



Guidance

Non-Expert Technical Statement Guidance

FSR-G-225

Issue 1

Archived

© Crown Copyright 2017

The text in this document (excluding the Forensic Science Regulator's logo and material quoted from other sources) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown Copyright and its title specified

PART 1 - INTRODUCTION

1. PURPOSE

- 1.1.1 This guidance sets out the legal requirements and Regulator's requirements for non-expert technical statements. It also provides advice in relation to the application of those requirements and more generally.
- 1.1.2 This guidance has been issued to support the operation of the Codes of Practice and Conduct for Forensic Science Providers and Practitioners to the Criminal Justice System [1] (the Codes). In particular the provisions with regard to section on Reporting the Results of the Codes and the Code of Conduct.
- 1.1.3 This guidance provides support for, and clarification of, the operation of the Codes. In the event of any conflict with the provisions of the Codes then the Codes shall prevail.
- 1.1.4 As a result of its status as guidance this document avoids the use of prescriptive language. This should not be taken to suggest that requirements set out in the Codes are not mandatory. Similarly it does not suggest legal obligations are not mandatory.

2. SCOPE

- 2.1.1 This guidance is applicable to non-expert technical statements produced for use in the Criminal Justice System (CJS) in England and Wales. Separate guidance [2] has been issued in relation to expert reports.
- 2.1.2 Forensic practitioners, whether expert or not, may be called upon to provide 'statements of fact'. This is a statement which does not contain any opinion. It is important to recognise what amounts to opinion and ensure that if the statement contains opinion, or if it is likely that opinion evidence will be asked for at court, a report complying with the provisions for expert evidence is produced.
- 2.1.3 The requirements set out in this document do not apply to 'informal' documents produced by practitioners with no intention that they be used as evidence (e.g. a note clarifying issues).

3. RESERVATION

3.1.1 This guidance is believed to be accurate at the time of publication but it is the duty of each provider to ensure it meets the legal obligations and to keep up to date with those obligations.

4. STRUCTURE

4.1.1 This guidance has the following structure.

- a. General Information.
- b. Requirements

5. ISSUE

5.1.1 Issue 1.0 of this guidance was issued on 16 October 2017.

6. MODIFICATION

6.1.1 This is the first issue of this document.

PART 2 - GENERAL

7. LEGAL INFORMATION

7.1.1 The information provided in this guidance related to legal issues is based on the legal position, or at least those provisions which apply beyond expert witnesses, set out in the document FSR-I-400 [3].

8. REPORTS

8.1.1 This guidance applies to statements produced by forensic practitioners to be used in evidence, other than expert evidence, in the CJS.

8.1.2 A statement is a document produced by a practitioner setting out the results of their work formatted for use in evidence in the CJS.

8.2 Streamlined Forensic Reports

8.2.1 Level 1 Streamlined Forensic Reports (SFR1) were originally developed to be a summary of an expert's evidence served on the defence to obtain agreement of the evidence under the provisions of, what is now, Rule 19.3(1) of the Criminal

GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE

Procedure Rules (CrimPR).¹ The SFR1 does not have to be prepared by the expert whose views are summarised within it.

- 8.2.2 The SFR1 process is now also employed to provide an outline of evidence of fact to the defence. Such an SFR1 does not require the involvement of an expert but may do so.
- 8.2.3 In relation to reports of fact the consequence of this is that the requirements which apply to statements (see below) do not apply.
- 8.2.4 It follows that SFR1 cannot be used as evidence.
- 8.2.5 The guidance in this document does not apply to SFR1.
- 8.2.6 Level 2 Streamlined Forensic Reports (SFR2) are intended to be used as evidence and may be used for evidence of fact. In such cases the requirements for statements must be complied with. The guidance set out in this document therefore applies to SFR2.

8.3 Statements

- 8.3.1 A statement is one form of a report. It is formatted to comply with the provisions of s9 Criminal Justice Act 1967.
- 8.3.2 A statement is the likely means by which contested evidence will be provided to the CJS and is the manner in which non-expert technical evidence will be provided.

