

**Response to
the Forensic Science Regulator's
Consultation Paper
'A review of the options for
the accreditation of forensic practitioners'**

**Prepared by
the *UK Register of Expert Witnesses***

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Executive Summary	4
Introduction	6
About the UK Register of Expert Witnesses	6
Accreditation of experts as expert witnesses	8
Terminology.....	8
Is there a need for accreditation?	9
Civil arena.....	9
Criminal arena	10
Science and the court.....	11
Conclusion.....	12
What can be accredited?.....	13
Susceptibility of opinions to meaningful accreditation.....	13
Susceptibility of expertise to meaningful accreditation	13
Assessing methodologies and the ‘competency culture’	14
Conclusion.....	15
Quality assurance	16
The Regulator’s Proposals.....	18
An end to register-focused decision making.....	18
Avoid creating a proxy for appropriate and targeted scrutiny.....	19
Legal Services Commission approach to cost	20
Growing cynicism about ISO/UKAS.....	20
Conclusion.....	21
Answers to the Specific Questions	23
Annexes	26
Annex 1: Experts’ answers to the specific question.....	26
Answers.....	26
The Respondents.....	26
Annex 2: Polling results	30
Work profile of the contributors	30
Annex 3: Correspondence	31

Executive Summary

This is the response of the *UK Register of Expert Witnesses* to the Consultation Paper issued by the Forensic Science Regulator on 15 January 2009. It draws together contributions from 319 expert witnesses listed in the *Register*.

The five principles of better regulation issued by the Better Regulation Executive (BRE) teach us that good regulation is transparent, accountable, proportionate and consistent, and it is targeted according to need.

We begin with the observation that no one has provided evidence for there being a *general* problem with the quality of forensic science evidence in the Criminal Justice System (CJS) in England and Wales. So, in considering the changes to the regulatory framework brought forward by the Regulator, we have borne in mind the need for them to be targeted and proportionate.

Setting a Quality Standard for forensic science that encompasses the providers, practitioners and, crucially, their *analytical methods* is far better than the system offered previously by the CRFP. We think it is entirely proper for the Regulator to set the Quality Standard and we agree that using the Skills for Justice National Occupational Standard (NOS) system for specific analytical techniques is appropriate. Requiring individuals to demonstrate compliance with any relevant NOS gives the right level of oversight.

However, the Regulator must ensure that the Quality Standard and NOS are not permitted to stifle innovation. Science will always move faster than the quality standards, and this must be recognised in the Regulator's quality framework.

Where we disagree with the Regulator's proposals is on the question of accreditation. The *UK Register of Expert Witnesses* has never believed that it is necessary or meaningful to accredit individuals as expert *witnesses*. What is susceptible to meaningful accreditation is an individual's expertise, and that is best done *by his own professional regulatory body*. A forensic scientist who does not have a professional regulatory body could be encouraged to join the Forensic Science Society.

Accordingly, we welcome the Regulator moving the focus of regulation away from the CRFP model of accrediting individuals. But we believe that the Regulator's proposal to impose UKAS accreditation against his Quality Standard *on all providers* is untargeted, disproportionate and potentially anti-competitive.

Accreditation may **seem** to offer users of forensic science services an enhanced level of confidence that all evidence, regardless of the supplier, is quality assured and directly

comparable. However, the truth is that accreditation can never assure quality because quality comes from every individual's *ongoing* rigorous and error-free implementation of proper procedures; *a priori* accreditation can only give us some measure of past performance.

On the cost front, large companies and service providers who are already embroiled in the processes and expenses associated with other ISO-based quality systems may not find it too onerous to achieve UKAS accreditation against the Regulator's Quality Standard. But this is not so for smaller forensic science providers and individuals. A compulsory system of UKAS accreditation for all would incur disproportionately large costs on the smaller forensic science providers and individuals. Indeed, many may have to stop offering their services to the courts. We should remember that many of the failures of forensic science have arisen in the large forensic laboratories. If the Regulator wants to encourage a thriving and competitive sector, he will not wish to concentrate the skill base in a small number of large providers.

The Regulator is correct to say that quality comes from building a competency culture. So, he must take care to avoid accreditation becoming a surrogate for scrutiny. It is far better for the court to determine if the Regulator's Quality Standards have been followed on a case-by-case basis than for accreditation of a provider and its employees to become an easy proxy for the scrutiny that should be applied properly in every case.

The Regulator's one-size-fits-all approach to UKAS accreditation against his Quality Standard seems to us to be both untargeted and disproportionate. This is especially so given both the lack of evidence of there being a general problem with the quality of forensic science evidence and the inability of accreditation to deliver quality assurance.

Turning back to the BRE principles, the very best regulation of the quality of forensic science evidence would offer transparency, accountability, proportionality and consistency, and would be targeted according to need. We already have such a system in place – it is the detailed scrutiny that can be brought to bear by the lawyers, the judge and the other expert witnesses upon the evidence adduced in a case *within the context of that case*.

Of course, even with this optimal system in place problems with forensic science in the criminal justice system have arisen in the past. But these have usually stemmed from a systemic failure of the court properly to handle conflicting or novel scientific evidence, due in part to inadequate court procedures. We believe that the ongoing work at the Law Commission is the best way to tackle this systemic weakness.

Introduction

This is the response of the *UK Register of Expert Witnesses* to 'A review of the options for the accreditation of forensic practitioners' Consultation Paper issued by the Forensic Science Regulator on 15 January 2009. The first draft of this response was posted on the *Register's* website (<http://www.jspubs.com>) in early February 2009. The c. 3,000 experts in the *Register* were then invited to consider the response and feed back their own views.

We also enabled experts to contribute by lending their support to, or recording their rejection of, the views contained in our initial response through an on-line polling system.

Overall, 307 expert witnesses registered their views with us through the polling system, three experts provided answers to the specific questions and nine experts sent written responses.

About the UK Register of Expert Witnesses

J S Publications has published the *UK Register of Expert Witnesses* since 1988. The *Register* has developed over the years from a simple directory publishing project into a support organisation for expert witnesses. Most of our time is now spent on the professional support and education of expert witnesses.

Perhaps the most important feature of the *UK Register of Expert Witnesses* is the vetting we've undertaken since the product's inception way back in 1988. Indeed, our many conversations with lawyers have highlighted the importance they place on knowing that listed experts are vetted. All experts have the opportunity to submit to regular re-vetting by instructing lawyers in a number of key areas, such as report writing, oral evidence and performance under cross-examination. The results of the re-vetting process are published in the printed *Register*, in the software and on-line.

The printed *Register* is distributed free of charge to a controlled list of around 10,000 selected litigation lawyers. The on-line version of the *Register* is also available free to anyone with an Internet connection, and currently attracts approximately 27,000 searches per year.

We provide registered experts with a variety of free educational resources. These include our quarterly *Your Witness* newsletter, a series of more than 60 factsheets, court reports on cases that have implications for expert witnesses, our Expert Witness Year Book and LittleBooks series, and our expert witness *e-wire* service. This information flow ensures that experts in the *Register* have the opportunity to be amongst the best-informed experts, with respect to expert witness-specific issues, in the country.

However, we also recognise that the quality of expert evidence is in large part controlled by the quality of the instructions received. Sadly, we have observed a marked decrease in the quality of instructions to expert witnesses in recent times. To try to help combat this trend, we have published *Practical Guidance for Expert Witnesses in Civil Cases*. Subtitled “What lawyers think experts should know but seldom get round to telling them!”, this guide helps lawyers and experts to work together more productively.

