End User Specialist Group (EUSG)

Minute of the meeting held on 30 May 2012
Home Office, 2 Marsham Street, London SW1P 4DF

Present:

Ewen Smith (ES), Chair	Criminal Cases Review Commission
Jane Higham (JH)	Glaisyers Solicitors
Anne Priston (AP)	Forensic Science Society
Andrew Rennison (AR)	Forensic Science Regulator
Kevin Sullivan (KS)	Guest
Anthony Heaton- Armstrong (AHA)	Criminal Bar Association
John Rea (JR)	Public Prosecution Service, Northern Ireland
Sandy Mackay (SM)	Expert Witness Institute
Soheel Joosab	Home Office Science Secretariat

1. Welcome and apologies

1.1 ES welcomed members of the group, and extended a particular welcome to Sandy Mackay who was attending his first meeting of the group.

1.2 Apologies had been received from:

Peter Thornton	Judiciary
Martyn Bradford	Avon & Somerset Constabulary
Karen Squibb-Williams	Crown Prosecution Service
Francesca Wiseman	Legal Services Commission
Nigel Meadows	Coroners' Society of England and Wales

2. Minutes of the last meeting (7 February 2012)

2.1 ES requested that paragraphs 3.3 (which stated that the matter of expert witnesses and disclosure of complaints should be looked at for inclusion in the CoP) & 3.4 (stating disclosure should be included in the draft Legal Obligations paper) be made more exact, i.e. is disclosure to be included in the CoP or the Legal Obligations paper. It was agreed that the minutes should be amended to read…'that the CoP lacked guidance on disclosure and this should be looked at with the intention to include guidance on the subject matter within the CoP. Mr Rennison agreed this, and added that supplementary advice could also be included in the *Legal Obligations* paper...'.

Action: Secretariat

2.2 Subject to the above correction, the minutes were agreed as accurate.

2.3 Although not for correction of the minutes, AP advised the group that, relative to paragraph 2.2 of the minutes (reffering to engaging experts who are appropriately qualified/accredited); the FSSoc can be called upon as a first point of contact to provide an initial listing of suitably qualified experts.

3. Matters arising

3.1 All actions had been completed.

4. Contamination incidents

4.1 AR reported that following a complaint made by the Greater Manchester Police against a forensic science provider ("the FSP") concerning the contamination of DNA samples undergoing profiling, that he was leading an investigation into the circumstances of the complaint.

4.2 AR provided the group with a brief outline of the key elements of the complaint and the terms of the reference of the inquiry. This included, but not limited to: assessing the FSP quality and technical standards; compliance mechanisms applied at the time of the DNA profiling; corrective actions taken; and procedures proposed to prevent recurrence.

4.3 Although the investigation was nearing a conclusion, AR's enquiries highlighted (in this instance, and more generally) that there are many compliance mechanisms and checks in place to try to minimise the possibility of contamination; nonetheless contamination (although infrequent) remains. For that reason, AR advised he considers that contamination (particularly the aspect of human error) an element of forensic science standards that should be examined in more detail.

4.4 As part of his investigation, AR had asked the United Kingdom Accreditation Service to carry out an assessment of the FSP operating procedures, mitigating actions carried out and what processes have been established to minimise such future errors. The FSP also underwent a thorough assessment to establish if there had been any other instances of contamination. The results of the examination (audited by AR, the UKAS and the NDU) show there have been no other occurrences.

4.5 AR reported that the findings of his inquiry were that the science was sound and that the cause of the contamination was a result of human error.

4.6 AR said that the characteristics of human error are such that it is doubtful it will ever wholly be eliminated; but it can be minimised and managed through supporting best practice, development of quality management systems risk assessment and systematic operational reviews.

4.7 In considering possible contamination of DNA, a question was put by a member of the group as to whether a case for prosecution could be against an individual based on DNA evidence alone. AR said that when considering taking forward a prosecution the CPS apply the threshold test[1].

5. Standards for the management of contamination

5.1 AR introduced the item saying that he had recently commissioned KS to examine the issue of contamination. The scope of work is to examine the causes of contamination, types of contamination, the gaps in management of contamination and what can be done to minimise occurrence and maximise detection.