PART 3 - REQUIREMENTS

9. GENERAL REQUIREMENTS

9.1 Content Requirements

- 9.1.1 The requirements for content in a practitioner's non-expert statement, other than the normal content to be expected (e.g. the details of the examination undertaken, and the results of the examination), arise from a number of sources. These include, but are not limited to, the following.

¹ The CrimPR and Criminal Practice Directions are available at www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015. URL accessed on 2 November 2017.

GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE

- a. The provisions of s9 Criminal Justice Act 1967.
- b. The Criminal Procedure Rules.
- c. Judgments of the courts.

9.2 Required Content

Requirements

9.2.1 A statement must, at the start, provide the following information.

- a. The name of the witness; and
- b. The age of the witness if they are under eighteen.

9.2.2 A statement must be signed by the witness.

Declarations

Statement of Truth

9.2.3 A statement must incorporate a declaration that the author makes the statement believing its content to be the truth (to the best of their knowledge and belief) and understanding that if it is tendered in evidence they would be liable to prosecution if they wilfully stated in it anything they knew to be false or did not believe to be true.

9.2.4 Suitable wording appears in the criminal procedure forms linked to Part 16.2 of the Criminal Procedure Rules (CrimPR):^{2 3}

“This statement (consisting of # pages) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.”

9.2.5 See the discussion at paragraph 9.4.5 in relation to a possible alteration to this wording.

Standards

9.2.6 The Regulator requires that, to ensure compliance with the expectations of the CJS, compliance, or non-compliance, with the Code of Conduct shall be declared in statements intended to be used as evidence. See Code of Practice

² This is available at www.justice.gov.uk/courts/procedure-rules/criminal/docs/october-2015/ws001-eng.pdf.

³ This URL was accessed on 30th June 2017.

section 25.2.4. Therefore all practitioners shall declare in the following terms, or in terms substantially the same:

- a. ‘I confirm that, to the best of my knowledge and belief, I have acted in accordance with the Code of Conduct published by the Forensic Science Regulator [insert issue]⁴;’;
- b. ‘I confirm that, to the best of my knowledge and belief, I have acted in accordance with the Code of Conduct published by the Forensic Science Regulator [insert issue]³ in all aspects that relate to my personal conduct. However, my organisation is not yet compliant with the required standard (insert standard not met) for (insert discipline/sub-discipline relevant to the present case). Annex [x] details the steps taken to mitigate the risks associated with this aspect of non-compliance’; or
- c. ‘I have not fully complied with the Code of Conduct published by the Forensic Science Regulator [insert issue]³. The nature of this non-compliance, to the best of my knowledge and belief, is that I am not/my organisation is not (delete as applicable) yet compliant with clause [insert clause from the Code of Conduct] and the required standard for (insert discipline/sub-discipline relevant to the present case). Annex # details the steps taken to mitigate the risks associated with this non-compliance.’

9.2.7 Guidance on the contents of the suggested annex mentioned above can be found in section 11.

Number of Pages

9.2.8 As indicated at 9.2.4 the report should contain a declaration as to the number of pages of which it is comprised.

Exhibits

9.2.9 Statements often include references to exhibits.

9.2.10 Part 16.3 of the CrimPR is worded as follows.

“16.3. Where the statement refers to a document or object as an exhibit, it must identify that document or object clearly.”

⁴ Issues published from 2017 onwards.

