



Select Committee on Science and Technology

Corrected oral evidence: Forensic Science

Tuesday 29 January 2019

4.30 pm

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Members present: Lord Patel (The Chairman); Lord Borwick; Lord Fox; Lord Griffiths of Fforestfach; Lord Hunt of Chesterton; Lord Kakkar; Lord Mair; Baroness Manningham-Buller; Baroness Morgan of Huyton; Baroness Neville-Jones; Lord Oxburgh; Lord Thomas of Cwmgiedd; Lord Vallance of Tummel; Baroness Young of Old Scone.

Evidence Session No. 21

Heard in Public

Questions 230 - 240

Witnesses

Lucy Frazer QC MP, Parliamentary Under-Secretary, Ministry of Justice; Fiona Rutherford, Deputy Director of Legal Aid Strategy and Policy, Ministry of Justice; Matthew Gould, Deputy Director of Criminal Courts and Criminal Law Policy, Ministry of Justice.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Lucy Frazer QC MP, Fiona Rutherford and Matthew Gould.

Q230 **The Chairman:** Good afternoon, Minister, and thank you very much for coming to help us with our inquiry. It is very important that we hear from the Ministry of Justice about the use of forensic science and its provision to the criminal justice system. I know that you have a busy day and thank you for making the time despite that. Would you and your colleagues introduce yourselves for the record and then we will proceed with the questions?

Lucy Frazer: I am the Minister in the Ministry of Justice. I am also the MP for South East Cambridgeshire.

Fiona Rutherford: I am the deputy director for legal aid policy at the Ministry of Justice.

Matthew Gould: I am the deputy director of the criminal courts and criminal law policy at the MoJ.

The Chairman: Minister, do you want to say something by way of an opening statement or declare your interests?

Lucy Frazer: I wanted to mention, as I mentioned to the clerk, that when I was a barrister and before I became an MP I acted for the Government in relation to the Forensic Science Service at the time of its closure.

Q231 **The Chairman:** If I might kick off with the questions, in the evidence to the Committee we have heard a lot in regards to legal aid and how legal aid provision is insufficient, particularly for the defence to be able to use forensic science to challenge the prosecution's forensic science. I understand that you are undertaking a review of legal aid provision. Would you like to comment, first, on whether you think there is evidence that legal aid provision currently plays against the defence being able to use it, and, secondly, on the review that you are undertaking?

Lucy Frazer: As I mentioned, I was a barrister, and for justice to be delivered I think it is really important that there is equal and proper representation on both sides. It is important that that plays out in forensic evidence as in all evidence. The Legal Aid Agency regularly reviews a number of things. It is disappointing if people are saying that they do not have access to this expertise.

The rules in relation to legal aid—I think you have written evidence from the Legal Aid Agency—set a maximum rate for forensic experts of £90 an hour for inside London and £72 an hour for outside London. Those rates will be increased where necessary. The rules also state that legal aid should be available, as with any disbursement, if there is a sufficient benefit to the client in the case in the instruction of a forensic expert report and the cost of the expert is reasonable. Thus legal aid should be available for the forensic expert.

You mentioned that we are doing a legal aid review. Expert fees were changed and we are looking at a number of matters. We have not released that report yet, so I do not think I should disclose what will be in the report when it comes out.

The Chairman: Do you have any idea when it might be published?

Lucy Frazer: It should come out soon. We said early in the new year and it will come out early in the new year.

Baroness Neville-Jones: You have until June.

Lord Thomas of Cwmgiedd: The evidence is contradictory here and it may be that the Legal Aid Agency is not applying what you have mandated.

Lucy Frazer: We will look carefully at your report and the evidence that you put forward.

The Chairman: Thank you very much.

Q232 **Baroness Morgan of Huyton:** Minister, may I ask you about scientific understanding? We have had quite a lot of evidence from a whole range of people about the patchy level of scientific understanding, particularly of probability. To what extent ought we to be having more mandatory training in scientific principles for legal professionals? Is there a way in which you could update knowledge as we go forward?

We had really interesting information on the judicial primers, but they seemed a little ad hoc. It seemed that a group of people were doing that, which was great, but it was not very clear what would happen when they finished their work or how many areas they would cover. It almost felt like a group of people who had willingly got together to do it, rather than it being properly supported, funded and run, yet it seemed a good model. What is your thinking in this broad area?

