



Forensic Science Advisory Council (FSAC)

Minutes of the meeting held on 7 December 2016
at Home Office, 2 Marsham Street, London SW1P 4DF

1. Welcome and apologies

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

1.2 The Regulator thanked Kathryn Mashiter of Lancashire Constabulary, who was standing down after this meeting, for her contributions as a member of Forensic Science Advisory Council (FSAC).

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 9 September 2016 were reviewed. A number of the actions were either complete or on the agenda to be dealt with in the meeting. The remaining actions were discussed as follows:

- **Action: Regulator to highlight with the National Police Chiefs' Council Marketplace Strategy Group the risks of withdrawal from the market place of a Forensic Science Provider (FSP).**
The Regulator confirmed this was being monitored by the NPCCPSG, in addition the Home Office Commercial Directorate had been asked to consider issues of insolvency of a FSP and associated risks. The Regulator would keep the FSAC informed.
- **Action: Regulator to make the next version of the Codes of Practice and Conduct (Codes) available as an advance notification version (making clear that the text has not been finalised) and to publish the final version with an October 2017 commencement.**
The Regulator confirmed she would circulate the Codes when they were available.
- **Action: David Lewis and Karen Georgiou to contact the NPCC and College of Policing to find out what work they are undertaking to raise standards within the area of sexual offences.**

David Lewis confirmed he had written to the NPCC and College of Policing but had not yet received a response. He would contact them again.

- **Action: FASC members to provide their views as to whether any further issues need to be addressed by the legislation which will place the FSR on a statutory basis.**

The Regulator informed FSAC that she expected an update from the Home Office regarding the legislative timetable for this and would keep Council informed of progress.

3. Codes of Practice & Conduct (Codes) process

3.1 In advance of discussing the latest iteration of the Codes, the Regulator asked to have a more general discussion focused around the standards as laid out in the Codes. The Regulator indicated that there had been some resistance from a range of forensic units to adopting the Codes and she welcomed exploration of the reasons for this with the FSAC.

3.2 One reason suggested was the cost involved in the implementation of the standards which included an UKAS audit, implementation of quality management systems and a range of IT security remits. Some of the smaller FSPs were finding the costs associated with these requirements to be significant. In addition, fees to pay for forensic procedures had been reduced by the Ministry of Justice Legal Aid Agency (MoJLAA). As a result some forensic units were reporting a rethink of their ability to comply with the Codes.

3.3 The Regulator commented that she was not aware that she had been formally notified of any withdrawals from the process and asked that details of forensic units not intending to comply with the Codes should be brought to her attention. She noted that for any companies which had signed the UKAS confidentiality waiver, she would be notified of a withdrawal from the accreditation process.

Action 1: Roger Robson to feed back to the Regulator any anecdotal information regarding the range of companies that do not plan to adopt the standards.

3.4 Whilst Council members agreed that the Codes were appropriate and all FSPs should comply with them, there was an acceptance that many FSPs, both commercial and police force based, were at different stages. Some have achieved compliance but others were still a considerable way off; a lack of available funding was reiterated as a root cause. An option discussed to assist with the cost issue involved larger accredited FSPs providing their laboratories to small providers, the smaller FSPs would then benefit from using the accredited facilities. However, the onus would still remain with the small FSPs to assure themselves on issues of accreditation relevant to the processes used. Costs would still apply in leasing the facility and the issue of non-accreditation would re-emerge when samples were removed from the accredited site.

3.5 Whilst appreciating costs were involved, the Regulator reminded the FSAC that the Codes had been launched in 2011 and therefore FSPs had already been

given sufficient time to comply with them. The Regulator was reluctant to make any changes to the timeframe. In respect of the costs for the additional IT security, the Regulator was keen that small companies addressed this, as considerable risk is associated with IT security, particularly in the area of digital forensics.

3.6 UKAS processes were also suggested as an inhibiting factor to accreditation, with reports from some FSPs around lack of consistency in assessments, assessments being too in-depth, and being overly resource intensive for time and money. The UKAS representative accepted that FSPs might have a perception of inconsistency but assessments are individual to each facility, no two would be the same. That said, UKAS would investigate any reports of inconsistency. The FSAC recognised the benefits of the UKAS assessment and the added assurance this brings to quality management processes and procedures. However, this view would need to be better embedded into the ethos of FSPs.