Reservations and Limitations

- 9.2.11 The prosecution is obliged to disclose information which may assist the defence or undermine the prosecution case. This duty applies to the prosecution (the law enforcement and prosecuting authorities) as opposed to witnesses (unless those witnesses are agents of the prosecution). It is, however, necessary for the witnesses instructed or called by the prosecution to make such information clear to the prosecution so that the disclosure obligations can be met.
- 9.2.12 There has been extensive discussion of the disclosure obligations of expert witnesses in the courts. There are specific provisions in the CrimPR.
- 9.2.13 It must be recognised that the obligations for disclosure are not restricted to expert witnesses. In the case of *R v Ward* [1993] 1 WLR 619, 96 Cr App Rep 1, [1993] 2 All ER 577 the Court of Appeal (Criminal Division) commented on the obligations of disclosure related to scientific evidence. While the discussion was about scientific evidence, as that what was being considered in the case, it appears sensible to consider the comments as applying to any technical evidence.
- 9.2.14 Relevant quotes from the judgment are as follows.

“An incident of a defendant’s right to a fair trial is a right to timely disclosure by the prosecution of all material matters which affect the scientific case relied on by the prosecution, that is, whether such matters strengthen or weaken the prosecution case or assist the defence case. This duty exists whether or not a specific request for disclosure of details of scientific evidence is made by the defence.”

“Three senior RARDE scientists took the law into their own hands, and concealed from the prosecution, the defence and the court, matters which might have changed the course of the trial. The catalogue of lamentable omissions included failures to reveal actual test results, the failure to reveal discrepant Rf values, the suppression of the boot polish experimental data, the misrepresentation of the first firing cell test results, the concealment of subsequent positive firing cell test results, economical witness statements calculated to obstruct enquiry by the defence, and, most important of all, oral evidence at the trial in the course of which senior RARDE scientists knowingly placed a false and distorted scientific picture before the jury.”

“It is the clear duty of government forensic scientists to assist in a neutral and impartial way in criminal investigations. They must act in the cause of justice.”

“... the prosecution’s general duty of disclosure in respect of scientific evidence. That duty exists irrespective of any request by the defence. It is also not limited to documentation on which the opinion or findings of an expert is based. It extends to anything which may arguably assist the defence. It is therefore wider in scope than the rule. Moreover, it is a positive duty, which in the context of scientific evidence obliges the prosecution to make full and proper enquiries from forensic scientists in order to ascertain whether there is discoverable material.”

- 9.2.15 It is important to note that although the Court stated the duty to disclose rests with the prosecution it robustly criticised a number of scientists for failing to disclose information in their reports and evidence. It is also relevant that the criticisms of the scientists were not based on whether they had acted as expert witnesses and that a number of the criticisms related to what would be described as evidence of fact.
- 9.2.16 It follows that a practitioner issuing a statement should inform the prosecution of any information which may undermine the position provided in that statement. Where the information relates to technical issues or standards there is no sensible filter to be applied by the prosecution so that the information should be set out in the statement.
- 9.2.17 Particular care should be taken to make the following issues clear in the report.
- a. Any results obtained which would undermine the information in the report.
 - b. Any work, or other information, the witness is aware of which would undermine the information in the report.
 - c. Any limitations to the analytical approach adopted.
 - d. Any limitations to the interpretation model adopted.
 - e. If the work was not undertaken in an appropriate quality framework or relevant standards not adhered to.
 - f. The uncertainty of measurement associated with the methods employed and the manner in which this has been addressed.

9.3 Form

Units of Measurement

- 9.3.1 Where the statement includes results of any measurement these should be, except as noted below, provided in the appropriate SI Units, SI Derived Units or

units accepted for use with the SI system. It is acceptable to provide the results in other units (e.g. imperial units) as long as these are provided after the SI Units and not more prominent. It is also acceptable to provide a conversion factor.

- 9.3.2 It is acceptable to use imperial measures in relation to road traffic signs, distance and speed. The relevant units being mile, yard, foot and inch. It is also acceptable to use the pint when dealing with dispensing draught beer and cider or milk in returnable containers.
- 9.3.3 The use of imperial units for designations or descriptions as opposed to results of measurement (e.g. in the description of the calibre of weapons or ammunition) is acceptable.

Legal Limits and Units

- 9.3.4 Where the statement involves comparison of results against any legal limit or requirement (e.g. alcohol in blood) the results should be provided in the same units as the limit/requirement is set. This limits the risk of confusion or misinterpretation of the results provided.