Our daily contact with expert witnesses – drawn from across all disciplines, and including some who undertake an occasional instruction and others who work almost exclusively as expert witnesses – has given us a detailed understanding of this ‘litigation support industry’.

Accreditation of experts as expert witnesses

In seven short paragraphs detailing his recommendations, the Regulator succeeds in bringing some much-needed rationality to the debate over the accreditation of forensic practitioners who provide evidence to the criminal justice system (CJS). But there is a danger that the Regulator will attempt to implement the proposed scheme too widely. This response tries to show how, by reference to the Better Regulation Executive's (BRE) principles of good regulation, it is possible to identify appropriate limits to the scope of implementation of the proposed regulatory scheme.

Before responding to the specific questions raised in the consultation paper, it is necessary to answer some basic question about the accreditation of *experts* as expert *witnesses*.

- Is there a need for accreditation?
- What can be accredited?
- How effective would accreditation be at ensuring the quality of forensic science?

The constituency represented by the *UK Register of Expert Witnesses* (UKREW) is composed of a small number of individual forensic scientists, and a much larger body of medics, engineers and other experts who provide expert evidence to the CJS and, more frequently, to the civil and family courts. As such, our main purpose here is to draw a distinction between the larger forensic laboratories, for whom the Regulator's current proposals appear well suited, and the smaller providers represented in the UKREW, for whom the UKAS accreditation approach would be disproportionate. We do this within the framework set out for us by the BRE principles of better regulation.

Terminology

The Regulator is (possibly by design) vague about any distinction between his 'forensic practitioners' and the more common 'expert witness'. We choose to treat his term as encompassing all experts who provide evidence to the CJS. In particular, we do not restrict ourselves to forensic science because the proposals for change will not sit in isolation from the wider expert witness community.

Is there a need for accreditation?

The desire of those who have argued¹ for the position in which virtually all experts are accredited by the Council for the Registration of Forensic Practitioners (CRFP) implies that they believe either:

- that the quality of expert evidence, across the board, is in need of improvement, or
- that the CRFP process could have assure quality in the provision of expert evidence to the CJS.

However, the UKREW has long been sceptical of the need for general accreditation of *experts as expert witnesses* because no one has been able to show that there is a general failing in the quality of the expert evidence provided to the UK courts. Furthermore, it is our belief that no *a priori* accreditation scheme can prevent a good expert getting it wrong on the day.

Civil arena

Clearly the civil arena is of only peripheral interest to the Regulator at this juncture. But it has one very important lesson for us that has general application. In the civil arena, following introduction of the Civil Procedure Rules (CPR) in April 1999, we have seen:

- expert evidence placed under the complete control of the court
- the adoption of a cards-on-the-table approach to litigation
- absolutely clear guidance for expert witnesses on their overriding duty to the court.

In the system of case management that existed pre-CPR, lawyers held sway and often used expert evidence as part of their case management strategy. All too often this strategy involved finding the most circuitous route to court, and misuse of expert evidence was just one tactic they adopted. It was, then, perhaps understandable that the 'hired gun' was seen from time to time. All this has been swept away and the CPR has encouraged the development of a self-regulating meritocratic system within the civil arena, with the occasional 'bad' expert being readily identified and widely reported, and the 'good' experts no longer used as pawns in the lawyers' games of brinkmanship.

¹ e.g. the Legal Services Commission in its 2004 Consultation Paper "The Use of Experts"

LSC Survey response (n = 190)²			
	Agree	Neutral	Disagree
Do you agree that the effect of the Civil Procedure Rules has been to solve many of the past problems that solicitor-based case management caused with expert evidence in civil cases?	75.6%	14.9%	9.5%

LSC Survey conducted on www.jspubs.com between December 2004 and February 2005.

The introduction of the Criminal Procedure Rules has had, and will continue to have, an important analogous effect in the CJS. Of course, the effect will be fettered – and rightly so – by the defendant’s need to have somewhat greater freedom to adduce evidence as a foil to the inevitable imbalance of a process pitching the individual against the State.

Criminal arena

We recognise that those who have based their assessment of the quality of expert witnesses on media reports over recent years will have been likely to conclude that all expert witnesses are unprincipled Mammon-worshipping rogues! But, look into the detail and it is clear that whilst there have been failings in the quality of expert evidence, the real problem lies in the systemic failure of the court properly to handle conflicting scientific evidence.

We can demonstrate this by reference to the high-profile miscarriages of justice in child death cases. We do not believe they reveal a general problem with the quality of expert evidence – and the Court of Appeal agrees – but they do hold an important lesson on this systemic problem.

In its decision in the Angela Cannings appeal³, the Court of Appeal made it plain that the reason for quashing the conviction was not the expert evidence, but the emergence of some new and previously unavailable evidence that had been identified (recent SIDS studies and the possibility of a genetic factor). Whilst the Court of Appeal warned experts of the dangers of being ‘over-dogmatic’, the main problem it identified was the way in which the courts handle conflicting expert evidence. The decision concludes:

“If the outcome of the trial depends exclusively, or almost exclusively, on a serious disagreement between distinguished and reputable experts, it will often be unwise, and therefore unsafe, to proceed.”

Turning to the Sally Clark case, we do have an example of an expert who got it wrong – Dr Williams. He failed to make reference to the laboratory report that ultimately led to Mrs

² The LSC Survey was carried out as part of the UKREW response to the Legal Services Commission’s consultation “The Use of Experts” published in November 2004.

³ *R -v- Cannings* [2004] EWCA Crim 1

Clark's release. Whatever the reason, the fact that the report became lost in the court bundle was a failing by someone, and it had dreadful consequences. But can it really be symptomatic of a general problem of quality amongst expert witnesses? The CPS disclosure manual which was published as a result of this case has been very helpful in giving experts explicit guidance on how they ought to handle the evidence they assess including, importantly, the evidence they think is irrelevant or erroneous.

Professor Sir Roy Meadow has been vilified in the media. In the Clark trial it was reported that:

- his 73,000,000:1 statistic was wrong⁴
- "Meadow's Law" ran the risk of switching the burden of proof to the defendant
- he brought to the court an air of infallibility.

Our conclusion is that none of this ought to have been allowed, *by the trial court*, to result in a criminal conviction where the 'outcome of the trial depended exclusively, or almost exclusively, on a serious disagreement between distinguished and reputable experts'. The Court of Appeal subsequently thought likewise.

Professor Meadow was a world-acclaimed authority, and by all accounts his mere presence in court had a way of winning over juries. What was more, the Court of Appeal noted that he had a certain arrogance. What is arrogance if not a species of self-belief? What do lawyers and the courts crave? Certainty. Is it any wonder that Professor Meadow was called back time after time after time?

Science and the court

Naturally, the Regulator is mainly concerned at present with the quality of forensic science evidence put before the criminal court. This is indeed an area in which the courts need to exercise greater caution than they currently do, but not, we think, because the forensic practitioners are notably lacking in quality control.

Take, for example the case of *Dallagher*⁵ and ear print evidence. This case involved the murder of an elderly lady. An ear print was found at the scene. Two experts found a strong match between the ear print and Mr *Dallagher*. On appeal, three further experts brought fresh research which cast doubt on the reliability of ear print evidence. A retrial was ordered and, ultimately, the case against *Dallagher* was dropped because DNA evidence taken from the print unequivocally established someone other than *Dallagher* had left it.

