

School of Law

CENTRE OF CRIMINAL JUSTICE STUDIES



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# Forensic Science Regulation in England & Wales

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# Outline



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- Forensic science market in E & W
- Current regulation
- Need for further regulation?
- Growing criticisms of lack of oversight
- Recent developments: new regulator
- A happy ending?



# Forensic Science 'market' in E & W



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- Massive expansion since 1991 (<10.5% p.a.).
- Half of police spend on in-house services — SCEs/ fingerprinting. Remaining: external suppliers.
- Major provider Forensic Science Service (FSS): largest one-stop shop with 11 labs & research centre.
- Small(er) companies undertake analysis/ testing (drugs/ documents etc.) Many specialise.
- Small % by individual forensic practitioners.

# The Forensic Science Service (FSS)



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- FSS ‘partially privatised’ in 2005 – ‘Government Owned Company’ – prior to full privatisation (?).
- Historically, FSS also advised Govt. on forensic science - no longer appropriate since privatisation.
- FSS has approx. 70% of the market (declining).
- Supplier of NDNAD operations – until end of contract.
- 3 big competitors to FSS:
  - LGC Forensics Ltd
  - Orchid Cellmark (DNA)
  - Key Forensic Services

# Current regulation:



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## *Individuals*

- Occupational standards, eg academic qualifications required for positions within police or externally
- Council for the Registration of Forensic Practitioners (CRFP)
- Home Office Register of Forensic Pathologists
- Royal Society of Chemistry & professional bodies
- Forensic Science Society: Nov. 2004: changed status to a Professional Body.



## *Organisations*

- approval of forensic science providers by police forces as a result of formal procurement processes
- Home Office Circulars
- Legislation imposing general requirements on companies and other organisations, eg Health & Safety at Work Act

# Current regulation



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## *Systems and information*

- National DNA Database Custodian
- International standards, eg for DNA exchange
- National Firearms Forensic Intelligence Database standards
- Other operational standards – police/ provider based.

# Current regulation



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## *Forensic science processes, products. and services*

- UK Accreditation Service accredits labs: 2 major standards: ISO/IEC 17025 and ISO 9000:2000.
- British Standards Institute.
- internal quality systems and procedures
- ACPO policy and doctrine
- type approval of kits
- product definitions as prescribed in police service procurement arrangements

# Current regulation



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## *Legal system requirements*

- CJS requirements, including the adversarial system and rules, case law and process, ACPO manual of guidance and the Prosecution Team disclosure rules.
- relevant statutes, eg Police and Criminal Evidence Act

## *Ethical requirements?*

- Human Genetics Commission
- Information Commissioner

# Need for Regulation?



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- But still... no formal regulatory body or independent oversight. Regulation patchy/ limited to accreditation of individual scientists, laboratories, or forensic techniques/ technologies.
- ‘Case by case’ assessment of experts (x-exam) has proved flawed. ‘Old’ miscarriages – forensic science implicated.
- Recently: competence/ integrity of experts questioned (& supervision: Taylor).
- Increased competition rarely fosters higher standards.

# Need for Regulation?



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- Need for level playing field for suppliers (avoid ‘cowboys and cherry-pickers’).
- FSS has been standards setting body - no longer appropriate.
- Growing recognition internationally for proper regulation & oversight.
- Criticisms/ calls for regulation growing in recent years; scientists themselves calling for regulation (reputation/ integrity).

# Runciman Report (1993)



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- Royal Commission – post Birmingham 6 (*et al*)
- 13 recommendations: Establishment of oversight body a priority - CRFP (8 years to come into being).
- Also recommended a Forensic Science Advisory Council to set min. standards - up to police to demand higher
- Could be effective mechanism for ensuring scientific standards, integrity, and continuity of provision of forensic science.
- ***‘At time of transition in forensic services market, the need for an independent regulator is becoming ever more critical.’***

# Council for the Registration of Forensic Practitioners



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- CRFP established in 1999 to give courts point of reference on the competence of forensic practitioners.
- Aim: ***“to promote public confidence in forensic practice in the UK”***.
- Publication of a register of currently competent forensic practitioners; ensuring that registered practitioners stay up to date and maintain competence; and disciplining registered practitioners who do not meet the required standards.
- Standard for registration is ***“safe, competent practice”***.