9.4 Non-Mandatory Content

Age

- 9.4.1 It is common practice for witnesses who are over eighteen years of age to state this at the start of the statement. There is no legal requirement to do so.

Occupation

- 9.4.2 It is common practice for witnesses to state their occupation at the start of the statement. There is no legal requirement to do so.

Page Signing

- 9.4.3 It is common practice for witnesses to sign each page of the statement. There is no legal requirement to do so.
- 9.4.4 It may be a useful practice as it ensures the statement is comprised of content which the witness has confirmed.
- 9.4.5 Where this practice is adopted the declaration of truth (see 9.2.4 above) may be altered to read as follows.

GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE

"This statement (consisting of # pages each signed by me) is true ..."⁵

Heading

- 9.4.6 The form linked to Part 16.2 of the Criminal Procedure Rules uses a heading as follows.

"STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9)"

- 9.4.7 There is no requirement for this, or any header, to be used but it may be advisable to incorporate such a header.

Continuity

- 9.4.8 The admissibility of evidence is linked to its relevance to matters in issue in the case. It follows that it can only be relevant and admissible if there is a chain of continuity.

- 9.4.9 It is therefore common practice for witnesses to state, in the statement, the date on which they took control of the exhibits and the source of those exhibits.

Accreditation

- 9.4.10 There is no clearly stated requirement for a statement to include a description of any accreditation held by the organisation by which the witness is employed.

- 9.4.11 In order to achieve compliance with the Code of Conduct, the requirements laid out in the Statement of Standards and Accreditation Requirements must be achieved. Where this requirement is accreditation a declaration of compliance to the Code of Conduct means the required accreditation is held, and where accreditation is not held the practitioner must declare non-compliance with the Code of Conduct (see 9.2.6).

- 9.4.12 Where an organisation holds accreditation its employees may, if they wish, make reference to this in statements or in annexes in the statements dealing with non-compliance with standards. The following principles should be maintained.

- a. Reference to accreditation should only be included in relation to work which is within the scope of accreditation.

⁵ The term 'statement' is used as the text is intended for more general use.

GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE

- b. Any reference to accreditation should be clear that the accreditation applies to the organisation and the methods employed – not the individual.
- c. It is acceptable for the accreditation to make clear that the competence of staff is assessed as part of the accreditation process.
- d. It should be clear whether the accreditation covers the interpretation and/or assessment work which has been undertaken as opposed to just the analytical methods.

9.4.13 UKAS has published guidance on referring to accreditation [4].

9.4.14 If an organisation holds accreditation to ISO 17025 but not to the Codes, a suitable form of words may be as follows.

"My statement is based on the results of analytical work undertaken (a) using documented and validated methods within the scope of the organisation's UKAS ISO 17025 accreditation [lab reference] and (b) by staff determined to be competent for such work under the organisation's quality systems which are accredited to ISO 17025. This accreditation does/does not (delete as applicable) cover the assessment and interpretation of evidence.

This partially meets the Regulator's requirements. Full compliance requires the accreditation to include the Regulator's Codes of Practice which has not yet been assessed/awarded. A gap analysis has been performed and the risks identified have been addressed thus:

1....

2....."

10. CLARITY

- 10.1.1 The statement may be used, without any additional information/assistance from the witness, to make decisions about the conduct of the case (by both parties) or as evidence. It may also be used as the basis of an opinion expressed by an expert witness.
- 10.1.2 The statement should be clear, unambiguous and be capable of being understood by persons (e.g. jurors) who do not have the technical understanding of the witness.
- 10.1.3 It must also be comprehensive (particularly with regard to setting out any limitations or reservations) so that any expert basing their opinion on the statement of fact can address all relevant issues.