⁴ see *BMJ* 2002;324:41-43 [5 Jan] for Meadow's account of the background on this statistic and its use in the Clark trial

⁵ *R v Dallagher* [2002] EWCA Crim 1903

But the Court of Appeal found no merit in the argument that the experts' opinions should have been ruled inadmissible on account of the inherent unreliability of inferences drawn from ear-print analysis. The Court agreed with the view expressed in *Clarke*⁶, that there are "no closed categories where [expert] evidence may be placed before a jury" as it "would be entirely wrong to deny to the law of evidence the advantages to be gained from new techniques and new advances in science".

The real problem here is that there is a fundamental incompatibility between what science can offer and what the English legal system seeks. The courts want certainty; science cannot provide it. For any hypothesis to be scientific it must be capable of being proved wrong – if only the evidence proving it wrong could be found. This fundamental principle of science means it can never provide absolute certainty. This has been the source of many of the problems with expert evidence in the courts, and yet no system of accreditation can tackle it. However, the ongoing work of the Law Commission – to introduce new powers for the criminal courts to assess the methodological reliability of expert evidence before it gets put to a jury – might.

Conclusion

Based on our observations we see no evidence of a problem with the quality of expert evidence in general, and our expert respondents largely agree.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that there is no evidence of a <i>general</i> problem with the quality of expert evidence?	71.4%	14.8%	13.8%

Survey conducted on www.jspubs.com during February and March '09

For the Regulator, we believe this analysis shows that, in keeping with the central tenets of the Better Regulation Executive's (BRE) principles of good regulation, his proposed UKAS accreditation scheme should only be imposed where it is proportionate to do so. Since a lack of existing regulation is not leading to quality control problems, then UKAS accreditation, if deemed necessary, should be implemented only when it would not be unduly burdensome or expensive.

Since we find no evidence of a general lack of quality through a failure to regulate, we would argue that it would be disproportionate and untargeted to apply his proposed UKAS

⁶ *Clarke* [1995] 2 Cr App R 425, 430

accreditation scheme across the board to all service providers. We do, however, support the development of a Quality Standard for all to follow.

What can be accredited?

Susceptibility of opinions to meaningful accreditation

Implicit in much of the debate on accreditation by registration of individuals (the CRFP model) is the assumption that the skills of the expert witness, as opposed to those of the expert, are susceptible to accreditation. But what is there in a person's ability to form an opinion and bear witness to it that is susceptible to meaningful accreditation? The basic skills specific to report writing and the giving of evidence are not that onerous, and are easily acquired through training, although experience is a better tutor.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that there is little to accredit in an expert's ability to form an opinion and bear witness to it?	64.2%	13.0%	22.7%

Survey conducted on www.jspubs.com during February and March '09

In fairness to the CRFP, even it did not suggest that such accreditation was possible. According to the CRFP literature, what it was doing was checking that experts:

"Take all reasonable steps to maintain and develop [their] professional competence, taking account of material research and developments within the relevant field and practising techniques of quality assurance."

As we show in the next section, we suggest this sort of assessment should lie with an expert's existing professional regulatory body.

So, although it seems generally accepted that the ability to form an opinion is not susceptible to meaningful accreditation, it has been the case that a wrong opinion – wrong due to inexperience or having missed something – has caused real problems. Whatever the Regulator does about quality assessment of procedures and methods, it will have to be court procedures that deal with this source of error.

Susceptibility of expertise to meaningful accreditation

Insofar as an individual's competence as an expert might be in need of accreditation, this is a task best performed by the expert's professional body. Such bodies will generally already have the disciplinary powers in place to deal with an expert whose expertise is found to be

below some defined standard. We believe that where a professional regulatory body already exists, that body should be left to regulate its members.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that what does need accrediting is an individual's skill as an expert?	81.8%	9.2%	9.0%
Do you agree that where an expert is already subject to regulation by a professional qualifying body, that system of competency checking should be left intact?	80.7%	8.7%	10.6%

Survey conducted on www.jspubs.com between February and March '09

However, some of our contributors have expressed concern that their own professional regulatory bodies are unwilling, or unable, to perform the function of dealing effectively with complaints about their members' performance in the forensic arena. There may well be a role for the Regulator in developing a standard for the handling of such complaints within professional regulatory bodies and then promoting its adoption within these bodies.

Assessing methodologies and the 'competency culture'

Where we see great merit in the Regulator's proposals is in the move towards creating what might be called the 'competency culture' within forensic practice. Placing regulation of the individual within the overall framework of organisational quality assessment of process and method seems to us to be self-evidently a better approach than the single-faceted CRFP approach.

We understand that it will not prevent competent experts getting it wrong on the day. But in large forensic science laboratories with high workloads and the obviously greater attendant risk of cross-contamination and administrative error (e.g. a sample being wrongly labelled), adopting a competency culture of the sort envisaged by the Regulator can only help to reduce (and spot) errors. For such laboratories, using the UKAS system of accreditation against the Regulator's Quality Standard may be a proportionate change for the good.

But UKAS accreditation is an approach that implies the existence of an organisation with the capacity to implement the required audit systems. There is clearly a 'scale of operation' at work here, and the Regulator should make a determination about the size of organisation his proposals on UKAS accreditation should encompass.

We had a distinctly equivocal response to our survey question on the merits of switching the regulatory focus away from the individual. In hindsight, perhaps our survey question on this

point should have asked whether it was right to broaden the focus away from accrediting individuals to encompass the broader scope outlined by the Regulator.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that the Regulator is right to switch the focus of accreditation away from the individual and onto the organisation?	21.6%	21.8%	56.6%

Survey conducted on www.jspubs.com between February and March '09

For the vast majority of experts in the UKREW the proposed UKAS scheme would be disproportionate in terms of cost and unworkable because of insufficient staff in the 'organisation' to implement the system. The Regulator's scheme would operate in the pre-trial arena, and we have sought to show that true quality control of expert evidence can only occur in court. So we argue that for the smaller providers, such as many of those listed in the UKREW, the proper regulatory balance is struck by:

- the existing professional regulatory bodies accrediting their own members as experts
- the judge, the lawyers and the opposing expert(s) scrutinising⁷ each expert report, and
- providing an open and transparent system, run by the professional regulatory body, for handling complaints against an expert found wanting in his duties as an expert witness.

Implementing the Law Commission proposals for a judicial power to enquire as to the methodological reliability of the proposed expert evidence would then tackle the some of the procedural failings in the courts that have given rise to problems in the past.

Conclusion

Avoiding unnecessary regulatory burden is central to the BRE's principles of better regulation. It would be disproportionate to impose UKAS accreditation on the small-business and individual forensic scientists, medics, engineers and other experts who work outside of the larger forensic laboratories. Instead, working with the existing professional regulatory bodies to improve and standardise their handling of complaints about the forensic work of their members is a more proportionate response for such practitioners.