Lucy Frazer: There are a number of important points to make about training. The first is that training and gaining expertise of all kinds is good and we should encourage it wherever possible. As those who have sat in various courts will tell you, judicial training is the responsibility of the judiciary via the Judicial College. I have seen some of the evidence that came before this Committee and I understand that that is happening.

You mentioned the primers, which I understand are helping the judiciary to undertake its role. It was said that they were the first two, by which I presume there are others to follow. I saw from the evidence particularly from Lord Hughes that there is judicial training and that they liaise with the Royal Society.

I was a barrister and I saw the evidence from the legal profession and that the Bar has put out evidence specifically on this matter. All barristers are required, as are solicitors, to do CPD, and you can get training in forensics. Interestingly, shortly after I became a barrister, it became mandatory to do a module in forensic accounting. This training, however, is not mandated and is the responsibility of the professions and not the

Ministry of Justice. However, I would support and encourage it wherever possible.

The second point worth noting relates to the responsibility of the expert, of the judge and of professional legal advisers and representatives. Each has different responsibilities. I think Lord Hughes said it and Sir Brian Leveson referred to it, but it is not the role of the judge to put forward the expert evidence; it is the role of the expert to put forward that evidence.

The Civil Procedure Rules, which Sir Brian Leveson referred to in his evidence, set out the parameters and the requirements of the expert. The expert has a duty to the court. There is a timetable of who puts in what evidence and the possibility of experts narrowing down the issues. It is the role of the expert to identify the key issues in relation to their expert evidence, and it is the role of judges and barristers to ensure that that is clear, clearly communicated, and inconsistencies are highlighted, rather than them being experts in the evidence themselves.

May I draw an analogy by way of a third point to other areas of law that come before the courts? You will find counsel and solicitors appearing in cases that cover a number of different sectors of which they have very limited knowledge. I am sure the judges around the table will have heard cases or have acted in them as barristers where, before that case came before them, they had absolutely no knowledge of the subject matter of the case at all. I did cases on foreign law, pharmaceuticals, a whole range of sectors that I had zero knowledge of. It was not my role to become an expert; it was my role to help the expert to explain the issues to the court and identify discrepancies in the evidence of the other side.

That is a long way of saying that I am in favour of training and expertise, but I do not think that judges and representatives need to become the expert.

Baroness Morgan of Huyton: I agree. Work has been done in the primers on gait, for example, and the evidence was overwhelming that this was not reliable. I take the point that that has gone to the judges, but why is that not widely disseminated to the legal profession as a whole? What is the point of that work happening if it has only a rather narrow audience?

Lucy Frazer: We are working with the Home Office to see whether, if the evidence is available, we should be putting things like that to juries, for instance, which would fall within our responsibility.

Baroness Morgan of Huyton: It is an example of people co-operating. We keep searching for ways to get the different parts of the criminal justice system to work together on this area. The primers seem to me to be an example of that, yet they seem very modest in their ambitions, even though it seems a good model.

Lucy Frazer: It is a good model, and it has been well received.

Q233 **Lord Fox:** Taking your point about experts setting evidence out, there is a lot to be said for that, but some experts are not subject to peer review

and there are large numbers of experts who are operating without any accreditation. That sets certain alarm bells ringing. We have heard evidence of serial misunderstanding of proportional and statistical evidence.

Would it therefore not seem sensible to have a minimum amount of coaching to juries about the significance of statistical information, whether it is from the expert themselves, or indeed from the court, so at least they can put the evidence they are hearing into some context, if the experts choose not to or are not asked to by the lawyers in any other way? In a sense, in the ideal world what you say is true, but we are not operating in that ideal world.

Lucy Frazer: In relation to the regulator—

Lord Fox: The non-statutory regulator.

Lucy Frazer: —the non-statutory regulator, and accreditation, we look forward to the Home Office review. We are supportive of the Home Office's approach. We are supportive of the Private Member's Bill, which the Home Office is supporting, that would put the regulator on a statutory footing.