- CFRP important step: PM:

***“Ensuring high standards of professional competence of those experts called to give evidence is crucial to the credibility of the judicial system and the Register is a tool that can do much to underpin that credibility”.***

- FSS requires all its reporting officers (court-going scientists) to be registered
- ACPO policy is that police force forensic personnel should be CRFP accredited.

# CRFP registration



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- Qualifications/ experience, references from colleagues/ users, declarations about past & future conduct.
- Assessor samples recent cases against competence criteria developed with professional bodies.
- If successful, applicant registered for 4 years.
- To renew, has to “demonstrate that they have stayed up to date and maintained their competence”; recent casework assessed.
- Disciplinary action possible: educational or removal from Register.

# Limitations of the Register?



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- VOLUNTARY (LSC requirements?)
- Some discredited experts would have had no difficulty in obtaining registration.
- Limitations for small specialisms (e.g. forensic anthropology), as members all responsible for accrediting each other.
- CRFP must be subject to independent auditing and is, and is seen to be, transparent, accountable and independent.

# Limitations of the Register?



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- Cannot be panacea for judge's discretion.
- Science must also be correct, AND also valid in THAT case.
- Expert's credentials not always gauge of whether evidence is correct in specific case.
- Only for UK based practitioners.
- Stops short of rigorous scrutiny of forensic science.

# Select Cee (2005) 'Forensic Science on Trial'



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- Suggestions for filling oversight gap;
  1. Forensic Science Advisory Council
  2. Scientific Review Committee at the CCRC
  3. Science and Law Forum.
- FSAC to oversee regulation of market & provide independent/ impartial advice on forensic science:
  - independent body of reps of all major stakeholders.
  - to review, or to commission inspections of, the use of forensic science, & to propose improvements where necessary.
  - could oversee Forensic Science Society and the CRFP.

# What to Regulate?



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- Regulation should cover 3 main areas:
  1. accreditation of those providing forensic science to police: (could include in-house services and provision to the wider CJS); defining applicable standards, including quality & fitness for purpose
  2. oversight and control of forensic intelligence databases;
  3. provision of advice on matters related to forensic science, including type approval and advice on forensic standards.



- Home Office satisfied 3 main suppliers all had “*a strong emphasis on the quality of service provided to the CJS [...] further commercialisation of the forensic science market, especially with untested new entrants, could however change this position*”.
- Proposed a model for regulation that involves “*the creation of a single quality assurance regulator (building on the experiences of the Custodian of NDNAD) accrediting suppliers who wish to provide services to the police and, by arrangement, other entities within the CJS*”.

# Govt. response



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- ‘Accreditation’ would be granted at the corporate level but the process would be based on appropriate quality standards applying to:
  - The corporate body;
  - The products and services provided; and
  - The individuals responsible for the service.
- Procurement requirements meant that police would only negotiate contracts with quality providers...

# But...



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- police not well placed to evaluate quality of service across range of scientific disciplines
- providers required to prove quality of service at each procurement/tendering exercise
- need a mechanism to identify poor providers or services and protect the police and CJS from them before procurement, and
- police not only user of forensic science and the quality standards must reflect needs of other stakeholders in the CJS (victims/ defendants).