⁷ See the next section for a discussion on quality assurance

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you think that where individual experts (i.e. those not employed by an accredited organisation) are concerned, the Regulator should rely on professional regulatory bodies rather than try to adopt the UKAS approach?	73.2%	15.0%	11.8%

Survey conducted on www.jspubs.com between February and March '09

Quality assurance

We do not believe that any system of accreditation can assure quality in the provision of expert evidence to the CJS. The CRFP, in creating an overarching system of professional skills accreditation, sought to usurp the function of the professional bodies and the courts by pre-selecting experts who were 'sufficiently expert' to be instructed. Yet its system could not prevent miscarriages of justice like those perpetrated in the 1970s and 1980s which led to its creation. Quality assurance can only come from looking carefully at each expert, in each case and from many angles. And that's precisely the system already in place in the form of the lawyers, the judge and the other expert witnesses in a case.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that the quality of forensic science evidence given to the courts can only be controlled by looking carefully at each expert's evidence, in each case and from many angles – exactly the system of lawyers, judge and opposing experts we already have in place?	85.6%	8.8%	5.6%

Survey conducted on www.jspubs.com between February and March '09

The CRFP scheme always appeared to us to be unworkable, and the expert community has voted with its feet. If the Regulator's scheme is to avoid similar problems, he must be very clear about what it is he is attempting to do. Woolly phrases such as 'the regulation of the quality of the provision of forensic science' (para 1.10) should be avoided – for how can any system of *a priori* checking guarantee quality when even the most skilled expert can get it wrong occasionally?

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that no system of <i>a priori</i> accreditation can prevent a first-class expert witness getting it wrong on the day?	89.9%	4.1%	6.0%

Survey conducted on www.jspubs.com between February and March '09

We believe that the best the Regulator can hope to achieve is to imbue a culture of competency checking through reference to his broad ISO-based Quality Standard. This, it seems to us, is the closest we have yet come to an answer to the questions posed by the miscarriages of justice of the 1970s and 1980s. The Regulator's scheme cannot guarantee quality, but it can create a competence culture within the major provider organisations. And that is a big step forward.

For all these reasons, we welcome the signal from the Regulator that he is to end the focus on the accreditation of expert witnesses by the registration of individual practitioners. However, our expert respondents are not so sure. Despite the singular failure of the CRFP approach to gain broad recognition or support from the forensic community, which would explain the large neutral vote, a sizable minority of our expert respondents say the CRFP approach should stay – although with the closure of CRFP events have rather overtaken us.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that the Regulator is right to reject the CRFP 'register' approach to accreditation?	39.8%	31.8%	28.5%

Survey conducted on www.jspubs.com between February and March '09

The Regulator's Proposals

An end to register-focused decision making

The Regulator rejects both the proposal from the CRFP and that from Skills for Justice to continue the existing CRFP register. He prefers embedding practitioner oversight in a broader quality standard approach. We endorse this change in emphasis.

The superficial attractiveness of a register is the easy access to information it promises to those who instruct experts. But in the real world, practical difficulties prevent this benefit arising because to deliver on this promise a register has to include everyone, and that implies mandation. There is, rightly, no appetite for a mandatory register of expert witnesses within government or judicial circles.

The CRFP was conceived originally as a professional regulatory body for forensic scientists who had no other professional regulatory body, and in that role it had a value. However, this potential was wasted by its expansionist ambitions (e.g. forays into the civil arena) which have appeared to be driven by the need to make its register financially self-sufficient rather than by an identified need in the areas it coveted. In opting instead for an ISO-based Quality Standard, the Regulator has ensured that in future any drive to widen the scope of regulation does not arise simply through a need for a register to become self-financing.

The challenge for the Regulator is to ensure he matches a given quality control mechanism with the appropriate type of provider. As the Regulator's Practitioner Standards Specialist Group concluded, the 'one size fits all' mentality is flawed. This means the Regulator should not attempt to force the UKAS accreditation model onto the sole practitioners and small forensic firms, a sector of the provider base for which it is patently not suited.

Rather, in keeping with the central tenets of the BRE's principles of good regulation, the Regulator should allow the professional bodies to take up any slack in this section of the provider base. If any of these individuals lacks a professional regulatory body, encouragement to join the Forensic Science Society ought to be sufficient. With its new professional body status, this established body should be well able to ensure ongoing competence. This approach would accord with the findings of the Civil Justice Council's Expert Forum meeting on accreditation held in March 2005.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that the Regulator should encourage any individual forensic scientist who does not have a professional regulatory body to join the Forensic Science Society?	64.0%	24.9%	11.1%

Survey conducted on www.jspubs.com between February and March '09

Avoid creating a proxy for appropriate and targeted scrutiny

The Regulator wants to move to a multi-faceted system of accreditation focused on the provider organisations, and that must be welcomed. By integrating the assessment of practitioners and the scientific methods they use into an organisation's ongoing quality procedures, and all to internationally recognised ISO standards, a superior replacement for the existing system of practitioner-focused accreditation will result.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you think that where international standards relating to the operation of forensic science laboratories exist, it would be perverse not to adopt them?	76.6%	18.6%	4.8%

Survey conducted on www.jspubs.com between February and March '09

Where international standards exist, it seems perverse not to adopt them. Not only would their adoption bring into the UK's quality assessment programme a level of objectivity, it would also allow comparisons to be drawn across national borders. This would be very helpful when monitoring the UK's performance in quality management of forensic science services, and would also help in cross-border litigation.

Provided it is recognised that the aim is to allow independent assessment to be made of an individual's competence (i.e. that the individual has the necessary knowledge and skills to undertake a given task), and not whether the outcome of a given task is correct (i.e. recognising that even competent people can get it wrong on the day), we see little wrong with promoting the Skills for Justice National Occupational Standards (NOS). Testing if a given expert in a given case has conducted a given analysis correctly must remain the domain of the court; otherwise the Regulator will have created a proxy for the proper (in the context of the case) scrutiny of the science.

However, it must be recognised that there is a danger of the NOS approach creating a barrier to innovation, e.g. if the absence of a NOS for a given task is seen as a negative, or if the science moves faster than the NOS writing (which it will). This must be guarded against – science develops through innovation, and novelty should be nurtured, provided only that the

greater uncertainties associated with novel approaches are made plain to all who rely on the science.

FSR Survey response (n = 307)			
	Agree	Neutral	Disagree
Do you agree that care must be taken to prevent the NOS approach from stifling innovation?	66.1%	30.4%	3.5%

Survey conducted on www.jspubs.com between February and March '09

Legal Services Commission approach to cost

Whilst considering the cost of the proposals, the Regulator will need to address the current attitude in the Legal Services Commission (LSC) that equates *lowest cost* with *best value*. It seems to us that the LSC chooses not to understand that quality forensic evidence will cost money – it cannot be provided ‘on the cheap’.

Given the recent cost-cutting measures introduced by the LSC, and its current proposals to arbitrarily cut expert fees still further, the Regulator may soon find that he has very few individual forensic scientists to worry about. Forensic scientists could ill afford to participate in his system if the LSC fee rates fail to cover even their operating costs.

Growing cynicism about ISO/UKAS

While we believe that the ISO/UKAS route is unlikely to attract much resistance, there are those with prior experience of such approaches who express pretty severe doubts about their suitability. From first-hand experience we recognise that ISO accreditation does not always mean what it seems to mean. As one of our contributors puts it, ISO9000 “demonstrates that there is a procedure in place which is consistently followed – if the procedure is faulty, everything the ISO9000 organisation does will be consistently faulty”.

Some see UKAS as a bureaucratic nightmare that increasingly exists to serve its own ends, supported by pressure from national governments and the EU. Why, these critics ask, when sometimes it takes months for an accredited laboratory to correct some non-compliance issue, does that laboratory retain its accreditation?