In relation to juries, as I mentioned, we are looking to take forward work with the Home Office to work with the judiciary to see whether something similar to the primers could be put to juries.

Lord Hunt of Chesterton: I had some experience as an outside scientific expert in a trial at the Old Bailey. There was a very considerable difference between the scientists, who were both experts, but at that time—15 years ago or so—not very much guidance was given to the jury about these differing scientific interpretations, one of which was very different from the other and led to the decision.

As I understand it, there has been a positive trend over the last 10 years in which the judge tries to get the scientists together. The point I am trying to make here is that when experiments are done, which are very expensive, it is sensible that the different parties discuss them before considering how they were applied. Is this kind of progress continuing?

Lucy Frazer: The procedure in the court is very much in the hands of the judge and governed by the Civil Procedure Rules, which set out the ability to narrow the points at issue between the experts so that as much as possible is agreed and only discrete issues go to the jury. In my limited experience, which is not in the criminal field, that happens and the issues are narrowed down as much as possible. That can be done by both parties putting in a report and doing an agreed statement of facts, and just having the issues in contention, or it can be done by sequential reports.

There is an ability under the Criminal Procedure Rules for the instruction of one joint expert, although I can see the advantage in having two. The structure is set out for the system to enable the experts to work together. We should remember that most people who appear before the court as professionals have a duty to the court. The primary duty of a

barrister is not to the client but to the court, and so too with experts. It is the duty of the expert to come to the truth and not to fight for the client. The experts may have differing opinions on the science, but they should collaborate as far as possible and leave the matters in dispute to the jury.

Lord Hunt of Chesterton: In the UK, it seems that people will use expertise from wherever it comes, whereas America has a very rigid system of using peer-reviewed material and you would not be allowed to use material that was developed ad hoc, as it were, for a particular case. Is peer review being used in the UK in a different way, and perhaps merely in a pragmatic way?

Lucy Frazer: All experts in their reports should set out the basis on which they have come to their opinions, and the literature they have referred to should be available. If the Committee makes some good recommendations, the Criminal Procedure Rule Committee, which is led by Sir Brian, can look at whether we can improve the rules, but the rules set out quite a good structure in relation to expertise and duty to the court. I thought it was quite interesting when Lord Hughes talked about seeing the expert "limping out of court". A good team in the court should be able to cross-examine the expert to find the truth.

Lord Hunt of Chesterton: Thank you.

Q234 **Baroness Young of Old Scone:** That leads on to the use of streamlined forensic reporting, which sounded like a good thing in terms of being able to get one view of the science in a comparatively simplified way. However, we have had some evidence that it is now being seen as a way of saving money and may in fact simply paper over some difficult questions, which the court is left to flounder around with subsequently. Do you have any thoughts on where the streamlined forensic reporting system is going and whether it is a good thing or not?

Lucy Frazer: The streamlining reports are good for the purpose for which they ought to be used. They should be prepared at a preliminary stage for the CPS for case management. They are not and should not be a final expert report used in the case. I know that the Forensic Science Regulator raised some concerns about the inappropriate use of streamlined forensic reporting in her 2017 report. The rule committee spoke with her at the time and I know it is in touch with her quite regularly.

We are not aware of any particular problems at the moment, but if issues are raised in relation to the use of these, we are very happy to ask the Criminal Procedure Rule Committee to look at it again to see whether we can strengthen the use of these reports, which, as I said, should be used by the CPS at an early stage.

Baroness Young of Old Scone: Is there any risk that even in the way the CPS uses them it simply does not get enough information to understand the nuances beneath the surface?

Matthew Gould: They should not be simplistic. The context to this is the efforts the courts have made over a decade or more to get better at the

pre-trial stage of the hearing so that the main trial is effective. Many of these things built on Sir Brian Leveson's review of efficiency that we are still implementing.

The direction of travel to enable the judge to better control and grip the preparation that leads to the hearing is a good thing. The forensic summary should not be so light that it does away with important matters of nuance. It should be a sensible primer, just as early notice of a Section 41 application is a helpful bit of information at an early stage that enables the judge to think about how he will manage the trial, and whether a witness will take 20 minutes because the evidence is agreed or who will take a morning because it needs to be challenged.

