



Forensic Science Advisory Council (FSAC)

Minutes of the meeting held on 7th September 2017
at Home Office, 2 Marsham Street, London SW1P 4DF

1. Welcome and apologies

1.1 The Forensic Science Regulator (the 'Regulator') Gill Tully welcomed those present to the meeting. See Annex A for the list of attendees and apologies.

2. Minutes of the last meeting, actions and matters arising

2.1 The minutes of the previous FSAC meeting had already been reviewed by members via e-mail and published on GOV.UK.

Matters arising

2.2 The actions from the FSAC meeting on 26th April 2017 were reviewed. All but one of the actions were either complete or on the agenda for the current meeting. The remaining action was discussed as follows:

- **The Regulator to provide further guidance on reviewing casework in the light of new evidence in her next newsletter.** The newsletter had been proof read and would be released on GOV.UK within the next few days.

3. The Codes of Practice and Conduct

3.1 The Council was provided with an updated version of the Regulator's Codes of Practice and Conduct (the 'Codes'). The document had been developed by the Regulator's Quality Standards Specialist Group (QSSG), incorporating items from the FSAC, feedback from practitioners and reflecting any policy changes.

3.2 The Code of Conduct had been substantially revised based on the discussions of the previous FSAC meeting¹. This is a code for all forensic practitioners, whether instructed by the prosecution or defence, to help maintain the values and ideals that the profession stands for.

¹ Available from:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/626060/Forensic_Science_Advisory_Council_-_26_April_2017_-_Minutes.pdf

3.3 Notable changes to the Statement of Standards and Accreditation Requirements included changes to crime scene investigation, cell site analysis and footwear coding/screening.

3.4 Notable changes to the Code of Practice related to occasional experts, infrequently used methods and disclosure of non compliance. Disclosure was a substantive item later in the meeting (see Section 4).

3.5 A number of technical queries were still being finalised, including on the use of forensic assistants (further details in Section 5.2).

3.6 The Council reviewed the updated Codes and provided its approval of the document. Publication was planned for October 2017.

3.7 It was noted that a new version of ISO17025 was to be published in late 2017 or early 2018, and that the Codes would require an additional update to reflect this.

3.8 The Regulator informed members that in collaboration with the United Kingdom Accreditation Service (UKAS), a review would be conducted on the costs and effectiveness of accreditation to the Codes. In the meantime, the representative from UKAS was asked to provide Council members with an update on the number of organisations that had gained accreditation to the Codes.

Action 1: Lorraine Turner to provide FSAC members with an update on the number of organisations visited by UKAS that have successfully gained accreditation to the Codes.

4. Expert and Factual Report Guidance

4.1 The Council was presented with two draft guidance documents concerning expert reports and non-expert technical statements. The documents were designed to help support the operations of the Regulator's Codes.

4.2 A section on declaring non-compliance with the Regulator's Code of Conduct was included within these guidance documents. Police representatives within the Council had previously expressed concern that the disclosure of non-compliance within expert witness statements could be used to undermine expert witnesses in court. Policing representatives suggested that the MG6 disclosure forms submitted by the police were preferable for highlighting non-compliance.

4.3 The Regulator informed members that the requirement for disclosure of non-compliance in statements would remain. A recent joint report by Her Majesty's Inspectorate of Constabulary (HMIC) and HM Crown Prosecution Service Inspectorate was highly critical of the MG6 procedure².

² *Making it fair: a joint inspection of the disclosure of unused material in volume crown court cases.* Available from: http://www.justiceinspectors.gov.uk/cji/wp-content/uploads/sites/2/2017/07/CJJI_DSC_thm_July17_rpt.pdf

4.4 The judicial representative indicated that the guidance was a useful tool for the courts, and would circulate this to colleagues within the judiciary.

Action 2: Mark Wall to circulate the guidance on expert reports and non-expert technical statements within the judiciary.