Of course, this is not the first time an attempt has been made to embed quality in large systems. From Peter Sommer we learned of an example in the engineering field about how quality management was changed in the industries working with Safety Critical Systems (SCS) – air safety, nuclear power and the like. In this case the UKAS-based ISO approach was not adopted. Instead the solution was firstly to compile a Guide that described ‘best practice’ in a fairly prescriptive manner.

The Guide was made generally available to all participating organisations and interested parties. Then the organisations were 'invited' to provide an Audit Unit with a portfolio of the evidence pertaining to their compliance capability. These units had the power to cause an organisation to be deselected. For example, an SCS product that could not produce a Safety Compliance Certificate endorsed by a big and well-recognised authentication house could not be delivered for use. Clearly any purchaser who used it and was subsequently involved in a litigation case would have to take full and unlimited liability. The result was no insurance, etc., so everyone realised the nature of the game and got on with it.

Peter Sommer concludes, "[this work] relied on the generation/compilation of a best practice manual. But once it was done then it was very easy to apply and police. Each department doing relevant work had to produce its relevant bit of compliance. Both had the tremendous advantage that best practice behaviours were forced into all aspects of coal face and higher level operations right up to senior management involvement. Quality became built in as part of the processes and was NOT an add on at the end. It raised overall standards and was pretty cheap to do. Because it was 'output driven', no one in particular was disenfranchised by a meaningless Training Certificate. If you stood up to the mark you were in and part of it. Organisations became very competitive!"

It has become clear to us through this consultation that ISO-based standards for the production of tangible items and of methods of analysis can be genuinely helpful. But the Regulator will appreciate that so much of what an expert witness does cannot be submitted easily to such standardisation and procedural checking. It is to be hoped that through his proposals the Regulator will not take attention away from the one existing truly effective quality control mechanism: the adversarial challenge to evidence exerted in the court.

Conclusion

The Regulator sees as outdated the CRFP approach to tackling quality standards in the use of forensic science "through the single dimension of assessing and registering individual forensic practitioners". He believes that a modern regulatory framework means that "assessment of practitioner competence is best achieved as part of an assessment of standards across the boards, not as a standalone evaluation". Accordingly, the Regulator seeks "regulation of practitioner competence to be integrated into the accreditation of broader standards". He notes that such accreditation is already "international best practice for forensic laboratories" and proposes a UKAS-based system of laboratory quality assessment. We broadly agree with all of this.

Where we disagree with the Regulator is in his final assertion that the "model could work effectively for all sections of the forensic community". Whilst we agree that his Quality Standard should be adopted by all, we believe that the UKAS accreditation approach does

not scale down at all well to the small enterprises run by individual forensic scientists, medics, engineers and other experts who routinely provide expert evidence to the CJS.

We have analysed against the BRE's principals of better regulation:

- the existing regulatory framework for experts
- the Regulator's proposals
- the current quality assessment system operated by the courts, and
- the ultimate objective of ensuring that methodologically reliable expert evidence is placed before the court

We believe our analysis shows that the Regulator should implement his proposals on accreditation in the larger forensic laboratories, but that he should not try to adapt them for the smaller providers. Instead, he should allow smaller providers:

- to develop their own systems to demonstrate compliance with the Quality Standard and
- to work with the existing professional regulatory bodies to build transparent and accountable system for complaint handling.

Where an individual forensic practitioner does not have a professional regulatory body, the Regulator could encourage membership of the Forensic Science Society.

Answers to the Specific Questions

Paragraph 3.30: In the meantime, all providers with any laboratory function will be expected to be accredited to ISO 17025. Any law-enforcement body with an in-house laboratory function will be expected to work to the same standard and to apply for ISO 17025 and / or ISO 17020 accreditation. This, along with the full adoption of the National Occupational Standards means that each organisation will have to maintain a high level of practitioner competence.

The *UK Register of Expert Witnesses* supports the Regulator's ambitious initiative to develop a unified standard for forensic science in the UK. We understand that this work will inevitably take time if done properly. It seems, therefore, that to require providers to meet the existing international ISO standards for forensic laboratories pending the outcome of the Regulator's work is an appropriate move. In taking those practitioners based in organisations that will be able to implement UKAS accreditation along the path towards eventual implementation of the Regulator's unified standard, a powerful first step towards solving the problems in forensic science provision in the '70s and '80s that gave rise to the CRFP will have been taken.

Question 3.36: National Occupational Standards (NOS) - Are viewed by managers as an indispensable tool for managing a highly skilled workforce. They are used widely to support individual and organisational development and quality assurance at all levels. They provide benchmarks of good practice across the UK.

'National Occupational Standards (NOS) describe competent performance in terms of outcomes. They allow a clear assessment of competence against nationally agreed standards of performance, across a range of workplace circumstances for all roles.'

www.skillsforjustice.com

NOS appear to offer a natural means by which to standardise the assessment of workforce skills across the many providers of forensic science services to the criminal courts. Skills for Justice was created as a Sector Skills Council for the forensic sector; not to adopt its NOS would seem odd.

Some practitioners may have concerns about individual NOS and their suitability. But that should not detract from the value of adopting the now widely accepted NOS approach to defining what amounts to competence in a particular task. Our only concerns are as follows:

- Do senior scientists view NOS, which are essentially an extension of the NVQ system, as relevant to them?
- Are NOS generally accepted in the independent sector?

Question 3.40: Skills for Justice recommend that NOS are used as a ‘common language’ and that they are the key test of practitioner competence.

It is laudable to try to create a ‘common language’ to enable assessments across many and varied scientific disciplines and tasks to be open to comparison. Provided it is recognised that the aim is to allow independent assessment to be made of an individual’s competence (i.e. that the individual has the necessary knowledge and skills to undertake a given task), and not whether the outcome of a given task is correct (i.e. even competent people can get it wrong on the day), we see little wrong with promoting the Skills for Justice NOS.

However, it must be recognised that there is a danger of the NOS approach creating a barrier to innovation, especially if the absence of a NOS for a given tasks comes to be seen as a negative. This must be guarded against – science develops through innovation, and novelty should be nurtured so long as the greater uncertainties associated with novel approaches are made plain.

Question 4.13: The Regulator would welcome views on the current assessment and registration processes conducted by CRFP to be sure that all views and experiences are heard and considered.

The *UK Register of Expert Witnesses* has long been critical of the CRFP approach to the accreditation of individuals as *expert witnesses*. Whilst its remote casework-based system of assessment by assessors who have effectively assessed themselves may have some merit, it simply cannot support the claims about quality that the CRFP has made to the wider world.

Question 8.3: The Regulator takes the view that it is unnecessary and disproportionate to demand further levels of practitioner assessment through the CRFP process, and questions what additional benefits, if any, registration with CRFP can add.

We agree with the Regulator’s view. Real benefit will come from the coordinated assessment of firms, people and processes around internationally recognised ISO standards, coupled with clear guidance about the limited purpose of the assessments (guaranteeing the competence of the individual, not the quality of the evidence) when implemented within an appropriate organisation.

Question 8.7: It is important to recognise that individual competence is a product of the culture and quality management approach of the organisation in which someone works, as much as it is a reflection of individual ability. It seems logical, whenever possible, to assess individual competence within the overall assessment of an organisation. This is the standard adopted internationally for forensic science practitioners.

