



Forensic Science Advisory Council (FSAC)

**Minutes of the meeting held on 25 April 2018
Home Office, 2 Marsham Street, London, SW1P 4DF**

1. Opening and welcome

1.1 The Chair, the Forensic Science Regulator (the 'Regulator'), welcomed all to the meeting. See Annex A for a list of representatives present.

2. Minutes of previous meeting and matters arising

2.1 The minutes of the previous meeting held on 11 December 2017 had been approved by members prior to the meeting and were published on the GOV.UK website¹.

2.2 *Action 1: Members were asked to provide comments on the draft standard on forensic gait analysis by 8th January 2018.* A draft of the forensic gait analysis document was circulated to the FSAC in December. A comment was raised during the consultation that podiatrists were already regulated by the Health and Care Professions Council (HCPC). The Regulator is now in conversation with the HCPC to coordinate efforts. The Regulator had also been in contact with another professional body, The Institute of Chiropodists and Podiatrists (IOCP), regarding the standard.

2.3 *Action 2: Members were asked to provide feedback on high risk areas in the scope of crime scene examination and Simon Iveson to engage with the expert network on this.* This would be dealt with under item 10.

2.4 *Action 3: UKAS representative to send members the link to the technical bulletin about Version 4 of the Codes on UKAS webpage.* The link had been distributed to members.²

2.5 *Action 4: NPCC representative to circulate the story about retesting of Radox samples for West Yorkshire Police.* This was distributed after the meeting in December, but would be re-circulated by the secretariat.

2.6 All other actions were complete.

¹ Available from: www.gov.uk/government/organisations/forensic-science-regulator/about/membership#forensic-science-advisory-council

² Available from: www.ukas.com/news/technical-bulletin-ukas-assessments-incorporating-the-forensic-science-regulators-codes-of-practice/

3. Forensic Science Regulator Bill

3.1 The Regulator provided an update on the Forensic Science Regulator Bill which was published on the 9th March 2018 and laid before Parliament. The Bill would give the Regulator the power to set standards, investigate potential infringements, and take enforcement action. This action would be related to a broad set of circumstances and would not only be tied to the Codes of Practice. The trigger for the Regulator to take enforcement action was set as circumstances which would prove a substantial risk to the Criminal Justice System. This meant that there would need to be a very clear set of circumstances under which the trigger would be met. There would be no powers to carry out an inspection against an organisation's will, however if necessary, the Regulator would be able to issue a compliance notice so that a Forensic Science Provider could not continue operations until an inspection had taken place.

3.2 The Bill had been presented as a Private Members' Bill due to demands on the Government legislative programme. This meant the Bill was fairly brief and was unlikely to have a smooth passage through Parliament. The Bill did not succeed on the first attempt at achieving a second reading. A second attempt would be taking place on 27 April. If it was not passed on the second reading the chances of the Bill getting through the legislative programme in the current Parliament would decrease significantly. If a private members bill does not succeed there would be the chance of a bill within the Government programme in the future. Such a Bill could be more substantial and deal with more detail. There were several issues that would have to be dealt with separately to the Bill, such as addition of the Regulator to the relevant whistle-blowing legislation.

3.3 The Bill would require the Codes of Practice and Conduct to be placed before Parliament by a Minister as a matter of process. The appendices would also need to be laid before Parliament using secondary legislation and would thus need to become a more integral part of the Codes. A resolution in both Houses would be needed for the Codes to be enforced. Due to limited Parliamentary time, there would only be the opportunity to update the codes annually.

3.4 A member asked about the timeline for implementation should the Bill pass. The legislation would likely come into force by late 2019.

4. Codes of Practice and Conduct

4.1 The Regulator introduced the item. Should the Forensic Science Regulator Bill gain Royal Assent, the Codes would need a specific review before they were laid before Parliament. The Codes would need to be updated to reflect the new version of the ISO standard 17025,³ and to take into account any feedback and learning from the first round of implementation.

4.2 It would be important to ensure that the NPCC Transforming Forensics Programme would be informed of the review of the Codes and able to feed in comments. The current feedback mechanism was via the FSR's Quality Standards Specialist Group, on which the NPCC was represented. The NPCC representative agreed to highlight this within their network.