That is the intention, and as the Minister says it is an intention in the MoJ that we strongly support. If it is not working in practice, we want to look at that, and the rule committee is in touch with the regulator.

Q235 Lord Griffiths of Fforestfach: We have taken evidence from a variety of people who have commented on the forensic service being provided entirely from the public sector. We have looked at the mixed model that we have at present. The question has been raised as to what extent this mixed model has destabilised the criminal justice system, because firms have gone out of business, the rate of return on capital is very low, and as a result they cannot invest in innovation. Could you comment on that?

Lucy Frazer: You are right that there have been issues with the sector, and it is right to acknowledge that. I should identify that the provision of the system and of forensic services is led primarily by the Home Office. We are happy to support that in the MoJ because it supports our Courts & Tribunals Service and impacts us through the justice system. In so far as they look to review that system, we are very happy to support them in that process.

Lord Griffiths of Fforestfach: Apart from giving your support, which I am sure they welcome enormously, do you have a view on how it is working out?

Lucy Frazer: I understand that the commercial companies are helping to ensure that there is timeliness and speed. DNA analysis can now be done very quickly—in a matter of days, if not hours. I know that the Home Office is committed to encouraging investment, and I welcome that. As I said, I am very happy to look at the review by the Home Office and see where we can assist.

Lord Thomas of Cwmgiedd: There are a lot of people interested in forensic science: the judges through the work they do in the Criminal Procedure Rule Committee; those who have drafted the primers; the defence community, which has a great interest; the police through the Home Office; the regulator; and, of course, the CPS and a whole number of bodies.

Forensic science is essentially about ensuring that justice is done. First, why does the Ministry of Justice not have a bigger role, and, secondly, why is there not a strategic body encompassing all these interests that

can set out a policy that will remedy the defects in the system?

Lucy Frazer: That is a very good question. I am very happy to go away and look at how we can improve on delivering what is not only fundamental but growing in importance. I work across government in a number of my fields. In legal aid, I am working very closely with the DWP. In family law, we are working very closely with the Department for Education, and I work very closely with the Home Office on a number of matters, too. Sometimes it is important for one department to lead on an issue, but I take the point, and it is a very interesting question.

Lord Thomas of Cwmgiedd: You need non-political strategic leadership to deliver something that is key to justice. You need someone who is accountable for it. For the last few years, since the Forensic Science Service went out of business, the system has not worked. That may have been the right thing or the wrong thing to do—I leave that to the economists—but there is no leadership.

Lucy Frazer: Matthew is very keen to come in here.

Matthew Gould: I was just going to say, Lord Thomas, that one of the things we are talking to the Home Office about as part of its review is the role the Criminal Justice Board could play in starting to provide some of that leadership. Our view is that it has the potential to be a very valuable governance mechanism that brings the whole system together. In the past, it has been a bit of a talking shop, but the chance to sit in one room with the DPP, the Home Secretary, the Lord Chancellor and the head of the judiciary and review the whole system is an opportunity that we want to try to make more of. That is one of the ways in which we are offering to play more of a role than we have in the past.

Lord Thomas of Cwmgiedd: I wish you luck. Having sat on the Criminal Justice Board for about 10 years, I have never found it to be anything other than a talking shop. That is why you need a non-political person to lead it. If you take that comment away, that is more than I can ask.

The Chairman: It sounds, Minister, as though you would welcome a recommendation from us that would help you to progress this.

Lucy Frazer: We will look at your report very carefully.

Q236 **Lord Hunt of Chesterton:** What are the benefits of the Government Office for Science in providing ongoing communication of advice on science and technology to your respective areas of government? In our evidence to the Committee we have been told by the person who I think is number two in the science ministry about the large number of scientific studies that were quite relevant to forensic issues. The question is: how can you improve the role of science on these issues? What is being done about that?

Lucy Frazer: You are right to identify that it is a very important area across government. In my own department and within my portfolio, science and technology is a key part. Some of you will be more familiar than others with our court reform programme, which is all about technology and improving the technology through the court system.

