



Quality Standards Specialist Group (QSSG)

**Minutes of the meeting held on 22 March 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

2.1 The minutes of the previous meeting held on 1 November 2017 had been approved by members prior to the meeting and were published on the GOV.UK website¹.

3. Matters arising

3.1 *Action 1: QSSG members to feedback to the Regulator concerning the use of the term "identification" in latent fingerprint examination.* No feedback had been received to date so this action had been carried over. A task and finish group had been set up under the fingerprint expert network in policing and were formulating a response to this issue.

3.2 *Action 2: QSSG members to provide feedback on the forensic gait analysis draft standard within two weeks.* A comment was raised during the consultation that podiatrists were already regulated by the Health and Care Professions Council (HCPC). The Regulator was 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.

3.3 *Action 3: Simon Iveson to update the QSSG work plan.* This would be covered under item 5.

3.4 *Action 4: The Forensic Science Regulation Unit (FSRU) to identify a list of definitions related to crime scene investigation for the QSSG to discuss.* This would be covered under item 8.

3.5 *Action 6: The Forensic Science Regulation Unit (FSRU) to identify a list of definitions related to crime scene investigation for the QSSG to discuss.* This would be covered under item 8.

¹ Available from: www.gov.uk/government/organisations/forensic-science-regulator/about/membership#quality-standards-specialist-group

3.6 *Action 7: QSSG members to feedback on potential topics to be included in the Regulator's 2018 conference.* The Conference was held on Monday 19th March 2018 and was an interesting and successful day.

3.7 All other actions were complete.

4. Forensic Science Regulator Bill

4.1 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.

4.2 The Bill had been presented as a Private Members' Bill due to current demands on Government legislative programme. This means the Bill is 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 in April. If it was not passed on the second reading the chances of the Bill getting through the legislative programme in this Parliament decreases significantly. If a private members bill does not succeed there may 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.

4.3 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.

5. Codes of Practice and Conduct

5.1 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.

5.2 A member asked what degree of change would be required to the format of the Codes so they would be suitable to be laid before Parliament, and whether this would make the Codes less suitable for use. The FSRU responded that there would be two options for formatting the Codes. The first would be to reformat the Codes and appendices into one document. The second would be a simpler production of an index in the Codes to list all of the existing appendices and submit to Parliament as a composite document. The wording used in the Codes would need to be assessed to ensure that the obligations were clear from a legal perspective. Certain clauses in other standards, such as the International Laboratory Accreditation Cooperation G19:08/2014 standard,² may need to be inserted into the Codes.

² Available from: http://ilac.org/latest_ilac_news/ilac-g19082014-published/

5.3 A member asked what sanctions would be made available to the Regulator for cases of non-compliance to the Codes. As currently drafted, the Bill would enable the Regulator to issue prohibition notices to forensic science providers (FSPs) which were not complying with the Codes if that created a risk to the Criminal Justice System. An appeals process would be established for FSPs should they feel a notice was unreasonable.

5.4 The implication for existing standards, such as ISO 17025,³ was queried, in particular whether they would be rendered obsolete. This would not be the case as the Codes specify a requirement to have accreditation to ISO 17025 for most disciplines. A representative from the United Kingdom Accreditation Service (UKAS) raised the point that in other industries, similar models existed to those proposed by the Bill which ran effectively.

5.5 A member asked whether it was made clear in the Bill what type of body is covered by the powers. The powers were specified around the definition of forensic science. The Bill also requires the Codes to set out which fields will be covered.

5.6 It was suggested that the FSRU reconvene the editorial group to assess the changes made and feedback to the main Committee. This group would act as the conduit for wider stakeholders to feed in requirements to the codes, e.g. those in policing.

Action 1: FSRU to reconvene the editorial group to assess changes made to the Codes.

6. Disclosure

6.1 The joint review of the disclosure process in the case of R v Allan had been circulated ahead of this discussion.⁴ It was reported that the Crown Prosecution Service (CPS), the police, and the College of Policing had set out a joint disclosure improvement plan. This aimed to address the extent of a police investigation and the put in place strategies that should be used when a phone is seized. Under Criminal Procedure and Investigations Act (CPIA) police were required to make 'reasonable enquiries' and so it was important it was clearly defined what this would entail for a device. A technical subgroup had been established by the CPS and the police who aimed to address these issues. It was suggested that an FSRU representative should sit on this group.