³ Available from: www.iso.org/standard/66912.html

Action 1: NPCC representative to raise awareness of the feedback mechanism on changes to the Codes via the QSSG within their network.

5. Anonymous reporting

5.1 Following the inquiry into Randox Testing Services data manipulation, the Regulator had been considering whether mechanisms should have been in place to allow the issue to come to light earlier. The Regulator had agreed to investigate how the procedures for whistle-blowing could be improved.

5.2 Currently the only mechanism for an individual to raise a concern whilst remaining anonymous would be via correspondence. The Regulator had approached GOV.UK with a view to install an anonymous reporting tool on the FSR website. A discovery phase was required to be undertaken to gather more information on the requirement and determine how to fulfil it. An end of discovery report was produced which had been shared with FSAC members.

5.3 As part of the report writing process, a questionnaire had been distributed via the Chartered Society of Forensic Sciences (CSFS), policing representatives and the Association of Forensic Science Providers (AFSP). The AFSP raised concerns regarding the wording of the questionnaire and so the questionnaire had not been sent to AFSP members. These concerns had now been resolved and AFSP responses would be collated into an annex.

5.4 The conclusion of the exercise was that there were enough indicators to prove that an anonymous report facility is required. The primary route for conversations on quality of forensic science should still be internal to an organisation; however the anonymous reporting facility would provide a reporting mechanism where internal procedures failed.

5.5 The Regulator reported that the BBC had been carrying out an investigation into medical forensics, in particular examinations in sexual assault referral centres and custody suites. The Regulator had been interviewed for the documentary. As a result of the investigation it had come to light that a number of doctors had been asked carry out inappropriate practices, for example examining both the victim and the suspect of a single sexual assault. It was felt by those interviewed that they could not raise these concerns within their organisation. The Regulator had previously issued guidance on collection of samples for forensic analysis and avoidance of contamination which fell within the Regulator's remit.⁴ Medics should be encouraged to come forward with any concerns to their own regulatory bodies, but these cases also supported the need for an anonymous whistle-blowing service.

5.6 A proposal for provision of this service had been received from the Crimestoppers UK Integrity Line.⁵ The proposed facility would enable a dialogue to take place with the reporting party, which would not be possible with a simple anonymous text box. If the anonymous reporting facility was to go ahead, a guide would be developed for complainants on the information that should be included in the report.

⁴ Available from: <https://www.gov.uk/government/publications/sexual-assault-referral-centres-and-custodial-facilities-dna-anti-contamination>

⁵ www.theiline.co.uk/about

5.7 The Regulator had recently raised concerns via correspondence to the Science & Technology Committee that, “although there is already provision for anyone to report concerns to the Regulator, there may be no statutory protection under the Employment Rights Act 1996...” As the body responsible for investigating malpractice in forensics, it is essential that individuals reporting such activity to the Regulator are protected by whistle-blowing provisions. To ensure this, the Regulator has requested that she becomes a ‘prescribed person’ under the whistle-blowing provisions.⁶ A response from the Home Office would be published by the Committee soon.

5.8 In the correspondence, the Regulator also raised concerns that that her position under the Data Protection Bill is unclear. She was concerned that when the General Data Protection Regulation is transposed into UK law, rights might be provided “for ‘data subjects’ which could hamper investigations of complaints and referrals.”

6. Disclosure

6.1 A representative of the CPS provided an update on disclosure issues with regard to digital evidence. Disclosure of digital data, particularly in sexual assault cases, had arisen as a serious issue in recent months, bringing forward questions on how complex data is reviewed, understood and put into context in a criminal case. A particularly high-profile case was that of *R v Allan*. The case, which involved allegations that a woman, C, was sexually assaulted by a man, D, was dropped by the Crown Prosecution Service (CPS) on 14th December 2017 following the emergence of evidence captured from the complainant’s phone which undermined the prosecution’s case.⁷ The data had been captured in the initial download, but the investigating officer had failed to follow all reasonable lines of enquiry in searching the downloaded data.

6.2 The CPS had conducted a review of all live contested cases in January 2018 and had found that in most cases, the issue is not with the expert evidence, but failings in following reasonable lines of investigation. Guidance on this issue would be made available to police investigators and the prosecution.

