was written by somebody from one of the forensic providers, it has very detailed reference to the literature and it was looked at by the Forensic Science Advisory Council. It does exactly what a forensic science regulator document needs to do. It sets out the issues and provides mitigating processes and so on. It is the expert document, and I would refer people back to it. It is almost in itself a primer in the area, although it is quite detailed and complicated.

Q130 Chris Green: Does there have to be a reinterpretation of this information, for wider dissemination, if it is from a very large, detailed document that not everyone will read?

Professor Silverman: The document surfaces a lot of what was already known and makes it explicit. That is the main mitigating idea within it. Obviously it is a public document, for wider dissemination. I hope that will happen.

Dr Maxton: I have no comment to make.

Q131 Chris Green: Is there evidence that unconscious bias or cognitive bias may be influencing the outcome of investigations, or even resulting in miscarriages of justice?

Professor Silverman: I would defer to the experts who wrote the document. Clearly, they think that it could influence any decision at all. I do not have any specific evidence on that question.

Dr Maxton: Personally, I have no knowledge on the question.

Q132 Chris Green: Is the proposed establishment of a joint forensic and biometric service, based within the police force itself, likely to increase or decrease the reliability of forensic examinations?

Professor Silverman: In other words, if you set up something within the police force, will it be biased, by definition? No. I discussed this with Dr Tully yesterday. I said that I was likely to be asked this question and discussed it with her. She said, “No, you needn’t be worried, because everything is properly regulated and accredited.” Just as with anything else that is done, the regulation is there to make sure that there is not the problem that you have suggested.

Dr Maxton: I defer to Bernard on those points.

Chair: Thank you both for the evidence that you have given us, which is very helpful. We are very interested in the work that the Royal Society is doing on primers and the role that it will play in strengthening the forensic presence in the courts, and the value chain that exists there. We hope that you will keep us updated on how that work progresses and on the opportunities for the model to be replicated in other areas of useful science. We think it is a very helpful process.

Examination of Witness

Witness: **Rt Hon Mike Penning MP**, Minister for Policing, Fire and Criminal Justice and Victims, Home Office, gave evidence.

Q133 Chair: Minister, thank you very much for coming to appear before us. We are very pleased to see you. I know that you are aware of our previous session, in which we discussed issues arising from the forensic science strategy, and some concerns were raised around statutory powers, research and development and other things. Colleagues will raise some of those issues, but I want to start with a high-level question as to the nature of the strategy itself. It came rather late—a couple of years after it was promised—and when it did it was quite a high-level document. It still speaks of continuing scoping work. Why is it so high level? Why is it not more detailed, given how long it has taken to produce?

Mike Penning: I am sure the Committee is much more knowledgeable than I am on this, simply because it is so complicated and such a fast-moving feast. The other issue you touched on, I have corresponded with the Committee on. Although I do not know what other Ministers do, I try to correspond with the Committee much more than perhaps previous Administrations have done, simply because it is better for you to know where we are coming from, rather than being shocked when I arrive saying, “This is what we are doing now,” or whatever.

I am quite determined that the strategy is not a fixed entity. Given the nature of the science moving forward and the nature of the technology as it moves, if we fix it and do not at this stage have it fairly highbrow, which is probably a better way to describe it, we will lose the credibility of where we need to be. That is one of the reasons. As to its lateness, I am the Minister, so I apologise for my predecessors, but we have to get it right. The degree of stakeholders—the modern word for it—is just astronomical. The other thing is that, because of what the Committee said about the regulators and biometrics/forensics, I wanted to get it right, basically. If I had come in with a very basic document, which probably I would have understood, I might have been criticised for not being highbrow enough, so I probably can’t win.

Q134 Chair: Yes, although we had a lot of the stakeholders, as you say, giving evidence before us, and while you are right that it is important to have a framework that can accommodate technological advance and innovation, we are also talking about providers who are in the private sector, who are considering employing staff, and are considering expansion and investment, and they need a degree of certainty as well. One of the particular areas of confusion or uncertainty for them was the proposal for a national approach. It said in the strategy that there was going to be “scoping work” to put forward business cases for a national approach to be completed by the spring. That had not happened by the time we had our last session. Could you update us on that?