Action 2: CPS representative to provide FSRU information on CPS/ police digital subgroup

6.2 In order to develop a quality standard for this type of investigation, it would be necessary to develop an understanding of the tools used to extract data, and understand the range of data extracted using different tools. Those involved in the process needed to have an understanding of the data they were obtaining and any limitations. A subgroup of the FSR's Digital Forensics Specialist Group had been established to determine the quality standards that should be in place for open source investigations.

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

⁴ Available from: <https://www.cps.gov.uk/publication/joint-review-disclosure-process-case-r-v-allan>

6.3 It was thought that the large volume of the datasets in all cases involving digital downloads may have an impact on defence review. The number of hours requested by the defence was expected to increase.

7. NPCC update

7.1 An update was provided by a representative from the National Police Chief's Council (NPCC). In order to tackle the limitations of single tools used to extract data from mobile devices, many forces had been investigating using several complementary tools. To avoid inefficiencies in training staff to use a larger number of tools, the pool of practitioners would need to be relatively small.

7.2 Forces were slowly gaining accreditation for digital forensics, for example Thames Valley Police had just been granted accreditation for mobile phones and hard drives. Accreditation for fingerprint bureaux however, was not proceeding smoothly and many had not passed UKAS assessment. A full-time post had been created to tackle this issue and the staff member would sit on the quality managers group. The NPCC has been working closely with UKAS to create a 'buddy' scheme, whereby those forces who had already gained accreditation were sharing lessons-learned with those who had not. A step-by-step guide had been created to assist forces ensure they are ready for accreditation. The Chartered Society of Forensic Sciences (CSoFS) was planning on holding 4 accreditation events and a Crime Scene Investigation (CSI) event would be held in May on validation. The NPCC is hosting a strategic event on fire and collision investigation.

7.3 There are requirements in the Criminal Practice Directions that all experts must declare compliance with a code of practice or conduct in their discipline, the Forensic Science Regulator has determined this should be her Code of Conduct and this applies to all forensic practitioners. Guidance was now complete on declaration and some feedback had already been received. One force had been told by its staff association that it should not sign up to FSR Code of Conduct and they should only sign up to the code owned by the force. The NPCC guidance remained that any force conducting a forensic process should sign up to the FSR Code of Conduct, and that if there were any declarations of non-compliance, they would be in addition to that.

Action 3: NPCC representative to keep the Regulator informed on developments in police force uptake of the FSR Code of Practice

7.4 The NPCC quality managers group had been trying to ascertain where collision and fire investigators were turning to for support in accreditation. The Regulator would be attending a meeting of collision investigators in April.

7.5 The issue of contemporaneous note taking was ongoing and it would be important to ensure that fingerprint bureaux were meeting requirements in this area without hitting a limit of resources. Some forces had found pragmatic straightforward solutions, whereas others were yet to do so. A long-term aim of the Transforming Forensics programme would be to standardise practices across forces.

7.6 The Regulator reported that Key Forensic Services Ltd (KFS) went into administration in January and the NPCC had funded a managed run down in case a buyer could not be found. Most of the work in progress had been completed by the end of that

time. The KFS business had now been sold and would operate under the same name. UKAS worked closely with the NPCC and the administrator as part of that process and was able to offer accreditation immediately to the new entity. Some of the forensic science staff had been made redundant which raised the questions around what would happen if evidence that they had given was called into question. The lapse in indemnity insurance would need to be addressed.

8. Crime scene update

8.1 At the last meeting of the QSSG, discussions were held around scope and breakdown of accreditation activities in the crime scene area. There was general agreement that the scope of accreditation would cover CSI investigation. Two accreditation 'dry-runs' for different CSI units were planned during April and May to obtain an understanding of how policing is structured during an investigation. It was hoped from this exercise that a better understanding would be developed of how to take forward the accreditation exercise more widely after the dry-runs had been completed.

8.2 Once the accreditation exercise was started, it was expected that volume crime would be assessed first and major crime second. This was due to the less challenging scope and simple scene attendance of volume crime scenes. The assessment would look at all the processes which surround the management of the scene so it was expected that a holistic approach would be taken.

8.3 So far the responses received from forces were positive and accreditation was being taken seriously. At a recent NPCC Portfolio Board Meeting, it was agreed that a gold group would be set up to tackle accreditation of CSIs as well as collision and collision and fire investigation. This would to facilitate coordinated action across forces.

9. DNA Mixture Interpretation FSR-G-222

9.1 Members were asked for any final feedback on two post-consultation guidance documents for DNA mixture interpretation, FSR-G-222 and FSR-G-223.

9.2 A member highlighted that the terminology 'forensic units' had not been consistently applied, with some instances of 'forensic science providers' appearing in the text. It was agreed that this would be corrected and that forensic units was the preferred term going forward.