We agree. The proposed system of assessment of practitioners within the context of the provider's own assessment processes is a better system than the status quo. But the smaller forensic businesses and independent forensic experts who feed into the CJS must also be accommodated by the new system. Ideally existing professional regulatory bodies should be encouraged to take up the regulatory slack.

Annexes

Annex 1: Experts' answers to the specific question

Answers

This annex gives the responses made by two experts to the specific questions set in the Consultation Paper through the *Register's* website. The ID number links to this list of contributors.

The Respondents

ID	Name	Private	Work profile						
			Expert witness workload	Percentage of workload spent on...					
				Criminal cases		Civil cases		Family cases	
				PF	Non-PF	PF	Non-PF	PF	Non-PF
1	JACKSON, John	N	80%	0.5%	0.5%	-	99%	-	-
2	[REDACTED]	Y	50%	5%	-	-	90%	2.5%	2.5%
3	[REDACTED]	Y	60%	2%	-	14%	84%	-	-

Key: PF = Publicly funded work, Non-PF = Non publicly-funded work

Paragraph 3.30

“In the meantime, all providers with any laboratory function will be expected to be accredited to ISO 17025. Any law-enforcement body with an in-house laboratory function will be expected to work to the same standard and to apply for ISO 17025 and / or ISO 17020 accreditation. This, along with the full adoption of the National Occupational Standards means that each organisation will have to maintain a high level of practitioner competence.”

ID	Comment
1	I do not have laboratory facilities, but I might submit samples to standard clinical laboratories. I am sure they operate to high quality standards and participate in QC checks, but I do not know whether it is ISO17025 to which they are accredited.
2	Reasonable
3	

Paragraph 3.36

“National Occupational Standards (NOS) - Are viewed by managers as an indispensable tool for managing a highly skilled workforce. They are used widely to support individual and organisational development and quality assurance at all levels. They provide benchmarks of good practice across the UK.”

ID	Comment
1	I am effectively a sole trader. I operate to a quality system, but I have not had it registered or audited.
2	Not familiar with them but the idea seems sound.
3	Agreed

Paragraph 3.40

“Skills for Justice recommend that NOS are used as a ‘common language’ and that they are the key test of practitioner competence.”

ID	Comment
1	All of my work is based on my professional judgement of information, be it a witness statement or a medical report or a scientific paper. I am not sure how NOS can validate my professional judgement
2	Again, seems reasonable
3	

Paragraph 4.13

“The Regulator would welcome views on the current assessment and registration processes conducted by CRFP to be sure that all views and experiences are heard and considered.”

ID	Comment
1	I have no knowledge of this
2	No opinion
3	

Paragraph 8.3

“The Regulator takes the view that it is unnecessary and disproportionate to demand further levels of practitioner assessment through the CRFP process, and questions what additional benefits, if any, registration with CRFP can add.”

ID	Comment
1	I have no knowledge of this
2	Don't know but it appears that flexibility and freedom to conduct an investigation openly might be restricted
3	Agreed

Paragraph 8.7

“It is important to recognise that individual competence is a product of the culture and quality management approach of the organisation in which someone works, as much as it is a

reflection of individual ability. It seems logical, whenever possible, to assess individual competence within the overall assessment of an organisation. This is the standard adopted internationally for forensic science practitioners.”

ID	Comment
1	
2	Fine for organisations but what about independent self employed experts?
3	

Annex 2: Polling results

Work profile of the contributors

We asked each contributor to tell us:

- What percentage of his or her workload is expert witness work
- How the expert witness workload is split between criminal, civil and family cases
- How much of each category is publicly funded

These data have allowed us to prepare the following work profile analysis:

- 71% of our expert contributors undertake some criminal cases, with 41% spending more than 20% of their time on such work.
- 97% of our expert contributors undertake some civil cases, with 72% spending more than 20% of their time on such work.
- 22% of our expert contributors undertake some family cases, with just 9% spending more than 20% of their time on such work.

In respect of public funding:

- 60% of our expert contributors undertake some publicly funded criminal cases, but only 24% spend more than 20% of their time on such work.
- 45% of our expert contributors undertake some publicly funded civil cases, with 13% spending more than 20% of their time on such work.
- 18% of our expert contributors undertake some publicly funded family cases, with just 4% spending more than 20% of their time on such work.

The results of the survey are presented in table form within the body of the response.

Annex 3: Correspondence

This annex presents all the correspondence received on the consultation from expert witnesses listed in the *UK Register of Expert Witnesses*.

Private	No
From:	derek@mtechltd.co.uk
Date:	Wed, 11 Feb 2009 15:07:09 -0000
Message	<p>Chris,</p> <p>Many thanks for your email I am in agreement with your responses and should like to respond as below:</p> <p>There is a widespread belief that an audit by an accredited body (UKAS for instance) will guarantee competence. This implies that an auditor is as knowledgeable as the expert and, since experts have qualified by study but more importantly by experience it would be necessary for an auditor to have the same experience to be able to carry out an audit. This differs entirely from the UKAS day to day checking of machines and procedures; these have a recognised function which is capable of audit.</p> <p>An alternative - the requirement to sit an examination would be equally valueless. The range of skills developed by an expert are normally very extensive. In my own case, there are probably hundreds of areas of knowledge – just giving you ten types – stress corrosion cracking of stainless steels, caustic embrittlement of steels, effects of welding on microstructures, glass transition temperatures in plastics, osmosis of GRP in sea water, fatigue in metals and plastics and means of avoidance, corrosion under insulation, failures of springs, fretting in turbines etc. Would I not have to be examined on all these and many others to be considered competent? Then, having passed an examination, is there an assessment of personality – this is as important as knowledge base when in court and undergoing cross examination.</p> <p>To expect any such accreditation to eliminate errors is a futile hope.</p> <p>The route normally is that a lawyer/insurance company/ loss adjuster carries out an interview and selects from several experts who have either been recommended or whom they already know.</p> <p>As you point out, experts loaded with another tier of examination would mean that they would cease to offer a service.</p> <p>In my case and that of my company our knowledge base is constantly honed by working for industry etc. Litigation work is probably only 10% of our workload. If we have to be accredited, we would consider that there are better ways of earning a living.</p> <p>Derek Bates</p>

Private	No
From:	"HFTS" <info@hfts.co.uk>
Date:	Wed, 11 Feb 2009 15:52:11 -0000
Message	<p>Good Afternoon</p> <p>I have just read the response from the Register on the Consultation on Forensic Accreditation and I am broadly in agreement however there is one area that concerns me and to be fair I may have missed it. I am a Forensic Road Traffic Accident Investigator. We don't have a recognised governing body as such. I have always had a big problem with the Institute of Traffic Accident Investigators, it is primarily an avenue for Police and Ex Police AI's. I was in the Police Force for 30 years but only qualified as an AI after I left. I have tried to join ITAI on two occasions but because I don't have the right files to show them i.e. Police style Criminal Files (I deal primarily with the Civil Sector) and the files I have lack the necessary detail (their words not mine) I have been unsuccessful. They have also been trying to get into bed with the CRFP and have suggested mutually inclusive accreditation.</p> <p>My point is if there is no governing body as such or one which is not totally representative and no generic accreditation scheme, will that seriously effect the one man bands such as myself? As you can see I am qualified by examination and I am a member of a number of recognised bodies.</p> <p>Kind regards</p> <p>Terry Beale</p>