6.3 One of the contributing factors to these failings is that the volume of data to be searched in these cases has increased dramatically since the Criminal Procedure and Investigations Act came into force in 1996, and even since guidance on disclosure was issued by the Attorney General in 2013.⁸ The storage space on phones had dramatically increased, coupled with storage on the Cloud, a single download from a phone could amount to 40,000 pages of data. Keyword searches around the issue of consent were not considered to be straightforward and the colloquial language used in text communications provided further difficulty for investigating officers.

6.4 A series of measures had been introduced to address the problem. Firstly, a joint national disclosure plan had been established by the NPCC and College of Policing. Work was also taking place to set-up digital evidential transfer system (DETS) which all forces would be able to sign up to. This would allow digital media to be uploaded to a central repository which could be circulated to interested parties. Some of the software currently in

⁶ Letter available from: www.parliament.uk/documents/commons-committees/science-technology/Correspondence/2018-03-16-Letter-from-Science-Regulator.pdf

⁷ Report available from: www.cps.gov.uk/publication/joint-review-disclosure-process-case-r-v-allan

⁸ Available from: www.gov.uk/government/publications/attorney-generals-guidelines-on-disclosure-2013

use did not allow downloads from the latest model phones available and so a joint technology working group had been established to look at the range of tools available. A range of training resources were being made available to officers. The CPS had committed to provide digital training to all prosecutors by September 2018. A disclosure management document had been drafted to assist the CPS, the court and the defence to better manage disclosure. In terms of reasonable lines of enquiry, the CPS were asking the police to explain what they have done around disclosure which would be added into the disclosure management document and shared with the court and defence and it will give the parameters on which disclosure has been made.

6.5 The Regulator informed members that the software and methodology utilised for the capture of digital information had fallen under ISO 17025 since October 2017 and should be carried out in an accredited environment. The only exception to this was when the download took place in a 'kiosk' style deployment of forensic tools, for which the organisation had accreditation for one deployment and the other deployments were identical under configuration control and that staff are competent.

6.6 An NPCC representative reported on the work being conducted by the NPCC on validation and kiosks. Regarding reasonable lines of enquiry, it had been observed that imprecise use of terminology, such as 'full forensics' and 'full extractions', was increasing which meant assumptions had to be made on the information asked for and what was feasible. This meant that prosecutors often were in a trial situation without absolute clarity on the information presented. A Panorama programme was due to be screened on BBC One on Monday 30th April 2018, which was on the subject of disclosure.

6.7 Due to the high volume of data extractions from phones that was now taking place, a 'service level' approach was becoming the norm. Generally seeing service descriptions as level 1, 2 or 3 which increase in complexity of the download carried out. In terms of the forensic strategy, the NPCC were trying to get level of clarity in what is actually being extracted at each level.

6.8 With regard to validation, the NPCC had been working for the last 12 months to develop a national validation package for the level 1 service. The Home Office's Centre for Applied Science and Technology (CAST), which had now been merged into the Ministry of Defence's Defence Science and Technology Laboratory (Dstl), had been commissioned to assess the kiosks which the majority of forces using the frontline extraction method are contracted to. This work would be published shortly. The validation package would allow those who use this system to apply for accreditation once and deploy many times, as set out by the Regulator in the Codes of Practice. Forces would then be able to establish configuration authorities to manage all frontline tools. This would help ensure that standards are in-built to the service.

6.9 The Regulator asked whether a mechanism should be in place to allow stakeholders to feed into the National Disclosure Improvement Project. The plan had been published and was largely focused on policing and the CPS. The CPS representative agreed to share this with the Regulator. It was felt that some of the sub-groups of the project could benefit from some assistance from the digital community, such as the technology working group, and so the CPS representative agreed to raise this within the CPS.

Action 2: CPS representative to share the NPCC, College of Policing and CPS joint National Disclosure Improvement Plan with the Regulator

Action 3: CPS representative to make enquiries within the CPS as to whether external experts could be co-opted to the National Disclosure Improvement Project technology working group

6.10 The CPS expert guidance was being revised and would be published once complete. This guidance made reference to the Regulator's guidance and standards and would ensure that better access was available to the Regulator's resources for those in the CPS. A copy of the guidance would be shared with the Regulator before it was published.