Mike Penning: Yes. I would like to have done it by then. Because we are very much looking at the providers, whether from the police or in the private sector, and I am desperate to make sure we do not have duplication and that we have cost-effectiveness and quality of product coming through, the work the police are doing at the moment on their

capability review has an ongoing effect as to where and who is going to deliver forensics. One of the frustrations you have heard from the regulator, and one of the things that really concerns me, particularly with the private sector, but not solely with the private sector, is that we have the quality there, making sure that what is being put forward as evidence in a prosecution, and actually in many ways evidence put forward in a defence, has the credibility of the scientific profession as they go forward. I am very open about this; I am very frustrated that the police capability review is not further forward. It is holding me up in other areas, particularly in police funding, but this is an area that is now going to be driven very much by the police. Where and who delivers that has to be a matter for them, but we must have quality at the same time. I accept that there are concerns about, for instance, R and D and that side of it, but we will get there and then they will know exactly where they are.

Q135 Chair: If one of the roadblocks is police capability, certainly at the moment, you could still help us by giving a vision for how you think you are going to match those two divergent challenges, which is a strategy that allows for innovation but still provides the underpinning certainty. At the moment it may be that external forces mean that that certainty is not in the document yet, but what is going to be in there that will provide it?

Mike Penning: We will come on to the regulator's powers and accreditation. I am passionate about that and I was hearing from the regulator that there is real concern that people are calling themselves experts and doing work, particularly on the prosecution side, that may not be accredited and probably could not possibly be accredited. Going forward, contracts will be issued, but we need to make sure that delivery of expertise is nationwide, whether it is at NCA level or ROCU level—the forces doing their own thing—and that we are getting value for money for that. That is an area in which a lot of work is still going on.

Q136 Chair: You spoke about the sheer number of stakeholders being enormous; I think you said it was staggering. In our last session in April, we had a number of stakeholders before us and they said that they had not been involved yet in the scoping workshops for the national approach, and this was sparking some of the concern about what that national approach would look like.

Mike Penning: I saw that and asked my officials to address it. I am confident that if you called them back now—not all of them because there are so many stakeholders and invariably you will not be able to keep everybody happy, but I saw that and I was surprised—

Q137 Chair: Who exactly is leading on this work and making sure that the right people are involved? It seems to us fairly obvious that the regulator should have been consulted, for example.

Mike Penning: Yes, and I have met the regulator recently and we discussed this. It is a Home Office drive and the regulator is independent from us, of course, but that does not mean that the regulator's influence should not be absolutely paramount, I agree. At the end of the day, the buck stops with me and my officials.

Chair: All right. Thank you very much.

Q138 Dr Mathias: In our April session we learned about a draft document detailing the statutory powers for the forensics science regulator to enforce her codes of practice. Have the statutory powers been finalised, and do you know what the powers are?

Mike Penning: The exact powers we need to consult on. I need primary legislation. I have looked for other ways of delivering what we would expect the regulator's powers to be, but at the end of the day I need a vehicle. I would like to have put it in the Policing and Crime Bill.

Q139 Dr Mathias: Thank you for your letter, but it appeared it was not a priority. That is how it appears.

Mike Penning: I had a Bill of 200 pages with 200 amendments and new clauses, and the pre-legislative scrutiny said to me in no uncertain terms, "Enough is enough. You need to come forward with another Bill." Parliament, quite rightly, gets concerned when Governments come forward with so many amendments and changes to Bills. I bid for a Bill, with the Home Secretary's permission and the Justice Secretary's permission, which is a huge Bill, and there were just concerns that I was adding too much to it and making too much, so I need another vehicle. There will be a Home Office Bill of some description—there always is—and we will find a vehicle. I am absolutely determined. It is a commitment I have made: we will find a vehicle for primary legislation.

Q140 Dr Mathias: Yes, because there is concern—I have to declare an interest, because I have LGC in my constituency—about the deadline, October 2015. When do you think the regulator will be given the statutory powers?