Private	No
From:	[REDACTED]
Date:	Mon, 16 Mar 2009 14:33:08 +0000
Message	<p>Dear Chris,</p> <p>In the latest issue of Your Witness you wrote about the move to accredit forensic work through UKAS. The present system for forensic practitioners may be bad, but UKAS could be worse! Professional organisations can provide some assurance about experts through CPD, discipline procedures etc., but there are also academics with great knowledge who are seldom called to court and whose expertise may be unfairly excluded by overly-rigorous demands. The various occupational standards and professional accreditation/revalidation are broadly manageable but UKAS accreditation is very burdensome, particularly for small operators. You say correctly, "No accreditation scheme can prevent a thoroughly competent expert from getting it wrong on the day."</p> <p>My lab is not a forensic one and almost no samples ever go to court. However, UKAS are insisting on more and more samples being treated to the forensic standard which increases workload, stress and cost massively. UKAS probably adds more than a third to costs. Each year they multiply unnecessary paperwork to give themselves things to audit and shift most of the burden for organising the audit evidence onto the lab staff.</p> <p>The ISO/UKAS system is simply a poor one, but almost no-one has stopped to examine this. To oppose it is to oppose quality itself, which no-one could support. But compliance-with-SOPs is not quality and it is this that UKAS accredits. External and internal QC is a more efficient measure of performance. The organiser of an EQA scheme told me that quality of results often went down with labs that got UKAS - probably because so much effort is then expended in bureaucratic work. The UKAS quality system parasitizes the quality work of the lab and provides no absolute guarantee of correctness. It purports to assure precise measurement but often can only offer "confidence" (an emotion and a non-numerical value!) UKAS has no competition and creates fear, uncertainty and doubt about professional integrity and skill, and attempts to fix what usually isn't broken in order to market its "confidence". In practice, it creates the need to falsify records (hopefully only dates) because labs can't be economically staffed to meet their requirements in record-keeping.</p> <p>It may take labs many months to satisfy UKAS regarding correction of non-compliances, yet the accredited service is still offered during this period. If minor non-compliances are so bad, why is accreditation not suspended to assure quality? If they are not so bad, why must they be fixed? UKAS' income stream, of course! Very few labs are ever suspended or removed. This shows there is very little incompetence in labs and that the burden of UKAS is only of value for labs with marginal quality anyway. Unlike barristers, UKAS inspectors cannot be satisfied because they have to be seen to raise non-compliances to assure their managers they are doing their jobs. The system becomes increasingly tight but can never deliver unflinching perfection.</p> <p>The application of ISOs to manufactured goods is OK. Application to management systems and many biological measurements probably does not work well.</p> <p>There is a tendency for UKAS to extend its remit beyond what is written. Increasingly UKAS are removing the expert's discretion in testing and enforcing that only ISO methods are used, even when these are outdated and inferior. They are also getting close to accrediting opinions even when this is not sought, and of training/CPD schemes which they do not understand. UKAS has stifled innovation. The attached LAB33 Draft is an example of this. Professional organisations like the Food Standards Agency and Health Protection Agency are dutifully falling into line despite the massive unnecessary work these protocols of perfection will require. There is a certain logic to UKAS' demands, but they go far beyond the Food Safety Act whose requirements for forensic samples were reasonable in the real world.</p> <p>UKAS grows because the ISO requires itself of other suppliers and is enforced by EC legislation, not because it delivers clear benefits. If the benefits were obvious it would not need legislation and self-promotion to sell itself. Toyota have rejected ISO accreditation because they have a better system and the rate of UKAS growth has fallen as businesses begin to recognise its failings.</p> <p>There is a similar situation with barristers who attempt to monopolise the market in certifying expert witnesses because they attended their courses. The instructing solicitor and courts</p>

	<p>should decide on the quality of an expert's credibility and evidence in the case being tried, not his legal training certification generally. This could exclude genuine experts in unusual fields who are rarely instructed. Likewise for lab accreditation - better for the courts to verify the details of the samples presented to the court than for UKAS to sit as judge and jury on a random sample of every specimen that enters the lab. If courts were to accept mere accreditation without fully scrutinizing the evidence in a case, justice could be compromised.</p> <p>I would like to write much more about this but don't have time and instead attach an article which explains some of the problems which undermine the whole ISO quality philosophy. I suggest you have a look at some the material that John Seddon has produced on the subject and subscribe to his newsletter. http://www.systemsthinking.co.uk/home.asp I have no experience of Seddon's alternative and am not specifically endorsing that. He is the only ISO/UKAS critic I have found. The inadequacy of ISO/UKAS should be more widely known.</p> <p>It may be a long time before people wake up to the weaknesses of UKAS. A discriminating examination of its failings is overdue. The alternative is not a competing form of bureaucracy but an assurance of professional scrutiny and a return of trust.</p>
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Private	Yes
From:	[REDACTED]
Date:	Wed, 25 Mar 2009 20:32:04 -0000
Message	<p>I have difficulty with web use because of a shoulder disability, so am responding to your email only rather than being able to access the web (posed questions) as you suggest.</p> <p>I attended an evening meeting at the Academy of Experts earlier this month where the Forensic Science Regulator gave a talk. The talk was extremely informative and it is worth talking to Dominic at the Academy to get some background - he can probably point you to the slides on the website.</p> <p>I have in the past helped those in the Technology/Science arena establish themselves as experts, including providing premises, advice, marketing etc. I am considering helping some others at the moment. Most probably these would operate initially in the Criminal Defence arena, providing commentary on the reports of Prosecution Experts.</p> <p>I would see it as very important to the credibility of expert testimony that minimal barriers are put in the way of this type of development. New science/technology experts, starting out by providing commentary on established experts reports, are very important to justice. They are unlikely to do that much harm but can do much more good.</p> <p>If one thinks of some of the well publicised failing and criticisms of Scientific expert testimony, it harks back to those acting with minimal checks - such as can come from informed experts retained by the Defence. We do not want doubtful science challenged only years after it has been used to support questionable convictions. That simply discredits the law and costs a great deal in compensation, apart from the immense damage to the lives of those improperly convicted. Sally Clerk it must be remembered committed suicide even after having her conviction withdrawn.</p> <p>The checks and balances and barriers imposed on new experts in the Defence arena are already substantial. Regulation that discourages this further - or fails to support what I suggest - will ultimately only result in unsound convictions that bring discredit on the Police, the CPS, the courts and the legal profession. Nothing in this should be read as if I have a bias to Defence or Prosecution. Simply it is easier for new science/technology experts to establish themselves initially by simply commenting on reports of established experts. If you put barriers (rather than encouragement) to it, that ultimately works against the best interests of criminal justice.</p> <p>Hopefully you can fashion what I say above into suitable response to the posed questions I have not been able to access. Having listened to the Regulator I am not sure our views are poles apart. Providing you anonymise (leave my name and contacts of entirely) you can submit the observation in its entirety.</p> <p>Best regards</p>

Response to Forensic Science Regulator Consultation

Annexes

Private	No
From:	EddieJosse@aol.com
Date:	Wed, 25 Mar 2009 17:52:26 EDT
Message	<p>I largely agree with the paper produced by the [UKREW] and I have supplied my answers. I feel that accountability to a professional body registering the individual e.g. GMC is the way forward. For those who have no professional body, the FSS or something similar is fine. However, I am concerned if a professional registration body does not wish to become involved in monitoring its registered members in the expert field. I gather this is what happened with the architects body when Judge Jacobs referred an architect to them o/a poor evidence in court and before. Clearly legally mandating such bodies to do this is a possible solution. Regards. Eddie</p>