3.7 The FSAC also discussed the possibility of the Home Office developing an economic model to assess the impact of forensic science funding on the Criminal Justice System (CJS). It was explained that the number of Government Departments involved across the breadth of criminal justice systems meant that, at present, no one Department took a lead role. The Regulator described a new cross CJS forum whose first meeting would be in the New Year. The forum, which would be attended by the HO, Ministry of Justice (MoJ), and wider CJS and would be an opportunity to raise issues such as funding. As previously discussed with the FSAC, the HO was drafting new legislation to give the Regulator and the Codes a statutory basis which would allow their application to: those who carry out, commission and fund forensic science. It was not clear when the legislation would be enacted by Parliament.

3.8 In summing up, and recognising that costs appeared to be a significant factor to the adoption of the Codes, the Regulator confirmed that she would take the following actions: write to the MoJLAA regarding the falling level of fees and potential risks to effective operation of forensic services; raise this at a forthcoming CJS forum; and, would reiterate this in the soon to be published FSAC Annual Report. Better investment in the provision of forensic science would ultimately save money in the long term across the whole of the CJS.

Action 2: The Regulator to write to MoJLAA regarding levels of fees for commercial FSPs.

Action 3: The Regulator to raise the issue of adequate funding of forensic science at the CJS forum.

Action 4: The Regulator to highlight issues of adequate funding of forensic science in her Annual Report.

Updates to the Codes of Practice and Conduct

3.9 The Regulator described the recent changes to the Codes and encouraged FSAC members to circulate the Codes throughout their organisations for feedback and further suggestions.

3.10 Changes to the Codes included the introduction of the term 'Forensic Unit'. The use of this new term was to encompass within the Codes all those who might not have considered themselves FSPs such as digital units or collision investigators. The FSAC discussed how the heads of the 'Forensic Units' could exercise the appropriate levels of independence and impartiality as required by UKAS and how accreditation would assist this.

3.11 In addition, the section on continuity planning had been slightly expanded to remind customers and forensic units to take full account of everything they might need to have access to in order to ensure continuity if their FSP should go out of business.

3.12 The Codes now provide clarification on retention of material supplied to those forensic units instructed by the defence; this is in response to queries over recent months.

3.13 The Regulator explained that there had been a change to validation requirements in that all accreditation assessments from October 2016 must be to the format laid out in the Codes. For those that pre-date this, the minimum requirement would be for at least one accreditation to be provided in the new format, but alongside this there must be a plan detailing the review of all existing validation, as well as the production of a validation library and statement of validation completion.

Action 5: David Lewis to co-ordinate a response from the NPCC Performance & Standards Group and feed back to the Regulator by the New Year

Action 6: FSAC members to provide any comments to the Regulator by the New Year.

4. Disclosure of non-compliance with the Regulator's Codes

4.1 The Regulator described the requirements for disclosure of non-compliance with the Codes for evidential purposes. She explained the purpose of this was not to undermine evidence but to allow the Court an opportunity to challenge evidence in more detail if it wished. Any disclosure of non-compliance would only apply specifically to evidence being made to the Court in that instance. The Regulator was in contact with the Crown Prosecution Service (CPS) on how best to record non-compliance. For those organisations which do not comply with any aspect of the Codes, this would involve a statement of that fact to the Court along with a statement as to how they manage the associated risk.

4.2 FSAC members discussed how monitoring of impact on the CJS might be carried out, following the introduction of the non-compliance statement. It was agreed a post implementation review would be required to monitor any effects of

the statement on court findings and the evidence presented. David Lewis also suggested linking this in with the Police Criminal Justice Portfolio for its views. The Regulator agreed and would link with David Lewis for a discussion of this issue with the Police Criminal Justice Portfolio.

Action 7: FSAC members to consult with colleagues and send comments to the Regulator on declaration of non-compliance and how these should be presented to Courts.

