Dear Lord Patel

Recommendations Directed at the Forensic Science Regulator
The recommendations at paragraphs 90 and 91 of your report refer directly to actions that the Forensic Science Regulator should take. Therefore, although it is the responsibility of Government to respond to all of your recommendations, I am responding here, as an independent public appointee, to those within my current remit.

At paragraph 90, you recommend that “The Forensic Science Regulator should work with UKAS to find a proportionate way to reduce costs of accreditation for niche and smaller private providers. Exemptions from accreditation should exist for providers using new or non-standard techniques which could not yet be accredited, but the court should be made aware of this.”

Reducing Costs
Continuing work with UKAS and the Chartered Society of Forensic Sciences (CSFS) to find ways in which the costs of accreditation could be reduced for smaller and niche providers remains a high priority. The generic quality management system being piloted has the potential to reduce both the "internal" preparation time an organisation needs to spend in establishing their quality management system and the UKAS assessment time that would be required to gain accreditation. In addition, it provides a mechanism for audit and peer review for sole traders and very small businesses and support for ongoing quality management. It therefore has the potential to reduce the costs of gaining and maintaining accreditation. However, because the CSFS needs to recover its costs in developing and maintaining the system, there is a cost to joining the scheme. This cost is ultimately related to the number of organisations that join: a large number would enable the costs of the scheme to be spread more broadly and hence the cost to each organisation would be smaller. While the Regulator has no statutory powers, the number of organisations joining the scheme will remain low. If a means of funding the
CSFS scheme could be found, such that the cost to small businesses of joining the scheme could be reduced or eliminated, there would be a significant impact on the overall cost of accreditation. I have discussed this with Home Office officials, who have undertaken to determine whether grant funding could be found.

Alongside this work, I will continue to work with UKAS to seek ways to enable the appropriate assurance to be gained at a lower cost.

**New or Rarely Used Methods and Occasional Experts**

My Codes of Practice and Conduct (the Codes) already contain provisions to enable providers to deliver new or rarely used methods that are not suited to accreditation, whilst ensuring that the experts are informed of and comply fully with their legal obligations, including ensuring that courts are made aware of any limitations of their work.

The specific provisions relating to those who may occasionally provide expert evidence relating to a new or niche discipline are at section 2.1.3 of the current issue of the Codes (issue 4) and are reproduced at annex 1 to this letter. They place a requirement on those commissioning the work to ensure that the expert is aware of the legal obligations relating to expert evidence.

Section 20.2.45 also contains provisions enabling rarely used methods to be deployed either within or outside the scope of an organisation’s accreditation. Issue 5 of the Codes will be clarified to ensure that it is clear that this section also applies to new methods, which have not yet had the opportunity to be accredited. The draft wording is included in annex 2 to this letter.

It should, however, be noted that in transposing the requirements of the EU Framework Decision 2009/905/JHA into UK law through the *Accreditation of Forensic Science Providers Regulations 2018*, the UK Government has not specifically provided for any exclusions to the requirement for accreditation, which applies to analysis and interpretation of DNA and fingerprints.

**Review of Standards Framework**

At paragraph 91, you state that “We see a clear benefit in ensuring that most forensic science providers are accredited to the appropriate ISO standards. The Forensic Science Regulator should review the current regulation framework and make any necessary changes to ensure that it promotes good practice.”

Review of the regulation framework is a core part of the work of my office and advisory committees. Issue 5 of the Codes is currently nearing the end of its review process and will be published in due course.Whilst I note criticism of the applicability of ISO 17025 to fingerprints and digital forensics from some (e.g. at paragraph 80 and 82), it remains the case that ISO 17025 accreditation is the legal requirement for both DNA and fingerprints work across all EU states. There have been clear quality improvements brought about by implementation of ISO 17025 and the Codes for fingerprint comparison, most notably in relation to:
1. establishing the validity and limitations of the methods used, including through use of black box studies to determine where errors or differences of opinion between experts most often occur;
2. increased transparency and traceability through mandatory introduction of contemporaneous note-taking;
3. implementation of methods to control the potential for cognitive bias; and
4. ensuring that quality assurance mechanisms are evidence-based.