4.5 It was emphasised that all stakeholders in the criminal justice system should be aware that the purpose of these guidance documents was to allow proper scrutiny of forensic evidence.

Action 3: Adrian Foster to speak with Mark Bishop (relevant CPS lead) concerning the dissemination of the expert report guidance within the Criminal Prosecution Service (CPS).

4.6 Council members queried when the guidance would be released. The Regulator confirmed that publication was planned in the near future.

5. Legal Obligations

5.1 The Council was provided with a copy of issue 5 of guidance on the legal obligations placed on expert witnesses in the Criminal Justice System in England and Wales. This guidance was modified based on an update to the Criminal Practice Directions (CPD), supplement to the Criminal Procedure Rules (CrimPR), which required a number of declarations to be made in expert witness statements. The updated legal obligations guidance had been published by the Regulator on GOV.UK on the 2nd August 2017³.

5.2 Members discussed an issue that had been raised by Forensic Science Providers (FSPs) regarding a mandatory requirement by CrimPR 19.4(e) to state whether examinations relied upon by the expert were carried out by another individual (i.e. assistants) and, if so, to give details of their identity, qualifications and the activities they performed. It was highlighted that this requirement may lead to the activities and histories over 40 assistants being added to expert statements in some cases. The Regulator noted that the issue had been raised with the Criminal Procedure Rules Committee and there were discussions about restricting the requirement to certain classes of assistants. Members emphasised that only those with a significant input into examinations should be listed in the statement, but that the same level of information would still be available to the court within the case file.

6. Forensic Anthropology

6.1 The Forensic Science Regulation Unit (FSRU) had been working with the Royal Anthropological Institute to develop a standalone code for forensic anthropology. This document had been circulated amongst the Council members previously for comment. Members were informed that the Regulator intended to publish the anthropology standard on GOV.UK for public consultation.

³ Available from: <https://www.gov.uk/government/publications/legal-obligations-issue-5>.

6.2 The Council was also informed that the FSRU, in collaboration with the Chartered Society of Forensic Sciences and College of Podiatrists, was developing a quality standard for gait analysis. The judicial representative indicated that a primer on gait analysis was being prepared for the legal profession, and that it would be useful for the Regulator and judiciary to share their respective documents.

Action 4: Mark Wall to enquire with stakeholders about sharing the legal primer on gait analysis with the Regulator.

Action 5: The Regulator to enquire with stakeholders about sharing the draft gait analysis standard with Mark Wall.

7. Interpretation Model for Drug Driving

7.1 Council members were presented with a report authored by the FSRU to review the current approach to the reporting of drug driving results (s5A Road Traffic Act 1988) and that proposed alternative approaches. The enforcement of drug driving law involved a sample of blood being taken from the suspect and analysed for the drugs of interest. This analysis provided at least two measurements of the concentration of the drug. The determination of whether, and to what extent, the measurements supported the proposition that the concentration of the drug was over the relevant legal limit involved a consideration of the uncertainty of measurement (UoM) of the analytical method.

7.2 The Home Office required that scientists provide a 'not less than' figure, that stated with 99.7% statistical confidence the lowest possible concentration of the drug in the suspects system. Given that only 2 measurements were taken from the suspect, the UoM was often quite large, resulting in suspect's only being reported as over the legal limit when the drug concentration was significantly higher than this limit. Further, the large difference between the legal limit and the point at which a sample would produce a not less than figure over the legal limit did not appear statistically justifiable. Thus, it was suggested the current interpretation model for drug driving could be improved.

7.3 The FSRU had engaged with the Royal Statistical Society (RSS) to investigate improved models for reporting drug driving results. Two models were discussed; i) a significance model and ii) a Bayesian inference model.

7.4 The significance model would assign a threshold at a set drug concentration, at which only an extremely small proportion of blood samples above the legal limit would be incorrectly assigned as above the legal limit. This would also allow the continued use of the 'not less than' reporting approach currently used in the criminal justice system.