5. Fingerprint Comparison Scope

5.1 The Regulator reported approaches from police forces regarding the inclusion of the current IDENT1 Automated Fingerprint Identification System (AFIS) in the scope of their forthcoming fingerprint comparison accreditations, due before October 2018. Whilst she would not normally specify scope for accreditation, the Regulator recognised IDENT1 was used by all bureaux, therefore a consistent approach on this issue would be helpful and she welcomed views from FSAC members

5.2 IDENT1 was described as a screening method used to find potential fingerprint matches, any matches found were then independently examined by a fingerprint expert. IDENT1 is around 60-70% efficient as it might not find the correct fingerprint matches at the top of its candidate list; these are described as 'missed matches'. In addition, its level of effectiveness could be affected by local policies and procedures on how searches were undertaken. IDENT1 also lacked publically available validation data, although it had limited biometric assurance testing. The supplier would not currently validate IDENT1 because the contract was limited to short term maintenance of the system.

5.3 Given its use for screening, FSAC discussed whether it would involve excessive work for forces to include it in their scope for accreditation with the less exacting accreditation requirements for screening. Particularly as, within approximately two years, the Home Office Biometrics Board would replace IDENT1, and thus all the fingerprints algorithms, with a new AFIS. However it was noted that, the IDENT1 contract had been extended, with potential delay to the introduction of the new system.

5.4 The Regulator explained that she had obtained some feedback from the chair of Fingerprint Quality Standards Specialist Group (FQSSG), who recommended that individual bureau should make the decision based on local risks and priorities, while escalating major issues with IDENT1 to FQSSG. This approach was favoured by some FSAC members, especially as a new AFIS would be procured shortly. Meanwhile forensic resources needed to be focussed on areas of greatest risk. Forces were aware of the missed fingerprint matches with IDENT1 and had processes in place to manage this.

5.5 The Scottish Police Authority (SPA) reported it had included IDENT1 in its fingerprint accreditation scope three years earlier, so as to accredit the entire fingerprint process instead of having separate procedures for different parts. Having done so, the SPA felt it better understood IDENT1's risks and had put

appropriate measures in place, including escalation of new IDENT1 problems to the Home Office.

5.6 It was suggested that the NPCCPSG could raise awareness of the limitations of IDENT1 across fingerprint bureaux in forces, helped by SPA and work completed by the Metropolitan Police.

5.7 It was also noted that a European Union forensic directive mandates accreditation for both fingerprints and DNA analysis. The scope of the requirement may become clearer from the work starting the following week on the Prüm Implementation Board.

5.8 The Regulator confirmed she had written to the Chair and members of the Home Office Biometrics Board setting out requirements for validation of the new AFIS, including making available the validation data and validating the algorithm to forensic standards, and would discuss this further with them in the New Year. She would also update the chair of FQSSG with the views from the FSAC, and would revisit the subject at a later date.

Action 8: The Regulator to discuss the issues raised by the FSAC on the fingerprint comparison scope and IDENT1 with the chair of FQSSG.

Action 9: The Regulator to review further the issue of including IDENT1 in the fingerprint comparison scopes for accreditation and inform the FSAC of her conclusions.

6. Revised Criminal Practice Directions

6.1 The FSAC was informed that a new Part 19B had been added to the Criminal Practice Directions (CPD), which listed declarations to be included in an expert's report for court. Details of these changes had been circulated by the Forensic Science Regulation Unit (FSRU) to most bodies that provided forensic expert statements. A copy had also been sent to the FSAC.

6.2 The declaration requirements on expert statements derived from four sources:

- statutes and laws,
- the Criminal Practice Rules (CrimPR),
- case law, and
- courts' own processes, which were written into their practice directions.

6.3 The FSRU felt the declarations now listed in CPD Part 19B were not comprehensive, and some were unclear and had suggested changes.

6.4 In addition, there was a legal obligation to declare both actual and potential conflicts of interest in the statement; it would now be a requirement to also declare no conflicts of interest. The document also referred to a 'Code of Practice for Experts' but it was not clear which Code this was. The FSRU has contacted the Criminal Procedure Rules Committee (CPRC) and the Office of the Lord Chief Justice seeking clarification and would also discuss clarifying the wording.