Mike Penning: I cannot give the Committee that answer. It would be wrong of me to lead the Committee down an avenue when I just do not have an answer. I passionately believe that Ministers should not do that. All I can say is that when I took over this responsibility—I have not had it for that long—I was surprised that the regulator did not have statutory powers, because I cannot understand how you set up a regulator that does not. I am honest about that.

Q141 Dr Mathias: I appreciate that you had so much in your Bill, but you can understand, as a constituency MP and on our Science Committee, that this is a high priority.

Mike Penning: Yes, and the Chair and I have spoken extensively about this and hopefully you feel from the correspondence that I have sent in, and as I will re-emphasise when I write back to the Committee after this session, that if I could have had it in the Bill I would have had it. I am a Minister of State. That is a subtle hint.

Q142 Dr Mathias: In your letter, you say police forces are committed to meeting the accreditation deadline. Do you know what percentage?

Mike Penning: I have the details. I can write to the Committee with the full details. Of course, there are different areas—fingerprinting, as an example—but all the new chiefs have agreed this and we are going forward. The more difficult area for the police to come up with, which is why we have the capability review going on now, is the technology that is around. When we look at hard drives, if we are investigating paedophilia on the dark web, where exactly do we get that expertise from and should it be held at a national level?

Q143 Dr Mathias: I have to be so careful because of my interest.

Mike Penning: My view is that, while this is a decision very much for the police and the CPS as well, but predominantly with the police, holding it locally could speed it up, but only if you have the capability and the expertise, whereas if you at a national level—

Dr Mathias: We get that.

Mike Penning: It is really tough for some forces to give all that up, but I think the police are getting that now more and more, in other areas as well as this.

Dr Mathias: Thank you.

Q144 Chair: Can we go back to procurement? You mentioned this a little bit in the opening questions, but, as I understand it, the current national procurement arrangements are due to expire on 31 July.

Mike Penning: Yes.

Q145 Chair: Do we have details of what is going to replace them and what it is going to be?

Mike Penning: Yes. The police have given me assurances, which I will write to the Committee with, as they move on with their procurement. Some of those contracts, I suggest—I am speaking on their behalf—probably will not be long-term contracts while they continue to do the review as to where they are, but they have it in place and they are giving me confidence that they are happy from the end of July onwards.

Q146 Chair: Is it just a continuation of what is there now, while they are doing the capability review?

Mike Penning: It is; predominantly it will be, yes.

Q147 Chair: We are not moving to a national procurement arrangement of any kind in forensics particularly, or in any other areas.

Mike Penning: No. That would be completely against Government policy.

Q148 Chair: Different police forces will be free to choose their own—

Mike Penning: Yes—I am sorry to interrupt you—but the clear thing has to be the quality of the work that is done, the value for money as to how it is done and the speed, especially with the requirements in the Bill for police bail not to be extended beyond 28 days except in exceptional circumstances.

Q149 Chair: If new procurement arrangements are being put in place, is this not an opportunity to require that all work done by police forces is performed by suitably accredited providers? Obviously, we are still waiting for a legislative vehicle for the statutory powers for the regulator and this might be a way to—

Mike Penning: Yes, I think I completely agree with you, Chair. If I am waiting for the vehicle, that means I cannot at the moment force the forces, but—I will say it on the record—I cannot understand any force using a company that would not be accredited.

Q150 Chair: Are you able to put that into procurement arrangements in any way?

Mike Penning: I cannot at the moment.

Q151 Chair: What powers do you have?

Mike Penning: I think technically I have the powers to do so, but that would interfere with the way we want forces to develop their own strategies on procurement. Let me draft a letter to the Committee on that. But I say again that the accreditation is there for a reason. I am hearing, and the regulator told me this, that there are occasions when there is real concern about the quality of the so-called experts being used.

Chair: Yes, there is.

Mike Penning: The accreditation is for that. If I find, going forward—whether it be me or another Minister in this position—that that is being ignored, the statutory powers can be put in. They can do it by regulation.