[1] http://www.cps.gov.uk/publications/code_for_crown_prosecutors/threshold.html

5.2 KS presented an overview of the key elements under consideration:

a) Contamination categories
   - Consumables to sample (location recovery and storage)
   - Sample to sample (transportation, storage and lab processing)
   - Staff to sample (police officers at crime scene, SOCOs, laboratory staff)
b) Possible strategies to minimise occurrence & maximise detection
   - Standard operating procedures
   - Working environment
   - QA of consumables
   - Establish effective elimination databases (police, forensic staff and manufacturers
c) Quality management for production of consumables used in collection and processing of forensic material

5.3 Proposed outputs are to develop an anti-contamination guidance framework for the end to end forensic analysis process, i.e. crime scene to laboratory and examination. The guidance will either be an appendix to the Regulators Codes of Practice or a standalone guidance.

5.4 To support this, AR said that he has established a Publically Available Specification (PAS), managed by the BSI. PAS 377 sets out requirements for the functionality and manufacture of consumables (e.g. forensic kits) used in the collection, preservation and processing of material for potential forensic analysis. The PAS provides a standard for manufactures to conform to and will support forensic procurement specialists in purchasing decision. Additionally, it will ensure that the burden of quality assurance of consumables rests with the manufacturer, rather than the end-user.

5.5 In recognising the possibility of contamination/human error, a key component in developing an anti-contamination strategy is the establishment of elimination databases; police, staff (SOCO/laboratory staff) and manufactures databases – PED, SED and MED.

5.6 In relation to the PED, the group were advised that since April 2003 all new police recruits are required to provide DNA samples for profiling for inclusion on the Police Elimination Database (PED). Serving officers (and crime scene personal) that joined prior to April 2003 are asked to provide DNA samples on a voluntary basis. It remains, however, that a significant number of (pre 2003) officers' have not provided samples and, accordingly, their DNA profiles are not on the PED.

5.7 In considering establishing PED, SED and MED, there could be issues in collectively managing the databases to allow for an effective operational service. One option, therefore, would be to create a standardised centrally managed elimination database. There was also emphasis that the development of elimination databases would call for significant stakeholder engagement and consultation, i.e. with the ACPO, the Police Federation, representative FSP organisations and manufactures of forensic kits/equipment.

5.8 KS advised that the FSS had maintained DNA profiles (~8,000) for elimination purposes. However, with the closure of the FSS, and the legal constraints of the Data Protection Act, those profiles have now been deleted.

5.9 ES thanked KS for an informative presentation, and sought from members their initial views in the proposed outline of work on the management of contamination. Members expressed that they were supportive of the planned work and agreed that there is, as expressed by AR, a need to fully engage with the issue of DNA contamination.

6. Human error in forensic science

6.1 Currently juries are not provided with any guidance about the risks involved regarding possible DNA contamination. A suggestion was made on the benefit of factoring the possible risks of contamination into the court primer which is currently under draft (on DNA methods). AR said that he will be actively sharing his findings with the judiciary, and would discuss with Lord Justice Thomas the merits of such an approach.

6.2 AR said there is likely to be significant practitioner and media interest in the outcome of the investigation, and the conclusion that human error was the cause of the events. A question was put as to how AR intends to let the legal profession and other FSPs know what is being done around contamination and human error. AR advised that the inquiry report will be published on his website and that he will also write to the Bar Council, the Law Society and the Judiciary.

6.3 ES suggested that, additionally, there would be value in AR(as Forensic Science Regulator) and ES (as Chair of the End User Specialist Group) co-drafting an article for inclusion in appropriate periodicals/newsletters, e.g. legal journals and FSSoc journals etc. The article could describe the standards that are currently in place, recognition of the issues and provide reassurances that work is underway to help reduce, and detect, the likelihood of such errors.

Action: Andrew Rennison/Ewen Smith

6.4 AR said that he will be taking the wider issue of human error to the Forensic Science Advisory Council SAC for discussion at its next meeting.

6.5 AR said that as work progresses on contamination, and the aspect of human error, he will keep the group updated and seek its considerations at key stages.

7. AOB

None

8. Date of next meeting

Monday 10 September 2012, 3:00p.m., Conference room 7, Home Office,
2 Marsham Street, London, SW1P 4DF