I heard the previous panel talking about AI, and we are looking at that very carefully in relation to the disclosure of documents. Our MoJ head of research, our director of analysis, data-driven department and culture change, has committed to working with the chief scientific adviser on a number of subjects. Before I came here I had a meeting with a number of people who deal with data and behavioural science who have recently liaised with the Turing Institute in work that you heard about in the previous session. It is very important that we collaborate on these areas.

Q237 Lord Mair: Continuing on the science question, what is your department doing to work with UKRI? We heard from the previous panel about the need to get a lot more forensic science research done through UKRI. We have heard from previous witnesses in other sessions that there is a real case for the MoJ and the Home Office to collaborate with UKRI. Can you comment on that?

Lucy Frazer: I just mentioned one of the areas that we are working on, which is the funding that came from UKRI to the Turing Institute. That project is looking at how we use data in our criminal justice system and ethical issues relating to the collection and use of data, which is quite an important area.

Lord Mair: It is very interesting to hear of the work of the Turing Institute, but it is a very wide field, of course. Should the MoJ be doing more in other areas of forensic science which you can see need to be investigated?

Lucy Frazer: I am sure there is always more that we can do. As I mentioned, the Home Office leads on the provision of forensic science and we look at how it is used in our sphere, the courtroom. Obviously it is a very important area.

Lord Mair: You will know about the work that Julie Maxton has done in the science and justice forum. Do you think there is more to do with the results of that forum's work?

Matthew Gould: Yes, absolutely. I have to admit that I am not sighted on the detailed recommendations that she has made, but our head of analysis and data-driven department is in very close conversation with the chief scientific adviser at the Home Office. The way we are currently structured, the chief scientific officer at the Home Office is leading across government on some of these issues, and colleagues in the MoJ are feeding into that.

Clearly, the issues we are most interested in include digital forensics, given the growth in volume. That is one of the things we are already talking to the Home Office about. We are very interested in disclosure. The subgroup to the CJB, which is official level and permanent and is driving forward the Attorney-General's review on disclosure, is going through some of these very specific complex questions.

Lord Hunt of Chesterton: Does that include social science? This Committee visited the Turing Institute, and its use of statistical and other methods was remarkable in engaging in all aspects of social science,

including the media, to plug that in, and that all seemed to be quite novel.

Lucy Frazer: That is really important. As I mentioned, before I came here I had a meeting with four members of my team—a behavioural scientist, the head of analytics and others—to talk about how we can use that sort of science in our own systems, in our court reform programme and for people who come to use the courts. There is a lot we can do in our own systems, so that is absolutely something we are looking at and are doing.

Q238 **Lord Kakkar:** To come back to the confidence that we can all have, and the criminal justice system can have, in the science base underpinning the routine use of forensics in the criminal justice system, is the Ministry of Justice content that that science base is sufficiently robust as we see new techniques and a much broader dependence on forensic science in criminal justice? If not, how is the Ministry of Justice helping the Home Office to identify areas of anxiety about that science base?

Lucy Frazer: Can you give some examples of what you are thinking about?

Lord Kakkar: In general, we have heard in this inquiry that there are areas of well-established science, broad science underpinning forensic science, and other areas where new techniques may be developed. It is not entirely clear to us how those new methodologies are assessed before they become part of the broader criminal justice system. Does the Ministry of Justice have a view on that? Does it have the capacity to garner that information and provide insights into those who are commissioning and driving the research agenda in forensic science?

Lucy Frazer: That is a very interesting question. I think you are asking about forensic evidence rather than data, and it is probably fair to say that we have, or at least I have, focused more on data than on the science.

On the question relating to data, we are doing a lot of investigation into the interrogation by AI of data. We are looking, for example, at how the interrogation of data is used in commercial cases. The SFO is using AI in its disclosure, and we are looking at that, too. Fiona has been very involved in that. Commercial firms are developing that and we are looking at it very closely to see how we can take those ideas on board and develop them. Unique issues arise in the criminal jurisdiction that we will look at closely. Fiona, I do not know if you want to add to any of that.

Fiona Rutherford: It is right to say in relation to legal professional privilege that the Serious Fraud Office is in effect using a robot to pull out information based on various search references. It has a good success rate, and certainly in a recent big case relating to Rolls-Royce there was a success rate of more than 97%; the 3% left over went to counsel or a caseworker to go through manually.