Q152 Chair: There has been a lot of delay in this process already, for lots of different reasons; we have delay waiting for a legislative vehicle, for statutory powers to come in and to get accreditation well under way. There appears still to be resistance to using accredited providers and to different providers getting powers, and while everybody is interested in devolution of power and so on—I entirely support that—there are occasions when intervention becomes necessary, and it feels to me that in this particular instance there have been lots of opportunities for all the different actors to behave in the way the Government would expect and have signalled very clearly that they expect. I wonder whether this might not be an occasion to use those powers, and not delay.

Mike Penning: I reserve my position in that we have the powers to do so, if we need to, or we can seek the powers to do so. I fully expect, given the conversations I have had, particularly with the leads from the police, that this is where we will be, but, as I say, if we do not, my devolutionary thought process and the Government's devolutionary thought process may need to step in. I agree with you on that.

Q153 Chair: My last question on this topic is on concerns that were raised around some of the procurement that was happening, where there was fragmentation of procurement with a single case procuring different tests from different providers and this leading to no single provider or expert having an overview of the whole case. There were concerns about the robustness of the evidence that was coming forward as a result of that and a question about whether there needed to be steps within the procurement process to try to address the problem.

Mike Penning: I have to be slightly careful there, because I would be interfering as a Minister within a police investigation-type situation.

Q154 Chair: It is not specific to an investigation. It is more a procurement process that is needed.

Mike Penning: How a force puts together a case against an individual is a matter for them. I have heard a little bit about it, but I have not seen the evidence on it. I have asked the regulator, and I will reiterate that, and she will surely listen to what we are saying today. “We will pursue that” is the polite way of putting it.

Chair: Thank you.

Q155 Graham Stringer: Can I get the Brexit question out of the way first? There are research bodies in the country receiving Horizon 2020 funding for forensics. Have you done any work or contacted the Cabinet Office to see how that funding can be continued in the future?

Mike Penning: There is no agreement in Government beyond the present funding term. It is a bit early for negotiations beyond 2020. At the Home Office, we did exceptionally well with the last funding round. I am sure those sorts of negotiations will start, but looking at 2020 when we are in 2016 is too early for me, but they continue to have the funding because the success of getting it from 2010 to 2020 was significant anyhow. We have not started conversations yet, to be completely honest.

Q156 Graham Stringer: Thanks. This Committee and its predecessor Committee have been aware of the changes in the forensics science service for some time and shown concern. This is not a party political point, because I think the last Labour Government made a mess of closing the Chorley forensic science service, and I do not think the incoming coalition did much better when it closed down the Forensic Science Service. It seems to me that there are two gaps in the service and there is disagreement between Home Office officials and the regulator. One gap is the loss of contextual analysis when the whole Forensic Science Service went. Dr Tully has been in front of the Committee twice and told us that she thinks it is likely that people guilty of serious crimes are getting away with them. That is one gap. The second gap, because so many researchers have moved out, is whether there is enough research being done. It is not a party political point, but one gets a defensive response from the officials involved. I wonder whether you, as a Minister, are as concerned as I am about those two gaps in the service.

Mike Penning: First, thank you for being so honest about what happened before, rather than just saying it is this nasty horrible new Government. In hindsight, lots of Ministers would say that things could have been done differently. I am not as concerned, but I have heard the evidence that has been given to the Committee and, frankly, has been given to me as well. On the R and D side, there is a separate sort of funding stream; for instance, extensive amounts of innovation fund moneys have been coming out, and I encourage companies, providers, to work with their local force or with their regional force in collaborative bids for that.

On the area of contextual analysis, I share a bit of that concern with you. One area I have concerns about is that, if we use a private provider and that private provider, for instance, goes into administration, we do not at present have the capability to require all that contextual research background information to be supplied back to us. That is something I am looking at now, and in the legislation we will probably have to put those powers in. If you have been doing X amount of work for two or three years in a particular area, you obviously build up a knowledge base and you can refer back each time—I am not using scientific jargon; I am sorry, I am not a scientist or a lawyer—which is actually hugely useful to us. If that company goes into formal legal administration or receivership, for us not to be able to have that data and information, as we would if it was in-house, is a dangerous situation and I fully intend to try to sort that out. I accept that there is still ongoing disagreement about what the Government did at the time, but we are where we are and we need to make sure we get the best possible outcomes, the best possible R and D and the best possible contextual work.