Action 4: CPS representative to share a copy of the CPS expert guidance booklet with the Regulator

7. Home Office/ NPCC/ APCC Forensic Science Review

7.1 The head of the Home Office's Crime, Policing and Fire Group (CPFG) forensic science policy team attended to present this item. In January 2018 a significant provider of forensic services to the police, Key Forensic Services Limited, entered into administration, a situation which illustrated market risks. Impacts on the criminal justice system were being actively managed but were expected to continue for some period of time. In this context, and noting the criticisms in the Forensic Science Regulator's recent annual report, the Minister for Policing & the Fire Service, the NPCC and the Association of Police and Crime Commissioners (APCC) commissioned a joint review of the functioning of the forensic science market to address the concerns of policing, the regulator and criminal justice system partners.

7.2 The review would make recommendations to Ministers on steps required to maintain confidence in the effective future provision of high-quality forensic science to the criminal justice system. The review was expected to be completed by July 2018. The review would consult with relevant stakeholders across policing and the CJS, including the Forensic Science Regulator, and with large and small commercial providers. One specific focus would be the sustainability of the market.

8. Guidance for forensic scientists in the event of redundancy

8.1 In January 2018 a significant provider of forensic services to the police, Key Forensic Services Limited, entered into administration. The Regulator was seeking advice regarding forensic scientists made redundant as a result, since there was currently no guidance available. Issues to be addressed included remuneration of forensic scientists made redundant that were called to give evidence, and provision of indemnity insurance since the forensic scientist would no longer be covered under their former employer's cover. It was suggested that the police could pay for any written statements provided by the forensic scientist, however there was no view on who would be responsible for provision of indemnity insurance. It was confirmed the CPS could pay for the forensic scientist to attend court.

8.2 A member asked if it was known how many forensic scientists were affected by this issue. It was thought that the number was between 20-30 people. The Regulator stressed

this was unlikely to be a one-off situation and it was necessary to put in place a process in place to address this issue.

8.3 It was reported by the Chartered Society for Forensic Science (CSFS) representative that the society runs an insurance scheme for individual scientists and that CSFS members are offered a reduction in the cost of indemnity insurance. Were funds to be made available they could be allocated to help these individuals, however there was no consensus on where such funds would be derived from. The CSFS representative confirmed the fee is normally about £350 per year per person.

Action 5: Association of Forensic Science Providers representative to report to the Regulator regarding their forensic science provider company policy on indemnity insurance for ex-members of staff.

Action 6: The Regulator to send a note to the Home Office policy colleagues for further guidance on forensic scientists who had been made redundant.

9. NPCC

9.1 The NPCC representative presented this item. There had been some changes over the previous month within the NPCC portfolio: Chief Constable Debbie Simpson had retired. The new portfolio lead was Chief Constable James Vaughan, who would also be the lead for forensic pathology. Assistant Chief Constable (ACC) Dave Lewis was announced as the new Deputy Chief Constable (DCC). That had left some gaps in both the NPCC marketplace group but transition arrangements were in place. The FINDS board was seeking a new lead to replace the chair, this appointment is still outstanding.

9.2 The NPCC was continuing with a number of accreditation programmes. Currently there were 30 fingerprint bureaux seeking accreditation to 17025 across the country. One bureau had already received accreditation and a further two had been recommended for accreditation. A national validation event had been held to support those still seeking accreditation. Learning had been shared by those forces which had already been through the initial assessments. It was anticipated that 30% of forces would achieve accreditation by the October 2018 deadline. Some members expressed concern that there had been some resistance from organisations in preparing for accreditation, meaning the success rate for accreditation had been low. One member felt a lack of funding existed for implementing standards, which meant there were not sufficient provision for quality management systems and on-going testing. A member mentioned this had been discussed 10 years ago and the NPCC was made aware of these potential issues.