# The New 'Quality Advisor'/ Regulation Unit



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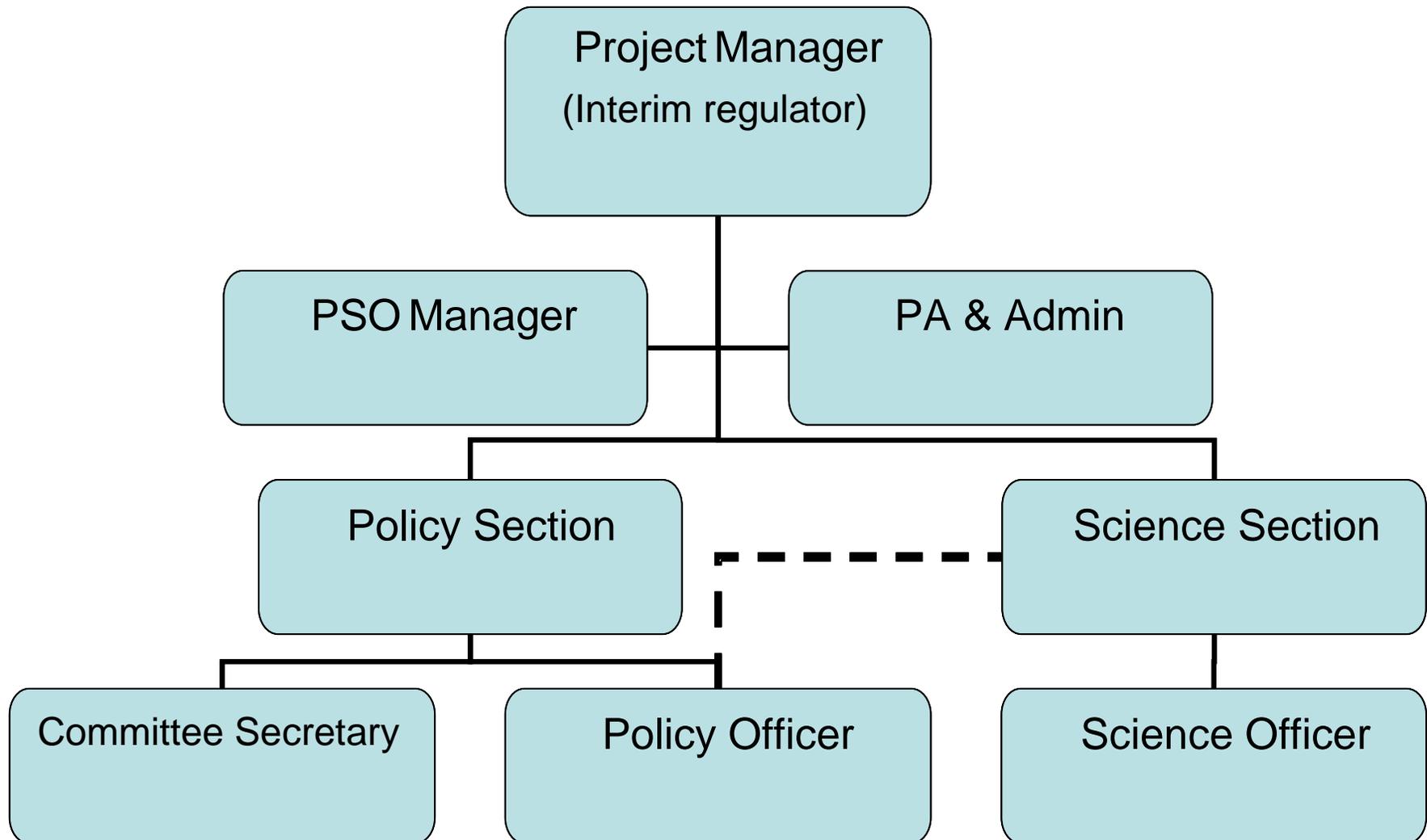
- June 2006: Ministers agree to the creation of a forensic science regulator/ 'quality advisor'.
- ***“It is essential to ensure that the integrity of, and confidence in, the CJS is maintained, that a level playing field exists for all suppliers and that quality standards are maintained in the face of the growing market and increased competition.”***
- Consultation exercise - proposals in February 2007
- Interim Regulator pending the appointment of an established Regulator