I will continue to work with my digital forensics specialist group to review the effectiveness of the implementation of the standard to date and any changes required as technology develops. The majority of those who submitted evidence critical of the standard for digital forensics have not yet applied for or achieved the standard and have understandable concerns about doing so. However, there is a rich source of data that enables a quantitative and qualitative evaluation of the impact of implementing the standard, from:

1. the application of the standard in over 30 organisations;
2. quality referrals to my office; and
3. wider reports of quality issues.

This will be collated and published, together with any learning points for the standards framework and/or its implementation.

Standalone Codes of Practice have been developed for a number of specialist areas, including forensic archaeology\(^1\) and forensic anthropology. In such disciplines, I have considered that such a Code of Practice, developed with the relevant professional body, can provide adequate guidance to practitioners. The corollary is that I expect the professional body to take action when the guidance is not followed and/or complaints about the practice of any member are robustly investigated and acted upon.

Ensuring that high quality review of forensic science is available to the defence is critically important, albeit such review is carried out in a very small minority of cases, with many cases having been resolved by early guilty pleas or other disposals. Some experts provide such a high quality service and others are clearly operating with limited knowledge or expertise and outside of the requirements of the Criminal Procedure Rules and Practice Directions. I am therefore in the process of setting a standard for this area, one stage of which was a "dry run" to determine whether or not ISO 17020 provides adequate assurance at a proportionate cost. The outcome of this study, including feedback from participants and estimated costs, is being evaluated and a proposed way forward will be debated at my Advisory Council later this year. I will then be in a position to set a standard for case review.

Yours sincerely

Dr Gillian Tully

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1 Contrary to the discussion of standards for forensic archaeology in the evidence from Dr Harrison, referred to at paragraph 87, I have not set a requirement for accreditation to ISO 17020 for this discipline.
Annex 1

2.1.3. All forensic units offering forensic science services to the CJS are to be bound by these Codes; however it is accepted that experts from other professions will be called to give evidence from time to time and the customer shall ensure that such experts are bound by the Code of Conduct and should make them aware of:

a. the general obligations of expert witnesses including the requirements of the Criminal Justice System as contained in the Criminal Procedure Rules\(^\text{23}\) (and Criminal Practice Directions, in particular 19A.5 and 19B);

b. the requirements for contents of reports\(^\text{24}\), including but not limited to,\(^\text{25}\) those prescribed in the Criminal Procedure Rules 19.4 and Criminal Practice Directions 19B;

c. retention, recording, revelation and prosecution disclosure obligations;

d. the requirements pertaining to the use of reference collections and databases should they rely on them;

e. the requirement to use validated methods or procedures based on sound scientific principles and methodology;

f. the need to demonstrate competence in using these methods or procedures, and evaluating the results obtained objectively and impartially, and according to established scientific and statistical methodology; and

g. the need to consider the impact that confirmation/cognitive bias can have at different stages and use of avoidance strategies


\(^{24}\) A statement is one form of a report. It is formatted to comply with the provisions of s9 Criminal Justice Act 1967.

\(^{25}\) Also see Expert Report Guidance FSR-G-200 from the Regulator.
Annex 2

Infrequently used methods

20.2.45 Infrequently used methods may be maintained on the forensic unit’s schedule of accreditation through regular use of mock casework, competence assessments and any other measures agreed with the accreditation body, or if not included on the schedule of accreditation re-verified in accordance with the requirements of these Codes prior to each use in casework.\(^75\) If these activities are to become part of the routine activities of the forensic unit, accreditation should always be sought.

20.2.46 All methods the forensic unit intends using, including infrequently used methods, shall have been validated in line with these Codes and the forensic unit shall demonstrate competence to perform the method. The validation, verification or re-verification shall include the steps in 20.2.5, and as with all methods, a validation library is required.\(^76\)

20.2.46 Forensic units shall have a procedure to identify infrequently performed examinations/tests and their maintenance or use including:

a. how staff competence will be maintained or is demonstrated;

b. the definition of infrequently performed examinations/test;

c. responsibility for the validation or verification;

d. sign-off procedure for use in the case including justification of method choice; and

e. how the status of the method will be reported in statements or reports.

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\(^75\) Also see TPS 68 UKAS Policy on Accreditation of Infrequently Performed Conformity Assessment Activities Edition 1 – Issued May 2017.

\(^76\) As with all validations the study scaled according to user requirement and case circumstances the adequacy and relevance of the available existing validation study, however the forensic unit must still verify the scope of the validation with the required steps in 20.2.5 even if these are brief.