Lord Hunt of Chesterton: Is that forensic accounting?

Fiona Rutherford: I am not entirely clear what it was, but it would have been millions of pages of evidence had it been printed out. Equally, we know that the police are looking at different angles. I think the Durham police—I would need to check—are using tools to try to get through vast quantities of evidence that simply cannot be done by a human being. Again, that is quite interesting from a legal profession perspective.

Lord Kakkar: Of course, one of the questions is about data and analytics and so on, but there is also a more fundamental question that relates to how new methodologies for forensic science are introduced.

Lucy Frazer: Do you mean whether they are acceptable?

Lord Kakkar: Whether they are robust and whether they have been properly tested. In science in general, when introducing a new technique or methodology one would have to ensure that it was published, peer-reviewed and properly and robustly debated in science to establish that it was sufficiently robust and applicable.

Lucy Frazer: Yes.

Lord Kakkar: Is the Ministry of Justice content that the foundation and the base of science driving forensic science is sufficiently robust for those who participate in the criminal justice system to be confident that if conclusions are reached and decisions are taken they are done so on a firm foundation?

Lucy Frazer: You are right to identify that perhaps there should be a preliminary assessment.

The second answer, of course, is that that is the role of the court. When people come to the court and assume expertise without peer review and without relying on literature, as I said at the outset they will have had to have set out the basis on which they have founded their expert evidence: "These are my skills. This is the basis of my experience and expertise". That can be challenged by the other side, by those involved in the case.

Baroness Manningham-Buller: I am sorry to press you on this, Minister, but I still do not think you are quite answering the question we are trying to get at. It is not about data analytics or about what happens in court. It is about the science that is done in our universities with a forensic application that, perhaps not this afternoon but next week, might have an application to the criminal justice system.

How does the Ministry of Justice either support the financing of that research or be aware of it, because we are talking about things for the future and things that are happening now that could be of real assistance to the administration of justice? This is not about data analytics or the way things are conducted in court.

Lucy Frazer: I think you are asking a couple of things there. If you are asking how we are supporting it, I think that was your final question to the Minister, and he said that the spending review is coming up. I thought you were talking about whether it was appropriate for matters that might be untested to go to court. That is a separate question but a good question that we should think about.

Baroness Manningham-Buller: It is about the science before that stage; the science that may have an application to the administration of justice. Is the Ministry of Justice thinking of financing the science long before it gets to court?

Lucy Frazer: We would be interested to hear your views on that. I know you put it the previous Minister and he answered by referencing the spending review.

The Chairman: I think Baroness Neville-Jones might be helpful here.

Baroness Neville-Jones: It seems to me the money probably lies in the Home Office. There is a question I wanted to ask. Many people think that the most important function of forensic science in the end is that it should serve the interests of justice. The question arises as to why it is not the Ministry of Justice but the Home Office that still has the budget. In an ideal world, do you think this budget responsibility should shift to the Ministry of Justice, now that we have a Ministry of Justice? Of course, you are a newcomer and historically it has been with the Home Office, but now that your department exists, should your department not have the budget?

Lucy Frazer: I am always in favour of more money for my department, and it is a question I would want to think carefully about. Coming back to the point Lord Thomas made earlier, collaboration across government is important.

Baroness Neville-Jones: Who is in the lead matters a lot in government, if I might say so.

Lucy Frazer: It does. We prepare joint bids and we support bids that are made by other departments. It is in our interests, for instance, that the CPS works well. It is in our interests that the DWP gets decisions right first time. It is in our interests that immigration decisions are made well. At the end of the day we are a downstream department, and if those issues are resolved by other departments before they get to us our interests are well served. I am not saying I do not welcome the suggestion, but I would want to think about it.

Baroness Neville-Jones: It is arguable as things stand, is it not, that in fact it is the criminal investigation side that is more served by the current arrangements than justice?

Lucy Frazer: The police do quite a lot of that.

Baroness Neville-Jones: Exactly.

Lucy Frazer: I think only 5% of the work that is done in relation to forensics ends up in court. A lot of the work is being done, as you say, at the level of the investigation.

Baroness Neville-Jones: That is the point.

