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rec'd 17/4/14

Prof Allan Jamieson
Forensic Institute
166 Buchanan Street
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15 April 2014

Reference: T3643/14

Dear Prof Jamieson,

Thank you for your e-mail of 12 March 2014 to the Rt. Hon. Chris Grayling MP, Secretary of State for Justice and Lord Chancellor. As the issues raised fall within the remit of the Home Office I have been asked to reply.

Remit of the Forensic Science Regulator

In your e-mail you suggest that the remit of the Regulator is limited to setting standards. This view is based on text on the GOV.UK Internet site section dealing with the work of the Regulator.

The remit of the Regulator was set out in a Written Ministerial Statement presented to Parliament on 12 July 2007. This makes clear that the role is to advise HM Government and the Criminal Justice System on issues related to standards for forensic science. This is a wider remit than just setting standards and issue related to costs of implementing standards, and who meets those costs, is a matter within that remit.

Charging for Defence Examinations

The provision of forensic science in England and Wales is based on a commercial model. As a result the work of forensic science providers (FSPs) instructed by the police/prosecution related to defence examinations has always been charged for. Historically this cost was met by the police as part of the "overheads" included in the charging model of the FSP.

It has always been open to FSPs to charge the defence, as opposed to the police, for costs associated with defence examinations. The Department does not expect charges to be imposed for the basic examination of the case file, of the exhibit or equipment used for the examination. However, where the forensic science provider is required to deploy additional resources (whether personnel or physical) then charges are reasonable.

The development of the commercial market, increased transparency of the charging models employed and increased competition on price has meant that the use of a "hidden" overhead to cover the costs of defence examination was no longer possible or appropriate.

The clarity of charging models led to questions being raised as to who should pay for such work. The normal approach is that the police are responsible for all investigative work, the Crown Prosecution Service is responsible for costs related to the prosecution and the defence (often funded by the Legal Aid Agency) is responsible for costs incurred as a result of its activities. In such an approach it is not clear why the police should be paying for costs associated with defence examinations.

As the contracts with the police do not cover additional work, unless commissioned by the police, and there was no overhead to cover additional work it appears logical for the FSPs to seek their costs from the defence.

Codes of Practice and Conduct

The contracts between the police and FSPs require that each FSP maintain the standards set by the Regulator. The main sources of the Regulator's standards are the Codes of Practice and Conduct.

As the Codes were being developed it became clear that their requirements (taken together with the contractual term noted above) could be interpreted as placing a contractual obligation on an FSP to undertake all work related to the defence examination as part of the contract and within the contractual fee.

This issue was discussed with the Crown Prosecution Service, the police and FSPs. It was clear that all FSPs were required to facilitate defence examinations but that there was no requirement for the Codes to state, or indicate, who should pay. The footnote to which you refer was inserted into the Codes to make clear that the Codes do not require FSPs to perform work for free nor to charge the police.

The Codes did not create the right to charge, do not require FSPs to charge nor do they demand the defence must be charged.

Budgets

You note that the legal aid budget is under pressure and that additional charges will increase this pressure.

As I am sure you are aware all public expenditure is under pressure – including the budgets for the police.

Discussions are ongoing between the Home Office, the Crown Prosecution Service, the Ministry of Justice and the Legal Aid Agency about the operation of charges for the defence. While there are issues to be addressed the fact that FSPs will charge is not viewed as likely to cause major issues.

Instruction to the Regulator

You ask that the HM Government issue instructions to the Regulator not to comment on issues related to charges. In light of the discussion above no such instructions will be issued.

Instruction to FSPs

You ask that instructions be issued to FSPs to provide copies of the case file (or allow the defence to copy the file) at no charge. In light of the above discussion I do not believe it is appropriate for HM Government to instruct FSPs that they cannot charge to recover costs associated with copying files.

I do not believe it is appropriate to instruct FSPs to allow the defence to copy case files. The matter of what should be disclosed has to be determined by the prosecuting authorities. It follows that provision of the case file to the defence may not, in any given case, be appropriate.

Yours sincerely

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

Jeff Adams

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