9.3 An update was provided on digital forensics accreditation. It was confirmed around 40% of forces now have some form of accreditation across the 10 to 11 different methods utilised. The NPCC was also focusing on terminology, expert reporting, defence reviews, and guidance around legalisation for access to cloud data. They were also in the process of commissioning the College of Policing to support the NPCC in refreshing the Association of Chief Police Officers (APCO) guidance which was produced in 2012 for digital evidence.

9.4 An update was provided on crime scene investigation (CSI) accreditation to the ISO 17020 standard.⁹ A CSI validation event had taken place in Surrey. Two accreditation dry-runs had been agreed with UKAS, one of which was held the previous week and the other would be taking place in Staffordshire on the 4th and 5th of May.

9.5 A national accreditation workshop for forensic collision investigation had been held in Leicestershire alongside fire and rescue services to bring the communities together in preparation for accreditation to 17020.

9.6 A full business case for the Transforming Forensics programme had been delivered to chief constables and police crime commissioners at the end of January. The full business case contained five individual business cases for fingerprints, quality standards, digital forensics, DNA stage three, and a programme management business case. The chief constables and crime commissioners have been asked to indicate by the end of April 2018 if they wish to continue to support the programme. If the programme was supported, it is asserted around £30.5 million pounds worth of funding would be released over 2 years. This amount had not yet been confirmed as the actual figure.

10. Crime scene investigation

10.1 An update was provided on crime scene investigation accreditation. Two dry runs were being carried out by UKAS in a police environment. UKAS was planning to visit police forces to assess how CSI was being conducted, how accreditation should be carried out and general readiness for accreditation. UKAS was looking at the practical assessments to make sure these are reliable, as this would be the first time they have been conducted within policing. Assessments would be divided into straight forward and complex crime scenes. Complex scenes included fire and collision investigation, the latter of which involves many measurement-based techniques. There had been positive feedback from the first dry run. The second dry run was due to take place in May. Lack of contemporaneous note-taking was highlighted as a potential blocking issue to accreditation.

11. Fire investigation pilot

11.1 An update was provided by a representative from UKAS. There was currently an 'expression of interest' application form for parties to take part in a fire investigation pilot for accreditation. The deadline for submission was the end of April 2018. Six organisations were expected to apply; three of which were fire services, and three of which were private providers. Some providers had revealed that they might not be ready to apply before the deadline, as they needed to do far more work to be ready for accreditation, but they had been encouraged to apply anyway and UKAS agreed they could discuss potential time-scales for readiness with them.

11.2 A concern had been raised regarding fire services that currently provided fire investigation services free of charge to policing, but had no statutory responsibility to do so. It was thought that if extra costs would be incurred to gain accreditation some fire services may stop providing this service. Commercial fire investigation companies felt they could not compete with "free" services from fire and rescue services

⁹ Available from: www.iso.org/standard/52994.html

11.3 There was a concern that by 2020 there may not be many accredited providers. This has been highlighted to the forensic science policy team, and fire investigation policy team in the Home Office.

12. Case Review pilot

12.1 An update was provided by a UKAS representative. It was being assessed whether ISO 17020 was the appropriate standard for case review on the behalf of the defence (but also possibly the prosecution). There had been two attempts to launch an accreditation pilot to 17020, but this has not progressed well so far. Several organisations had signed up initially, but as the deadline for the pilot approached, had subsequently withdrawn. All but one organisation withdrew from the pilot.

12.2 It was decided to change the approach slightly, and shift to a dry run approach. This would not result in accreditation being awarded at the end of the process, but would allow organisations to understand what steps needed to be taken to gain accreditation. There was currently only one organisation interested in signing up for the dry run, so UKAS would need to re-advertise. Some organisations had expressed concern over taking part in the pilot before it was decided whether 17020 was the correct standard for case review.

13. Updates to crime, PR, legal obligations, and expert report guidance

13.1 An update was provided by a representative from The Forensic Science Regulation Unit. Criminal procedure rules for some declarations submitted for evidence had been amended. The amendments were in relation to listing all assistants, or others on which reliance had been placed, connected to the case in accordance with the Criminal Justice Act 2003.

13.2 An issue has arisen where experts rely on the work of other experts (e.g. forensic pathologists relying on the work of forensic toxicologists) but the guidance has been amended to address that point.