Private	No
From:	Peter Sommer <p.m.sommer@lse.ac.uk>
Date:	Wed, 25 Mar 2009 13:53:54 +0000
Message	<p>Chris:</p> <p>As it happens I am on an advisory body set up by the FSR to cover my speciality - digital evidence. This means that I am pretty familiar with his ideas and have had several opportunities to discuss them with him.</p> <p>At the moment his focus appears to be on forensic laboratory work. In my arena I am not aware that there is much bad work of this kind - the only lab work in the majority of cases is making a safe "forensic disk image" of a computer's disk. Once that has occurred, all subsequent work is actually on the copy.</p> <p>The danger is that, as with many standards, most "customers" will not know what was assessed, and what was not. They will believe that the existence of a certificate attesting to compliance covers all aspects of performance and skill. As critics of ISO9000 sometimes say: it actually demonstrates that there is a procedure in place which is consistently followed – if the procedure is faulty, everything the ISO9000 organisation does will be consistently faulty.</p> <p>Where there are problems are when witnesses attempt to give interpretations and opinion, and don't know enough or miss things. His standards-based approach doesn't really help here. My suspicion is that the remedies against this type of evidence will lie in court procedure, and in that context the Law Commission consultation paper, now due on 7 April, will be very important.</p> <p>Peter</p>

Private	No
From:	ALAN SPRIGG <spriggalan@btinternet.com>
Date:	Thu, 26 Mar 2009 20:10:31 +0000 (GMT)
Message	<p>My work is in the area of child protection (NAI) mainly civil, occasionally criminal plus litigation in the areas of my medical sub-speciality (paediatric radiology).</p> <p>The GMC does not see a role in regulating experts, nor our royal college nor the GMC nor our speciality society. In a straw poll of those radiologists who do active child protection work most agree that accreditation was a good idea, but when asked would they join CRFP (in the absence of any Royal college approval system) the decision was that most people did not want to go through the hoop to do it - mainly as they were too busy doing it, to bother when there was no regulatory need.</p> <p>Our speciality is quite small. It is very difficult to persuade anyone to take the NAI work on at all. If prior accreditation was a hurdle this would deter even more as there is no evident training program within a small unpopular area.</p> <p>Most people who do it now developed by default and have become established experts based on recommendation, performance and perceived ability.</p> <p>I am not sure that regulation would have avoided the Meadows/Southall issue as they would have been amongst the first to accredit!</p> <p>Whilst I can see the desire to quality control labs etc it is far more difficult to control and 'certify' medical experts. Who certifies and what views should they hold in the controversial areas - how does the 'disciplinary' de-registration process work - is this because a lawyer (or client) does not like the opinion I gave because it did not suit his case?</p> <p>Whilst registration is difficult there is only a point in it if it is seen to be both valuable and there is a defined process/threat to remove the registration for fair reasons. Hence the reluctance by any expert to be directly controlled by the GMC - except where a doctors opinion is so unreasonable that it constitutes general professional misconduct.</p>

Private	No
From:	"Richard Smith" <seymr.smith@btinternet.com>
Date:	Thu, 12 Feb 2009 16:49:37 -0000
Message	<p>I have had experience of two major industry capability initiatives. They are the Safety Critical Systems (SCS) initiative and the Capability Maturity Model Initiative (CMMI).</p> <p>With respect to the SCS initiative, many machines including aircraft, weapons, nuclear power, robots etc use automation systems that are termed safety critical. In the late 80s a group entitled the 'Safety Critical Systems Committee' was formed from industrial experts to find a means of providing appropriate guidance. Of particular concern was that of software design and its Certification.</p> <p>With respect to CMMI, Capability Maturity was designed so that the quality of engineering processes in a diverse range of providers mainly associated with international Defence Procurement programmes could be put on a level playing field. In this initiative 5 levels of capability were defined; 5 was best and 1 was very basic. Each level targeted a particular form of organisational behaviour; Level 5 was reached when there was an intimate relationship between strategy, senior management, interlocking processes and coal face operations for organisations delivering a multiplicity of programmes.</p> <p>In both cases the solution route was firstly to compile a Guide that described 'best practice' in a pretty prescriptive manner. The Guides were made generally available to all participating organisations and interested parties.</p> <p>Then the organisations were 'invited' to provide an Audit Unit with a portfolio of the evidence pertaining to their compliance capability. The CMMI initiative decided to set up its own Audit group. The SCS initiative used the existing QA infrastructure to assess capability and conformance.</p> <p>These Audit Groups had the power to cause an organisation to be deselected. For example, a SCS product that could not produce a Safety Compliance Certificate endorsed by a big and well recognised authentication house e.g. AQUILA, could not be delivered for use. Clearly any purchaser who used it and was subsequently involved in a litigation case would have to take full and unlimited liability. The result was no insurance etc etc so everyone realised the nature of the game and got on with it.</p> <p>Both examples relied on the generation/compilation of a best practice manual. But once it was done then it was very easy to apply and police. Each department doing relevant work had to produce its relevant bit of compliance. Both had the tremendous advantage that best practice behaviours were forced into all aspects of coal face and higher level operations right up to senior management involvement. Quality became built in as part of the processes and was NOT an add on at the end. It raised overall Standards and was pretty cheap to do. Because it was 'output driven' no one in particular was disenfranchised by a meaningless Training Certificate. If you stood up to the mark you were in and part of it. Organisations became very competitive!</p>

Private	No
From:	"I.D.M.U. Ltd" <mail@idmu.co.uk>
Date:	Fri, 27 Mar 2009 15:11:10 +0000
Message	<p>My sphere of expertise overlaps with forensic scientists to an extent, notably in examining cannabis plants and other drugs exhibits in the course of my duties. However in general (with exceptions) forensic scientists are generally fair and honest in their reports/evidence. The problem arises where they have not been given the full picture by the police, or are supplied with misleading "samples' (e.g. sample cannabis plants which are much larger than the majority of plants present combined with the disreputable police practice of destroying the remaining plants shortly after seizure without retaining a 'B' sample for defence examination purposes. This creates an opportunity to mislead and I can provide solid evidence of occasions where the sample plants have been far from representative. The other issue is where forensic scientists give evidence outwith their reasonable sphere of knowledge or experience (e.g. on drug consumption patterns).</p> <p>My greater concern is low-ranking police officers put forward by the Crown as 'experts' on the basis of limited experience or a couple of one-day courses at the PNTC at Wakefield or other centres. In some cases these officers have given highly misleading evidence on consumption levels among drug users, and evidence as to valuation can, in many but not all cases, be grossly exaggerated. The issue here is partiality, and a misunderstanding of their role as an expert which some see as securing a conviction rather than giving unbiased evidence to the court.</p> <p>A further issue arises in the field of drug testing (e.g. workplace), where I have encountered scientists giving clearly misleading evidence as to the significance of results which may be above the 'official' threshold despite substantial scientific evidence that the 'official' threshold is too low to distinguish passive use or false positives.</p> <p>I would oppose a mandatory forensic scientists register, as any system which could discriminate against those who challenge accepted norms is potentially flawed.</p>