

*Dr Gillian Tully
Forensic Science Regulator
4th Floor, 5 St Philip's Place
Colmore Row
Birmingham
B3 2PW*

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Norman Lamb MP
Chair, Science & Technology Committee
House of Commons
London
SW1A 0AA

By e-mail via the Clerk to the Committee

Dear Chair

Statutory Powers

At the briefing session on the 13th December there was a discussion of the powers needed by the Regulator to effectively fulfil that role. I undertook to write to the Committee and set out my views on that subject.

Standards

The most basic power which is required is the power to set standards. In more detail I believe this requires the following.

- The power to set standards which must be complied with by all those providing forensic science to the Criminal Justice System (CJS); I will refer to all those providing forensic science to the CJS as 'forensic units', since they comprise commercial organisations, units within police and even sections within Government departments.
- The term standard should cover the following different classes of documents.
 - Documents of a general nature which apply across disciplines.
 - Documents which deal with specific areas of forensic science (e.g. DNA) or specific issues (e.g. anti-contamination processes or interpretation of evidence).
 - Documents, perhaps created with professional or regulatory bodies, which set standards for specific areas of forensic

science which so not fit into the normal analytical model (e.g. forensic archaeology).

- The power to set the dates by which compliance with those standards must be achieved.
- The power to set means by which compliance with is demonstrated (e.g. accreditation).

There must be a power to issue other form of documents. These will include, but be limited to, the following

- Guidance documents. These would not set requirements to be complied with but would provide advice to forensic units on how to achieve and maintain the standards.
- Information documents. These would provide information to forensic units. Perhaps the most significant of these currently is the document setting out the legal obligations on expert witnesses.
- Protocol documents. These set out processes or agreements which I have established normally with other parties in the CJS.

Enforcement

If the ability to set standards is to achieve the desired end there must be a power to enforce those standards. While the intention would be to work with forensic units to ensure the standards are achieved and maintained there must be an ability to deal with cases where co-operation does not achieve the desired end.

I believe the appropriate approach would be to use two levels of enforcement.

The first level would be an improvement process in which the Regulator has the power to determine what steps must be taken to achieve the required standards and the time by which those steps must be completed.

The second would be a process by which the Regulator can prohibit activities. The prohibition would persist until certain standards or other conditions are met. The ability to prohibit would have to be widely drafted to ensure it can cover methods, people and organisations.

This improvement process need not necessarily be set down in legislation, since the Regulator will be able to write to a forensic unit saying that improvement is required and if not achieved by a certain date a prohibition notice will be issued.

My view is that a prohibition process would be an extreme measure which would be used as a last resort and, normally, after the improvement process had been employed without achieving the desired aim. However, there would have to be a right to prohibit immediately in cases where the threat to the integrity of the CJS was such that it had to be addressed immediately.

Investigation

A further aspect of the role which would be improved by statutory powers would be the ability to investigate potential failings. This may include a power to require access to documentation.

General

The above discussion focuses on powers but I think care will need to be taken when creating a statutory basis to ensure the flexibility of the role and the ability to act in the best interests of the Criminal Justice System are not compromised.

Clearly for the role of Regulator to operate effectively it will have to be addressed properly in other legislation. The issue which arises immediately is that of data protection. I have serious concerns as to whether the Data Protection Bill currently before Parliament will allow the role of Regulator, particularly in relation to investigation of complaints and referrals, to operate effectively. This may change if statutory powers are created but, as you are aware, there is currently no robust timeframe in which this may occur.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gillian Tully', with a long horizontal flourish extending to the right.

Dr Gillian Tully