13.3 A member mentioned some reports for toxicology did not state which substances had been tested for and all substances present (illicit or prescribed), only that the presence of an illicit substance had been detected. It was suggested that the form should include which drugs had been identified.

14. Toxicology data manipulation

14.1 Re-testing led by the NPCC was still ongoing following the uncovering of major issues in toxicology testing at Radox Testing Services (RTS). It had become clear it was not just Quality Assurance (QA) samples affected, but some case samples had also been affected. The criminal investigation was still on-going and a file may soon be passed to the CPS.

14.2 A number of appeals have been heard against convictions made on the basis of testing conducted by Radox Testing Services. The Court of Appeal had based their findings on all the circumstances of the case, as well as the re-testing results of the samples in the 3 cases heard thus far.

Action 7: Representative from the Staffordshire Police to circulate the story about retesting of Radox Testing Services samples for West Yorkshire Police.

15. Model for interpreting drug driving cases

15.1 Guidance had been produced to offset an issue with, and propose a new approach to, the model for interpreting drug driving cases. Organisations had been asked to submit feedback on the guidance produced by 1 June 2018. This would enable production of a report to confirm which model should be used. It was highlighted that the C133 report which sets out the standards related to s5A analysis, should be produced as soon as possible after the consultation has ended, as providers were keen to have access to this.

15.2 A question was raised on whether an individual would be charged if they were found to test positively for a combination of drugs, but were under the limit for each. It was likely that they would be arrested under section 4 of the Road Traffic Act 1988 as “Driving or being in charge when under influence of drink or drugs”. If the sample provided is over the limit then they would be charged under section 5a of the Road Traffic Act 1988. “Driving or being in charge of a motor vehicle with concentration of specified controlled drug above specified limit”. If they were under the limit for all drugs or there were drugs present for which no limit had been specified they were likely to be prosecuted under s4.

15.3 An issue was flagged to the CPS and the Home Office regarding some new psychoactive substances where the dose-response curve was unknown. In one case, a toxicologist had conducted a search on the internet to determine the effects of the drug based on users who had taken a similar dose and used this information to determine an individual was unfit to drive under section 4. The court had ruled this unacceptable as the research was not published in a peer-reviewed journal.

16. Forensic Science Regulator’s Annual Conference

16.1 The annual Forensic Science Regulator conference had taken place on 19 March 2018. The chair wanted to thank FSAC members who attended the conference for their contributions. The presentations were positively received and good engagement had been achieved with Home Office officials, such as the director of the Data and Identity policy unit.

17. DNA mixture interpretation guidance, DNA mixture software validation guidance

17.1 Members were asked for any final feedback on two post-consultation guidance documents for DNA mixture interpretation, FSR-G-222 and FSR-G-223. Members expressed their approval and the documents would now be published.

18. Anthropology code of practice

18.1 Members were asked for any final feedback on a post-consultation version of the Code of Practice for Forensic Anthropology. All members were happy to approve the codes which would now be published.

19. AOB

19.1 UKAS confirmed the International Laboratory Accreditation Cooperation (ILAC) guidance G19 assessment used for the assessment for forensic providers was under revision. There was currently no timescale for the changes, however it would be necessary to revise the document to include the new ISO 17025 standard and other changes.

19.2 A point of clarification in the Codes was requested for sole traders and small to medium enterprises (SMEs). A member wished to highlight section 7.1 on personnel security vetting, as they felt this needed to be made clearer. Usually clearances were obtained from the non-police personnel vetting (NPPV) route, Security Check (SC) route or equivalent. The member felt sole traders and others do not have sufficient access to these routes. The NPCC representative confirmed access to police vetting can be obtained via the Warwickshire Police (WP). A general application could be submitted to the WP, even if the application is for a person who was not doing police work.

Annex A

Representatives present from:

- Forensic Science Regulator (Chair)
- Association of Forensic Science Providers
- British Association in Forensic Medicine
- The Chartered Society of Forensic Sciences
- Criminal Cases Review Commission
- Crown Prosecution Service
- Forensic Science Northern Ireland
- Forensic Science Regulation Unit
- HO Science Secretariat
- National Police Chiefs' Council
- United Kingdom Accreditation Service