7.5 The Bayesian inference model would compare two hypotheses, for example prosecution (e.g. the concentration of the drug was equal to that reported by the analysis) and defence (e.g. the concentration of the drug was under the legal limit) and statistically assess these to ascertain which scenario was more likely. It was highlighted that this approach made the report presented to the court

more complex.

7.6 Council members were encouraged to feedback on the draft report. It was highlighted that the current model for drug driving was highly conservative and went far beyond reasonable doubt, given the high threshold that was currently required to be met to support the conclusion that a drug was over the legal limit.

7.7 Members enquired about back-calculating concentration values from samples. It was clarified that although this was possible with alcohol, given that the degradation of alcohol was well characterised, achieving this for drugs was more complex. For example, some drugs would degrade into new substances, that themselves were also illegal.

7.8 The Regulator highlighted that the new interpretation model would establish a common method for drug driving analysis across the industry, and that the draft report would be circulated to relevant stakeholders for further consultation.

8. Annual Report

8.1 Council members were provided with a draft outline of the Regulator's Annual Report for 2017. Whilst the final content report would be decided by the Regulator, based on a considered view of risks, priorities and progress, the Council was requested to consider the issues, identify gaps and provide comments at this early stage.

8.2 The report outline contained a section on factors in the market environment that were a risk to quality standards, included the recent closure of a digital forensics provider and the forensics skills gap in the UK. Members highlighted that competition in certain niche disciplines was undermining investment in these areas and may lead to issues with capacity in the future. Furthermore, financial considerations were at risk of jeopardising quality control. These considerations included the costs of accreditation. The UKAS representative indicated some of these costs were related to re-visits by UKAS, which were the result of poor preparations for inspections by forensic units. UKAS was also encountering the same issues within different forensic disciplines at the same forensic unit, indicating that learning was not adequately being transferred between disciplines. It was suggested that these issues were closely linked to the skills gap in forensic science developing in the UK. The Regulator indicated quantifiable data on the current skills gap in forensic science would be collected.

8.3 Risks concerning forensic medical services were discussed. The Regulator informed members that not all practitioners or service providers in this area were fully aware of the significance risk that contamination (e.g. DNA) presented.

8.4 Members were informed that Legal Aid Agency (LAA) rates continued to present a barrier to the adoption of standards by defence practitioners, a situation exacerbated by the tardiness of payments to individual experts by instructing solicitors. The Regulator has previously conducted a stakeholder survey on this issue, the results of which were currently being considered by the LAA.

8.5 The Council discussed policing priorities, including that forensics often had a lower priority relative to other issues such as counter terrorism and safeguarding. It was also suggested that senior management within police did not always view forensic quality standards as a high priority. The Regulator was planning to address this with a letter to police chiefs highlighting the issue, jointly with the NPCC Forensic Science Portfolio Lead.

8.6 Members also discussed that access to scientific literature was limited for some practitioners. In addition, practitioners were not being granted permission to attend conferences due to resource pressures.

8.7 In relation to the skills gap, it was highlighted that there was a mismatch between the degrees being awarded by universities and the skills required by employers.

8.8 The Regulator asked Council members to provide feedback on the report via email within the next month.

Action 6: FSAC members to feedback to the Regulator on issues that should be covered in the 2017 Annual Report by the 16th October.

9. DNA/Trace Evidence Safeguards

9.1 There had been a small number of cases where errors or contamination had been shown to cause DNA evidence to be unreliable. The Regulator had written to the Lord Chief Justice (LCJ) to outline this issue, with potential explanations including mishandling of exhibitions by police or in the laboratory, incorrect recording of samples and cross contamination during sampling or analysis. The LCJ suggested that the Regulator work with HHJ Mark Wall QC to identify what safeguards would be appropriate, and was keen that any safeguards be applied to all cases involving DNA, and not only those where DNA was the primary evidence in the case. Members were provided with a paper outlining an initial proposal for consideration by the Council, prior to presentation to the LCJ.