6.5 Two options for layout of the declarations were discussed; one involved setting the declaration at the top of the statement, which the FSAC felt might be a distraction from the content of the report. Alternatively, a brief statement could be set at the top of the report which would then reference a fuller set of declarations at the foot of the statement. It was important to agree an approach, as a recent forensic pathology audit showed that forensic pathologist statements were inconsistent. Additionally, the Regulator had received reports about forensic experts presenting in court without a proper statement, there had also been a case where a forensics expert drafted a series of interim reports but did not draft an admissible final statement for court. The Regulator asked to be made aware of similar cases when they arose.

6.6 The FSRU agreed to circulate a revised version of the declaration to the FSAC. They would also arrange for the clarification on declarations in expert statements to be included in a version of the CrimPR, which is issued twice a year.

6.7 A related issue had been identified in that there was a legal requirement to list all the people involved in providing the court statement. For some forensic disciplines this would involve numerous individuals. However, it was acknowledged that cases had been dismissed at court because this list was incomplete. The requirement is linked to the use of s127 Criminal Justice Act 2003 in relation to relying on the statements of assistants.. The FSRU will discuss with the CPRC tailoring the wording of this requirement to focus on the qualifications of those giving forensic science evidence.

Action 10: Jeff Adams to revise the document explaining the recent Criminal Practice Directions revisions to expert declarations, and re-circulate it to the FSAC.

Action 11: The Regulator to raise the issue of expert statements for courts not complying with the Criminal Procedure Rules with the Criminal Procedure Rules Committee?

Action 12: FSAC members to report any issues that arose with the declarations in expert statements to the Regulator for review.

7. Disclosure Issues

7.1 The FSAC was informed that defence requests for disclosure of forensic evidence from the prosecution was inconsistent across England and Wales. In particular, some defence solicitors had made excessive or inappropriate requests for disclosures of forensic evidence to the prosecution.

7.2 Disclosure operates on the basis of two separate processes. The first, under the provisions of the CrimPR, allows disclosure of a limited set of information as of right. The second, under the Criminal Procedure and Investigations Act 1996, requires the CPS to provide the defence with all information it intends to rely on and a schedule of unused material. To be listed on the schedule the prosecution must be of the view that it could undermine the

prosecution case or assist the defence case. Once the material has been provided the defence can send the prosecution a statement of its case. The prosecution will then reconsider the schedule on the basis of the statement. It is then open to the defence to apply to the court if it believes there should be further disclosure. .

7.3 A meeting of stakeholders, including the CPS, Police, FSPs and representatives from Government departments and the Regulator discussed these issues in relation to drink and drug driving cases and it was agreed that guidance would be circulated from the CPS as to how disclosure requests should be handled. Disclosure obligations would be dealt with more robustly, with a stricter interpretation of what qualified as falling within the CrimPR obligations in order to provide more consistency on disclosure and avoid resources being used in responding to inappropriate requests. The CPS would also be more robust in defining what falls within the test of aiding the defence and undermining the prosecution case.

Action 13: FSAC members to feed back any further issues with defence requests for disclosures on forensic evidence to the Regulator to review.

8. Sexual Assault Referral Centre (SARC) Issue Update

8.1 The Council received an update on the contamination issue which had occurred in a SARC unit and which had resulted in the DNA profile of a victim and suspect in one case being found on samples from an unrelated case in circumstances where this must have been the result of contamination. An audit had been carried out on the SARC processes and the report would be published in the New Year. Following on from this the Regulator would consider undertaking a wider audit of SARCs.

8.2 The Regulator reported on actions already taken to improve awareness of contamination risks including: interim guidance for SARCs and Custody; working with the Faculty of Forensic and Legal Medicine to ensure dissemination of the guidance; the investigation report to be published in the New Year; and, the Regulator and her team to work with forensic nurses and forensic medical examiners. A joint letter from the Regulator and the Faculty of Forensic and Legal Medicine had also been sent to Police and Crime Commissioners to raise awareness about the standards and training required in the commissioning of this service.

Action 14: The Regulator to publish the report of the SARC Unit contamination finding in the New Year.

Action 15: The Regulator to consider undertaking a wider audit of SARC Units and their forensic science processes.