Q157 Graham Stringer: It is really about filling those gaps. If I can move on to a different area, only a small proportion of cases involving forensic science evidence reach the courtroom. Do you have a view on why that is, and do we need to understand more about why it is?

Mike Penning: I think we do. I am looking now for evidence to be brought to me as to why that is. I must admit that, when I first looked at my portfolio and saw that, my perception was that the number was much higher—especially considering the public’s perceptions about forensics, with all those strange programmes on TV every night showing you that every murder in the world gets resolved because of some tiny hair on something. First, we have to find out why, and I will commission research to do so. Depending on what the research shows, do we then say that it is because we think forensics could do much better and it doesn’t in court, or do we need to get better at it? The analysis needs to be done not just here but with our counterparts around the world. In other words, we are going to need to compare ourselves in the 7% you refer to, “Is that normal for America or the rest of Europe?” We cannot compare 100%, because many of their legal systems are slightly different from ours, especially the American legal system, but that is an analysis that needs to be done.

Q158 Graham Stringer: That is interesting. There is a drop in demand that makes it more difficult for the private sector providers to make a return, and they also concentrate on areas of forensic science that are repeat processes, like fingerprinting and DNA analysis. Do you

have a strategy to incentivise the private sector to invest in research in wider areas than those repeat processes?

Mike Penning: As I alluded to earlier, private companies will invest if they feel they can deliver a product that we are likely to buy, and very often, particularly with the nature of the way the Home Office works, we have had to incentivise that by giving them some confidence about the evidence base. In other words, we have been more promptly using the innovation fund moneys. There will always be areas where the private sector may not be able to provide, because it is such a niche situation, which is why forces will continue to do stuff, probably at national level, and that is exactly why the review that is going on at the moment should—I stress should—address some of your concerns. At the end of the day, we need to understand why there has been a drop in demand in certain areas and address that situation.

Q159 Dr Mathias: The forensics strategy says the Government plan a “clear, simple, overarching governance structure.” How is that going to be made possible?

Mike Penning: At the moment it is quite opaque, and you have probably adduced that from the evidence you have been given. If we believe in devolution and the devolution powers, that governance structure has to come from the powers we give the regulator, but at the end of the day the police take control. That is where this whole strategy is going, but we have to publish things that we probably would not have published before. The more we can do that, the more confidence there will be within the private sector and the more confidence there will be among the public. I have been in six Departments, and I have always had the attitude that we should publish, and you have to tell me why we should not publish. That was quite difficult when I was in Northern Ireland on terrorism and there are lots of the things at the Home Office that could be difficult, but in this particular area I cannot see why we would not be more open, rather than opaque as we are now.

Q160 Dr Mathias: Are you going to publish minutes and the full membership of the forensic policy group?

Mike Penning: I think wherever we can, that is what I would prefer to do, yes.

Q161 Dr Mathias: Will you be doing that? That, I believe, was highlighted by the previous Science and Technology Committee as being too opaque. Again, the question is why cannot those minutes and membership be published now?

Mike Penning: I do not know the answer—literally; I am honest about that. If we need to redact, we need to redact. I don’t like huge documents redacted, but we could write back. My attitude is that if we are going to keep the confidence of the market and the confidence of the public, which is probably the most important thing, and for the police to have confidence in the strategy as we go forward, let’s be open.

Q162 Dr Mathias: You can come back to us and tell us if there is any reason—

Mike Penning: Yes, of course. I tend to write back to Committees rather a lot after I have been there because of all the mistakes I make.

Q163 Dr Mathias: I absolutely appreciate that, but you can come back to us and tell us if there is any problem about publishing that policy group now—the full membership. Finally on that, what role do you envisage in the future for the forensic policy group?

Mike Penning: If it does what it says on the tin, it is probably one of the most important groups out there if we can get the right membership—the right people on it. There may be some people on it who prefer not to be named and we might have to respect that, but I will have to explain that.

Q164 Dr Mathias: You can come back to us on that.

Mike Penning: If we are where we are, which we are, it is a vitally important group and it should do what it says on the tin.