Baroness Morgan of Huyton: I guess that was my question. It seems to me, if you get the gist of where we are coming from, that there needs to be a genuinely joint independent strategic leadership across the piece, otherwise there is at least the perception, if not the reality, that forensic

science is essentially serving police forces and part of the criminal justice system but not the whole system. In a sense, it would be helpful for you to go away and think about that.

Lucy Frazer: I have learned in my year in office that the criminal justice system is linked fundamentally to so many other departments. Many of the issues the people raise and criticise the Ministry of Justice for the Ministry of Justice does not have responsibility for. When there are errors in court because investigations have not been fulfilled properly by the police, or the prosecution has not done its job properly, the Ministry of Justice is often the body people think has responsibility when we do not. We want to ensure that we work very closely with the Attorney-General's Office, with the Home Office and with all other departments to ensure that we have a proper and functioning justice system.

Lord Griffiths of Fforestfach: Forgive me if you feel that you have already answered this question. As I have listened this afternoon, there has been an awful lot about bureaucracies talking to each other and a lot about individual issues relating to UKRI and so on, but I am left with a question. Forensic science is meant to serve the justice system. We have heard that in the past we were the world leader in forensic science; maybe today we are not.

You are in the position of a Minister and you talk to other Ministers in the department, and you also talk to judges and to counsel, whether prosecution or defence. You hear feedback from juries and so on. As you assess the overall situation, how good do you think we are? Where are the gaps, and what can we do to make ourselves first rate? Frankly, the evidence I feel I have heard is that we are not there, and there is a danger of miscarriage of justice because we just do not have the right quality of forensic science.

Lucy Frazer: I think the purpose of your report is to tell us where you think the gaps are.

Lord Griffiths of Fforestfach: But, Minister, you are at the coalface. I am not at the coalface. I know very little about the law, unlike my colleague on my left.

Lucy Frazer: In terms of the quality of the provision of service, you asked me at the outset whether people could get expert reports, and the Legal Aid Agency is of the view they can. I read the evidence that Sir Brian Leveson gave where he referred to the "outstanding" forensic evidence that he had had in a double jeopardy case, so I think we can and do achieve excellence in the forensic service to our justice system. One can always do more, and we in the Ministry of Justice are happy to do more. We are happy to take on board any recommendations, but I think we have a system that can produce, as Sir Brian said, outstanding results.

Q239 **Lord Borwick:** I want to ask about digital forensics and the sheer quantity of information that is coming out of that field, as mentioned by Mr Gould earlier.

Do you believe that the judges are on top of the sheer quantity of information? We have heard suggestions from judges that a mobile phone should be analysed overnight and the evidence given the following day. The sheer quantity of stuff is quite daunting when we look at the number of cases that it will be involved in in the future. Are we doing the right training within the judicial system to deal with it?

Lucy Frazer: More can be done. If 19 officers are required to work over a weekend, perhaps the right orders are not being made, so there is an element of training we can do. As I mentioned at the outset, judges are trained in the Judicial College, and the Criminal Justice Board is an avenue to identify issues such as this. Matthew referred earlier to the work that was being done on disclosure. Following the Attorney-General's disclosure review, a subcommittee of the Criminal Justice Board is looking at disclosure issues and how we can improve these.

Disclosure and the quantity of data are a real challenge that we need to address. We need to address it in a number of ways, one of which is AI, which we are looking at.

Lord Borwick: I understand that, but I feel that in business you sometimes have to get the next generation of people in to understand a new technology and to make the most of it. Do you think the judicial system is trainable to get the hang of it?

Lucy Frazer: Yes, absolutely. We have some of the finest judges in the world. Our judges are internationally respected for their integrity, expertise and intellect. As I mentioned at the outset, judges, as well as barristers and solicitors, are used to dealing with information of various kinds, and their skill is in assimilating that information. It does not necessarily have to relate to a particular subject within their expertise, so I think they are capable of being trained.

Lord Borwick: Your colleague mentioned earlier that the hourly rate was £72 outside London.

Lucy Frazer: Outside London and £90 inside, yes.

Lord Borwick: Is that sufficient, given the enormous competition for people who are at ease with digital forensic evidence? Is it enough to recruit the quantity of people you are going to need for this purpose?