9. Human Taphonomy Facility Proposal

9.1 The FSAC was informed of a proposal from an academic organisation to set up a human taphonomy facility (also referred to as a “body farm”). A humantaphonomy facility is intended for the study of human cadavers in the process of decomposition usually in the open and under various conditions, for example clothed and unclothed, in order to gain a better understanding of the decomposition process. A few years ago a similar proposal was received by the FSRU but no progress was made as it was a commercial venture which did not seem to achieve the required level of support. The current proposal is from an academic institution and was first raised in 2014. A meeting of relevant stakeholders had taken place to discuss the plans, but that did not lead to an agreement as to what the facility would be used for in terms of research to be undertaken or how the results would be disseminated or employed.

9.2 Whilst similar facilities have been established in other countries and their research was highly regarded, the stakeholders and end users attending the stakeholder meeting considered that the flora and fauna of the United Kingdom varies so much between very small areas that results of decomposition in one place would not be applicable elsewhere..

9.3 If such a facility were to go ahead, the requirements for regulation would be considerable and would include, for example: a tracking facility for the bodies in the facility, the need for a clear known cause of death, both standard DNA profiling and mitochondrial DNA profiling to ensure the identification of any body parts carried found elsewhere from the facility (for instance as a result of predation). Security would also be required both for transportation of the bodies to and their placement in the facility, along with appropriate physical security for the area.

9.4 It was noted that the organisation proposing the facility had approached a number of Government departments for support, and one department had provided it. In addition, Government departments had also been contacted about developing a regulatory framework. There were no central regulations for such a facility, due to the number of elements involved, such as: public health legislation, animal welfare legislation, legislation around the use and disposal of human tissue, as well as the exhumation of human remains. However, it was noted that a standard was currently being developed for bio-banks for mortuaries, which would include sample storage and release procedures, and this might be relevant to the regulation of the facility. There may be scope of the extension of the Human Tissue Act 2004 to cover such a facility.

9.5 In view of the issues discussed it was felt that if such a proposal for a human taphonomy facility was received by the Regulator, the Regulator should seek a clear definition of the research to be undertaken and the regulatory framework employed before determining whether to offer support..

10. Any Other Business

10.1 The Regulator informed the FSAC that in March 2017 she would be giving a talk to the Criminal Bar Association as part of the Old Bailey Lectures. The focus

of her talk would be on raising standards and ensuring barristers are aware of the Standards.

10.2 The Regulator hoped to publish her annual report by early January 2017 at the latest. An embargoed copy of the report would be sent to the Council prior to publication.

10.3 Stan Brown explained that 12 members of the Northern Ireland High Court and Magistrates' Courts recently visited Forensic Science Northern Ireland Laboratory. They received a presentation and tour of the facility and reported that they found the visit very informative. Following this the facility then received a visit from the coroners of Northern Ireland who were given a similar presentation and tour; they also found the visit very informative.

10.4 Stan Brown also referenced the recent case of the Stephen Port murders; this was in the context of selective submission of evidence for forensic testing. The Regulator confirmed that she would write to the Independent Police Complaints Commission, as they are currently reviewing the case, to make them aware of the issues of interest from a forensic regulatory perspective.

Action 16: The Regulator to write to the Independent Police Complaints Commission to make them aware of the issues from a forensic regulatory perspective.

11. Date of next meeting

11.1 The date of the next FSAC meeting would be Wednesday 26th April 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)
Karen Georgiou	Bedfordshire Police
David Lewis	Dorset Police
Kathryn Mashiter	Lancashire Constabulary
Tom Nelson (Teleconference)	Scottish Police Authority
Mark Pearse	Association of Forensic Science Providers (AFSP)
Roger Robson	Forensic Access
Lorraine Turner	UK Accreditation Service (UKAS)

In attendance:

Jeff Adams	Forensic Science Regulation Unit (FSRU), HO
Emma Burton-Graham	Science Secretariat, HO (Secretary)
Mike Taylor	Science Secretariat, HO

Apologies:

Mark Bishop	Crown Prosecution Service (CPS)
Julie Goulding	Criminal Cases Review Commission (CCRC)
Anya Hunt	The Chartered Society of Forensic Sciences (CSFS)
Mohammed Khamisa	Mishcon de Reya
Mark Wall	Judiciary
Derek Winter	Coroners' Society of England and Wales