Dr Mathias: Okay. It is great to hear you saying that it should be, wherever possible, transparent and published. That is great. Thank you.

Q165 Chair: Minister, you have spoken quite a bit about your frustration with the policing capability review.

Mike Penning: You can hear it in my tone probably.

Q166 Chair: And the expression on your face—an open book. Could you give us a bit of an indication of the timings that you are now expecting from the review, given the impact that it is having elsewhere? I am thinking procurement and progress with the strategy, and I suspect it will affect the biometrics strategy as well, or am I being too pessimistic?

Mike Penning: On the biometrics strategy—well, on both—what I would really like to do, frankly, is to go away and come back with a more definitive answer than just saying I will do it as soon as possible.

Q167 Chair: Okay. You don't have a date for the capability review and you don't have a date for biometrics.

Mike Penning: I don't have a date that I can be confident about to give the Committee on either. On that basis, I would rather commit myself in writing to the Committee and then perhaps that will commit my civil servants to push on as fast as I would like them to do.

Q168 Chair: That is terribly Jim Hacker. I want to go back, finally, to the national approach. I am concerned that if we have forensics providers, or others, who watch this, they may feel no more certain about what the national approach will look like. There is not going to be a

national approach in procurement and there is not particularly going to be a national approach in research. What is the national approach going to be?

Mike Penning: Perhaps I have misled the Committee. That is not what I am saying. We need to have a national approach. The reason we have to have a national approach is that, if you go into one court with one group of people, you need to be competent in the next court with the next group of people. That is the national approach I am looking for. If people are providing a quality product, which is accredited, that is exactly where we need to be. I want them accredited. I want the statutory powers in place, not just for the private sector but when police forces are not up to standard, and a regulator that has teeth. There is no point just having statutory powers that do not have teeth. We will consult on that and make sure that it is not Big Brother, but, on the other hand, there has to be a stick that comes with the carrot, and the carrot is that you are registered and accredited. The stick is that you need to make sure that the quality is there and that we have power to do something about it.

Q169 Chair: In essence, it is going to be statutory powers plus accreditation.

Mike Penning: Yes.

Chair: All right.

Mike Penning: If you listen to what I said earlier on, I would expect everybody to be accredited if they are used. At the moment, that is not necessarily the case. If it is the case that they carry on using people who are not accredited, I reserve the power to come back.

Q170 Chair: The procurement intervention power. Okay. I have one last question, just to follow-up on Graham Stringer's point. The strategy says that "significant savings" could be produced from this national approach, which could then be recycled into priority areas of research. We have obviously heard concerns about that. Can you give us an idea of what assessment you have made of that? How big would those savings be? Do you think they would genuinely provide extra money? Would we be able to increase research in this area?

Mike Penning: As I have already said, there is money available within the innovation funds for research and work in this area. The saving area will be in duplication. As to extra money, I do not have extra money; let's not beat about the bush on that.

Q171 Chair: No, but the implication is that changing the way in which forensics are delivered will produce extra money, which will be "recycled into priority areas of research." It says "significant savings."

Mike Penning: I think there will be significant savings, but until we know exactly how the delivery points are going to be, whether national, regional, in clusters or at force level, we will not have anything definitive, but there will be some modelling that I could share with the Committee, which I will come back to.

Q172 Chair: If you could share that modelling with us, we would be very grateful. Thank you very much for coming in.

Mike Penning: I found it fascinating. I found it fascinating trying to get my head around the briefing notes as well.

Q173 Chair: It is a very interesting topic but it is also a very important one; it is the bedrock of our criminal justice system.

Mike Penning: I have one last point. I think it is really very important, and I am not just saying that because the Committee has been doing an investigation into this, not least because we have to have the confidence that the court process, which we are using forensics on, is actually the best in the world and we can deal with that, going back to Mr Stringer's point about the 7%, right or wrong, in national comparisons. The answer is that we do not know yet, but we will find out, and I will share that.

Chair: Thank you very much. We are expecting a number of pieces of correspondence from you. We might write to you just to note what we think we are getting so that we are all on the same page. In the meantime, thank you very much for coming, Minister.

Mike Penning: It is a pleasure.