# The New Regulator:

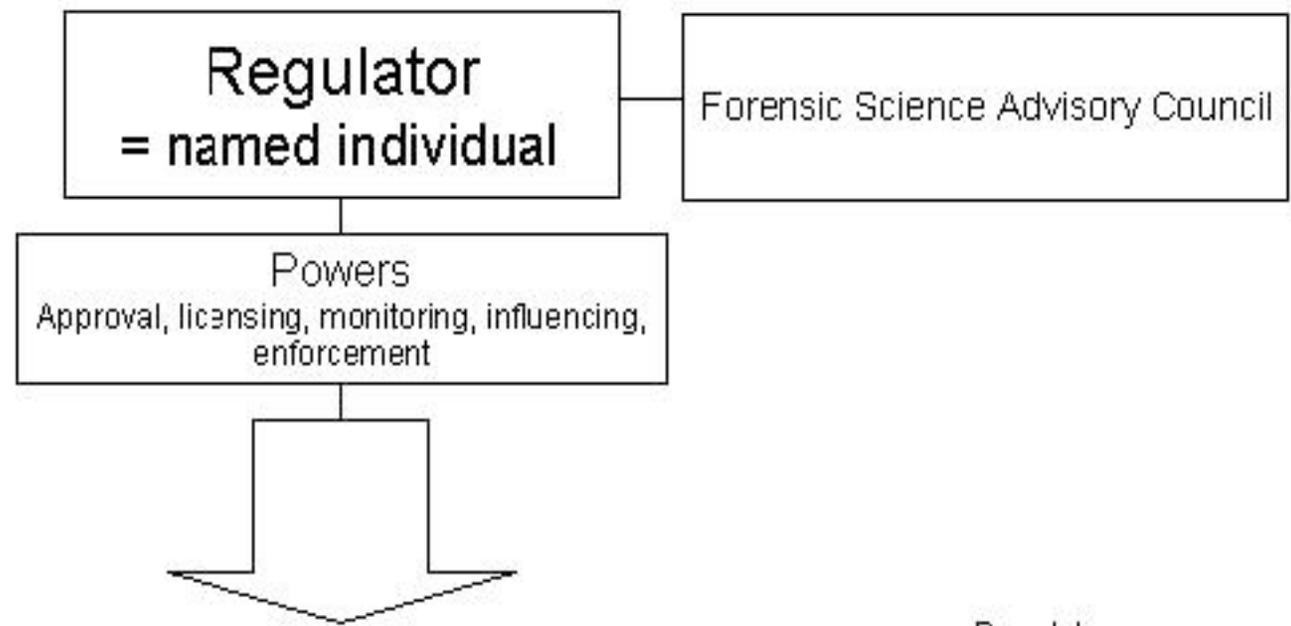


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- named individual, independent of any provider, appointed with powers delegated by the Home Sec (in post by March 2008).
- reporting to the Chief Scientific Adviser & guided by a FSAC, initially funded by Home Office.
- Regulation Unit setting up:
  - A FSAC;
  - Stakeholder Forum;
  - An Ethics Group for the NDNAD;
  - A reconstituted Forensic Pathology Council;
  - new arrangements for oversight of NDNAD



Appointed by Home Secretary  
 Located within Government  
 Funded initially by Home Office  
 Accountable to Chief Scientific Adviser



		Regulatory mechanisms				
Regulatory outputs						
	Individuals					
	Organisations					
	Processes					
	Products					

*Regulator oversees existing & new mechanisms to ensure required regulatory outputs are delivered*

*Regulator determines that standards are appropriate*

*Regulator approves suppliers*

**ILLUSTRATIVE**

# Purpose



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- *The purpose of the Regulator is to establish and sustain common quality standards in the provision of forensic science services to the police and the wider CJS. The requirement is driven, on the supply side by recent developments in the forensic science marketplace, and on the demand side by a number of recent cases in which apparent shortcomings have threatened to undermine public confidence in the quality of forensic science provision.*

# Objective 1



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By establishing, and enforcing, quality standards for forensic science used in the investigation and prosecution of crime, the Regulator will reduce the risk of quality failings impeding or preventing the identification, prosecution and conviction of offenders.