Checking

- 10.1.4 It is good practice to have the statement checked by someone other than the witness. The purposes of such a check can include the following.
- To ensure the statement properly addresses the issues about which the practitioner has been instructed.
 - That the statement is clear, unambiguous and understandable by the general public.

- 10.1.5 While the check is not intended as a proof reading exercise it is helpful if spelling and grammatical issues are identified.

Units

- 10.1.6 As noted above, the results should, normally, be provided in SI Units. It is acceptable to provide supplementary indicators.

- 10.1.7 While it is acceptable to provide a conversion factor (without providing the imperial equivalent as a secondary indicator) this is not advisable. It creates the risk that the witness will attempt to convert figures from SI to imperial while giving evidence. Any attempt to perform calculations while giving evidence creates a risk of making mistakes.

11. CONTENT OF ANNEX TO SUPPORT A DECLARATION OF NON-COMPLIANCE WITH THE CODE OF CONDUCT

- 11.1.1 Producing an annex dealing with issues arising from partial or non-compliance to the Code of Conduct allows the complex issue to be dealt within the statement and could allow forensic units to produce standard lines to take for certain methods. The practitioner submitting it as part of their statement must be prepared to answer questions on the detail contained in the annex should it arise.
- 11.1.2 It may be appropriate to detail what the forensic unit is doing to address the non-compliance, but it is unwise to attempt to justify the non-compliance.⁶ ||

⁶ Common explanations given to the Regulator for not implementing the full scope of accreditation in time include that the deadline was too short, a management decision was made to phase the implementation or that capacity by the accreditation body was the issue (when it had been a

- 11.1.3 The Regulator's requirements are detailed in the Statement of Standards and Accreditation Requirements. Non-compliance could be not adhering to one of the separate codes of practices detailed there, or not holding the required accreditation. Where a separate code of practice applies, the nature of divergence from its requirements should be considered and addressed. The types of issues with the accreditation status of the method used to generate the result reported are expected to fall into the following categories:
- a. Not having the required accreditation;
 - b. Having a more limited scope of accreditation than required; or
 - c. Holding accreditation for the method, not including the Codes of Practice and Conduct in the schedule of accreditation.
- 11.1.4 The following approach focuses on the main non-compliance issue envisaged; the accreditation status. However, the approach detailed may be relevant to many situations of non-compliance.
- 11.1.5 Accreditation does not remove all risk or prevent any error or mistakes from happening, however by requiring a third-party to look at how a range of issues which affect the quality of the output (such as competence and validation) it does seek to control risk. Therefore, as a minimum the annex should deal with what risks have been identified and how these are mitigated. One way of looking at risk is failure modes and effects analysis. This is a step-by-step approach for identifying what the effect of a quality failure in each stage might have on a finding, as well as consideration of whether the failure would be detected. Failure Mode Effects Analysis (FMEA) done correctly looks at all the stages in the method and what the effect would be at each stage. In a method dealing with a reagent, if a person applied the incorrect amount (e.g. through operator error, use of un-calibrated equipment, the wrong amount specified) how would that affect the result? If the method was searching for images on computer media, how would an operator error or a bug in the software tool most likely manifest itself – the examiner has found an image, would this have changed the result? The following sections cover these ideas in a little more detail.

management decision to pursue accreditation in the final year). Such explanations could be considered misleading to the court if not given in a full and balanced way, as well as being irrelevant.

GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE

- 11.1.6 In the annex, it would be relevant to consider, for example, whether the staff have been objectively determined to be competent. An accredited organisation has some assurance that the system of judging competence is adequate. If there was to be a challenge about the competence of the individual making the factual finding in question, what is the impact of poor competence? What errors could have occurred? For instance, could a different result have resulted as an incorrect setting or amount could have been selected, or would it be more likely that some evidence would not have been found or recovered?
- 11.1.7 Accreditation also gives third party assurance that the validation of the methods appears to be sound. One risk when there is no such assurance, is that the method has been assumed to be fit for purpose and is not. What validation has been done and how is this method deemed the correct and fit-for purpose method? An un-validated method may have a higher false positive rate than the operator is aware of, and higher than the court might expect. Tests that typically have higher false positive/inclusion rates include diagnostic and presumptive tests being used outside of their original use. The factual finding that the method gave that result may be true and even reproducible with that method. However, results from an inappropriate method, even when sold as an off-the-shelf testing product, could be misleading to the court if you have no testing data to ensure the correct caveats are presented with the finding.
- 11.1.8 The validation guidance published by the Regulator suggests all validations (whether to be used for factual reports or to be the basis of expert opinion) consider 19A5 of the Criminal Practice Directions, which covers topics of admissibility taken from case law such as the following.
- a. Validity of the methods by which the results were obtained.
 - b. Whether the statement properly explains statistical significance.
 - c. The degree of precision, margin of uncertainty, accuracy or reliability of the results.
 - d. Peer-review of the method.
 - e. Falling within the practitioners own field of expertise.
 - f. Completeness of the information available to the practitioner (noting too much information might suggest mitigation steps against cognitive bias were required).

GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE – GUIDANCE

- g. If there is a range of opinion on the matter or applicability of the method in question in the literature.
- h. Whether the practitioner followed established practice in the field.

- 11.1.9 Where the results of a search method is being reported, if the finding itself can be verified then some of the risk is controlled. If, for example, the case involved an indecent image having been detected, then the veracity of that finding can be visually confirmed. There may also be a risk that other images exist but were not detected. If the issue concerns the accuracy of the date/time stamp associated with the image, then in the absence of validation studies, it may not be possible to assure the court of the accuracy of the date/time determined by the method.
- 11.1.10 Accreditation gives assurance that the equipment the forensic unit uses is under a quality management system that requires appropriate maintenance and/or calibration. If the calibration was not assured, there could be a number of issues to consider including that a measurement may be false (e.g. of speed, chemical concentration) or the amount of material dispensed might be incorrect (e.g. wrong amount of reagent or sample). Does the method deal with these, how would these eventualities manifest themselves and affect the finding, are these uncertainties explained in the report/statement?
- 11.1.11 This overall approach may be sufficient to detail how risks associated with not fully conforming to a standard have been controlled in an individual case where evidence has been found. It does little to give confidence that there will be justice for victims of crime in other cases where evidence is not found, where perhaps it would have been had a better method been selected or used by a more competent individual or forensic unit. Therefore, this approach is not a long term alternative to adherence to the correct standards.

12. REVIEW

- 12.1.1 This guidance is subject to review at regular intervals.

- 12.1.2 If you have any comments or suggestions please send them to the address or e-mail address set out on the Regulator's Internet site. The URL is:⁷ www.gov.uk/government/organisations/forensic-science-regulator

13. REFERENCES

- 1 Codes of Practice and Conduct for Forensic Science Providers and Practitioners to the Criminal Justice System.
- 2 Expert Report Guidance, FSR-G-200.
- 3 Forensic Science Regulator Document – Legal Obligations Information, FSR-I-400.
- 4 United Kingdom Accreditation Service; Reference to Accreditation for Laboratories; LAB 1.

14. ABBREVIATIONS

Abbreviation	Meaning
CJS	Criminal Justice System
CPS	Crown Prosecution Service
CrimPR	Criminal Procedure Rules
FMEA	Failure Mode Effects Analysis
ISO	International Organization for Standardization
RARDE	Royal Armaments Research and Development Establishment
SFR1	Streamlined Forensic Report Level 1
SFR2	Streamlined Forensic Report Level 2
SI	International System of Units (from the French “le Système international d’unités”)
URL	Uniform Resource Locator

⁷ This URL was accessed on 14 June 2017.

Archived

Published by:

The Forensic Science Regulator

5 St Philip's Place

Colmore Row

Birmingham

B3 2PW

<https://www.gov.uk/government/organisations/forensic-science-regulator>

ISBN: 978-1-78655-568-7