Lucy Frazer: We have heard, as I am sure you have, that there might be some gaps in the provision of expert evidence, but the Legal Aid Agency says that there are no cases where there needs to be provision that is not being provided at the moment.

Lord Borwick: That is provision of the right quality rather than just the right quantity.

Lucy Frazer: I would hope that people were not being instructed if they were not of the right quality.

Lord Borwick: Does that imply that you are confident that £72 is enough to get the right quality of people, because it seemed to me to be on the low side of the market price for good-quality programmers?

Lucy Frazer: I think the average paid overall for an expert is about £1,500.

Lord Borwick: Is that to run a case through?

Lucy Frazer: Yes.

Fiona Rutherford: The average spend per case is around £1,300.

Q240 **Lord Thomas of Cwmgiedd:** I want to ask you a specific question about disclosure. As you know, Minister, for a long time in civil justice, AI and key word searches have been used a great deal to simplify the process of discovery. We were given some evidence that this might be difficult in the criminal context from the defence side. How are you grappling with that problem? It cannot be grappled with, there is a very real problem. Has the Criminal Procedure Rule Committee looked at this, and what is the answer to the points that were raised by two very experienced criminal practitioners?

Lucy Frazer: I am sure that there are challenges and I understand the one that you highlight. As Fiona mentioned, they already do AI disclosure in Serious Fraud Office cases.

Lord Thomas of Cwmgiedd: As I understood her description, she was talking about the review of documents seized by the SFO that might contain privileged documents. That is an internal process. I was interested in the inter partes process where we were told, and it is obviously a very serious problem, that if the defence will not agree to a search with key words, search terms or any other parameter, your problem is unresolved. How is the ministry addressing this issue, because it is very serious?

Lucy Frazer: We are starting to look at this issue and will resolve issues as they arise. I have been involved in very paper-heavy cases that were just starting to go online with e-forms when I was at the Bar. People agreed search terms, although I can tell you that they did not want to at the outset. It is possibly a journey that we will need to travel.

Obviously justice is paramount, so if we do not end up with a situation whereby documents can be searched in this way, they will have to be searched in another way. I would hope, as I have identified and as you well know Lord Thomas, the duties of those representing are to the court and not to their clients, and one should encourage co-operation in what is a very important area.

Lord Thomas of Cwmgiedd: The evidence we have received is so serious as to the amount of police time that goes on this sort of issue that it really would be helpful if this was addressed urgently in the light of the evidence given by two very distinguished criminal practitioners. If a member of your team were able to look at this and tell us the answer, it would be very helpful to the wider area.

Lucy Frazer: We are looking at it in the light of the disclosure review. Technology is an area we have been interested in for some time and, yes,

we will continue to resolve issues as they arise. Fiona, do you want to comment?

Fiona Rutherford: I would add that, as we announced in the AGFS consultation response, we are now reviewing all the different schemes that exist within the criminal legal aid jurisdiction. That includes everything from the police station all the way through to the very high cost cases and everything in between. That provides us with an opportunity to continue the engagement that we have started already with some very experienced practitioners.

I know the Committee has heard evidence from very well-respected legal professionals, as you say, but equally there are separate views where greater credence is given to some of the technology that exists now, and certainly there is some energy, if not necessarily always funding at the present time, to explore that further and to engage with us to help us find some of the answers to some of the questions you have posed.

Lord Thomas of Cwmgiedd: It is very urgent, and I did not detect—perhaps it is me—an urgency in addressing this problem.

Lucy Frazer: It is one of our priorities, in the sense that the Attorney-General has delivered a report. We are looking at a number of things within a short timescale. This is certainly an area that we consider very important, and Fiona is actively engaged on it with her team.

The Chairman: Minister and your colleagues, thank you very much for coming today. I know you have had a busy day and you have a busy evening coming up. Good luck with it. We might have put you through the mincer a bit, but that is the nature of the process, and we are very appreciative. We hope that our report will be helpful to you. That is our intention and we hope you receive it well.

Lucy Frazer: We are looking forward to your report. This is a very important area and a developing area, as I said. We are very interested in the challenges that you highlight and will consider them very carefully, because, as you mention, this is very important to justice.

The Chairman: Thank you very much indeed.