This will contribute to prevention, detection and deterrence of crime and improving public confidence in the police and other CJS agencies.

## Objective 2



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The absence of common, comprehensive and objective quality standards has made it difficult for the police to procure forensic services as intelligent customers. By establishing clear quality standards, the Regulator will simplify the procurement process for customers and suppliers and ensure that the outcomes more closely match the needs of the police. They will also help the police to measure the quality of forensic services provided under contract. This should assist in driving up the quality of service provided and in enabling the police to account for the choices made in procuring such services.

# Objective 3



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The creation and enforcement of quality standards in forensic science will help maintain and improve the quality of expert advice and testimony provided to the CJS. By providing the police and other CJS agencies with standard tools to assess the quality of services provided, the Regulator will help drive up efficiency and effectiveness across the CJS.

# Regulator accountable for:



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- setting standards for forensic science activities and processes performed by the police
- monitoring of compliance with these standards
- taking action as required to address shortfalls in performance against standards
- oversight and control of forensic science intelligence databases
- identifying, assessing and mitigating potential future risks through modification of regulatory arrangements

# Regulator accountable for:



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- ensuring quality standards continue to be assured and improved through contestable and transparent market for forensic science, enabling the entry of new suppliers, with appropriate assurance of continuity of supply
- creating an environment where innovation is encouraged, with ‘type approval’ awarded as appropriate to new techniques or products
- supporting public confidence in the contribution of forensic science to the CJS and the reduction of crime and its impact.

# What is being regulated?



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- Regulator should not duplicate/ replace existing arrangements but ensure they provide required scope, coverage, definition and robustness of monitoring/ enforcement to deliver the required level of quality and resilience. Where arrangements do not exist, should take steps to fill gaps.
- ***“The position I am taking is that Regulator does not need to regulate everything; but he does need to know that the important things are being regulated. The Regulator needs to build on the present arrangements where they work; to improve on them where they do not; and introduce new arrangements where none presently exist”***

# Benefits?



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- Reduced risk that investigations/ prosecutions will be damaged by deficiencies in the quality of forensic science services;
- Reduced risk that suppliers will distort the market by offering inferior services at reduced cost, competing unfairly with quality providers and damaging the criminal justice process;
- Ensuring that new scientific techniques are not introduced unless the validity of the techniques, and risks associated with them, are established and effectively promulgated

# Benefits?



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- More effective police procurement of forensic science services
- A reduced burden on forensic science suppliers
- A single, authoritative, source of advice on forensic science
- A focus for initiatives to improve the use of forensic science
- Bringing together a number of strands of work relating to quality in forensic science, forensic pathology and related systems.

# Yet....



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***The Regulator will not be expected to deliver all these activities directly. It will be the function of the Regulator to ensure that the standards exist, that they are fit for purpose, that they are subject to accreditation and that they are monitored. Where organisations exist to deliver the above activities, the expectation will be that this will continue and that the Regulator will operate through the established processes unless they are unable, for some reason, to deliver the required outcome.***

# Constraints?



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- no statutory backing (no ‘teeth’): will need to rely upon active support from the key stakeholders, backed by informal sanctions from CJS users of the services; e.g. suppliers which are unable to evidence compliance with quality standards are unable to secure police contracts.
- Courts will come to expect testimony given by expert witnesses to be underpinned by evidence that the science complies with the requisite quality standards.

# A Happy ending?



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- Has E & W solved the regulation issue?  
That will depend upon the:

\*Detail\*

\*Powers\*

\*Individual\*

\*Acceptance\*

- Focus on present - trajectories of research/developments & implications of applications of forensic science require scrutiny and critical debate.

- *Watch this space...*

*Many thanks, Carole McCartney*