9.2 The initial proposal was that an addition be made to the CrimPR to require, in cases where DNA or other trace evidence may form part of the evidence, that the Senior Investigating Officer produce a brief, factual statement covering how a sample was handled and packaged, and any occasions on which that packaging was opened prior to submission to a forensic science laboratory, detailing in what location(s) and under what handling procedures and environmental/contamination controls. It was envisioned that a living document in the form of a pro forma would be included with exhibits as they pass between individuals, allowing an audit trail to be established.

9.3 It was cautioned that a balance needed to be struck between enhanced auditing and police resources. It was emphasised that the police processed thousands of exhibits, and a practical solution would need to be reached in discussion with practitioners. It was clarified that this proposal would only apply to exhibits that were used as evidence in court.

Action 7: David Lewis to liaise with police practitioners on the DNA safeguarding proposals.

9.4 The Regulator emphasised that an enhanced understanding of the risks of contamination was required within policing. This risk was particularly acute with DNA evidence, as DNA could be the only scientific evidence used in a trial. Council members were asked to feedback on the proposals by email.

Action 8: FSAC members to provide the Regulator with feedback on the DNA safeguarding proposals by 30th September.

10. Data Integrity

10.1 Council members were updated on a case of malpractice within a FSP involving toxicology samples. It was confirmed that the number of affected toxicology samples was in the thousands. It was emphasised that, in addition to positive samples, misreported negative samples may also have had a significant criminal justice impact. Priority for re-testing samples was being given to live cases and cases involving individuals currently in prison.

11. Statutory Powers Legislation

11.1 The FSRU informed members that progress was being made concerning plans to pass legislation to give the Regulator statutory powers. The legislation would impose a duty on all those who commission or undertake forensics to have due regard to the Regulator's quality standards.

12. AOB

Standards for Evaluation Interpretation

12.1 The Regulator informed members that in collaboration with the RSS, there would be a workshop meeting at the end of October to initiate a quality standard for evaluation interpretation. This standard would address the statistical uncertainty surrounding the evaluation of forensic science evidence. The workshop would include representatives from the Association of Forensic Science Providers, legal academics, leading forensic science interpretation specialists, judicial and police representatives.

Opportunity within the FSRU

12.2 Members were informed of a job opportunity within the FSRU, to support the Regulator, and were encouraged to share the opportunity within their professional networks.

Action 9: Secretariat to share the details of the job opportunity within the FSRU with FSAC members for circulation within their professional networks.

Meeting with Nick Hurd MP

12.4 The Regulator was due to meet with the new Minister of State for Policing and the Fire Service, Nick Hurd MP, at which she would discuss issues around data integrity within FSPs (see Section 10).

13. Date of Next Meeting

12.1 The date of the next FSAC meeting would be Monday 11th December 2017.

Annex A

Present:

Gill Tully	Forensic Science Regulator (FSR) (Chair)
Stan Brown	Forensic Science Northern Ireland (FSNI)
Martin Evison	The Chartered Society of Forensic Sciences (CSFS)
Adrian Foster	Crown Prosecution Service (CPS)
Anya Hunt	The Chartered Society of Forensic Sciences
David Lewis	Dorset Police
Tom Nelson	Scottish Police Authority
Mark Pearse	Association of Forensic Science Providers
Roger Robson (via phone)	Forensic Access
Lorraine Turner	UK Accreditation Service (UKAS)
Mark Wall	Judiciary

In attendance:

Jeff Adams	Forensic Science Regulation Unit (FSRU), HO
Simon Iveson	Forensic Science Regulation Unit (FSRU), HO
Thomas Vincent	Science Secretariat, HO

Apologies:

Mark Bishop	Crown Prosecution Service (CPS)
Mohammed Khamisa	Mishcon de Reya
Andrew Rennison	Criminal Cases Review Commission (CCRC)
Karen Smith	Dorset Police
Derek Winter	Coroners' Society of England and Wales