9.3 No other comments were received and the document was signed-off by the Group. It would now be passed to the Forensic Science Advisory Council for a final recommendation to the Regulator for approval.

10. Anthropology

10.1 Members were asked for any final feedback on a post-consultation version of the Code of Practice for Forensic Anthropology. No comments were received and the document was signed-off by the group. It would now be passed to the Forensic Science Advisory Council for a final recommendation to the Regulator for approval.

11. Case review pilot

11.1 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). A formal pilot study had been attempted whereby a number of organisations would go through a trial accreditation process to test the robustness of the process, whether it provided the level of assurance required in a proportionate manner, and was accreditable. Unfortunately all participants withdrew from the pilot process due to the high investment required and uncertain outcome; until the pilot had been completed the standard could not be set. The Regulator decided as an incentive, a series of 'dry-runs' would be funded by the FSRU in order to test the process. This meant that participants would go through the accreditation process without being required to make payment, but they would not gain accreditation at the end of the dry-run. UKAS had now been in contact with the original group that had expressed interest to determine if any from that group would take part on the basis of the revised terms of reference.

11.2 Another concern around standard setting in this area was legal aid rates. Alongside checking whether 17020 was the correct standard and checking proportionality, a discussion was required with the legal aid agency to determine how to recognise the standard when experts are instructed. Those who had taken account of the standard and whose services would hence be more expensive, should not lose out on tendering.

11.3 A representative of the Legal Aid Agency (LAA) reported that the Ministry of Justice (MoJ) had launched a post-implementation review of the legal aid system. An email address had been issued by the MoJ to obtain statistical evidence from expert witnesses or defence practitioners to record the impact of legal-aid cuts on their operating models. MoJ was planning to meet with relevant stakeholders to discuss the background behind the changes and what the future state of legal aid would look like.

Action 4: LAA representative to send MoJ Legal Aid email address to secretariat for circulation.

11.4 A representative of the Chartered Society for Forensic Sciences reported that it was analysing the ISO 17020 standard in terms of accreditation for small traders in the defence sector. They had also developed a generic quality management structure. Good progress had been made and all of the Standard Operating Procedures had been drafted, however only one pilot volunteer had been found to date. The accreditation process was being discussed with UKAS and it was hoped that it would be rolled out soon.

11.5 The Regulator reported that several complaints had been made that legal aid had not been paid promptly by solicitors. Although payments are not a direct forensic science quality issue which falls within the role of the Regulator, the potential risk of companies becoming insolvent due to non payment could create quality issues so a high-level view was warranted. There was a feeling in the community that the current mechanisms in place were not working for small businesses particularly, as carrying large debts would not be sustainable in a small business. The LAA informed members that they had introduced new requirements in the criminal legal aid contracts launched in April (and new civil legal aid contracts to be introduced later that year) which would require legal aid contract holders to pay instructed third parties (including expert witnesses) within 30 days of receipt of a valid invoice. The Regulator asked that this be reported in the FSR newsletter.

Action 5: LAA representative to write an update for the FSR newsletter on the changes to criminal and civil legal aid contracts

12. Fire investigation pilot

12.1 UKAS had issued a notice asking for interested parties to participate in a fire investigation accreditation pilot. A good response was received and a meeting was held for interested parties, but there was a gap between the number of interested parties and those that would likely be ready for accreditation. Hampshire was leading on behalf of fire and rescues services in this area.

12.2 Discussions were taking place in the Home Office around commissioning of fire investigation. Currently most fire and rescue services provided fire investigation services free of charge to policing. This was not required by statute, but was common practice. It Concerns had been voiced by some fire investigators that if accreditation was required, fire and rescue services may not offer this service anymore. In addition, commercial providers had complained that they could not compete with a service offered free of charge. The Regulator would make representations to the Crime, Policing and Fire Group in the Home Office that there was a risk to effective supply of good quality fire service to police by 2020.

13. AOB

13.1 The Regulator reported in a judgement which had been brought to her attention in relation to fixing of LIBOR rates, where the court had made some interesting comments regarding expert witnesses. A criticism had been made about the calibre of experts used and also of those instructing the expert. The Regulator would put this into the next FSR newsletter. It would also be considered whether a footnote should be inserted into the Codes on expert witnesses.

14. Date of the next meeting

14.1 The dates of the next meeting were still to be finalised, but the suggested dates were Tuesday 17th July and Tuesday 13th November.

Annex A

Representatives present from:

- Forensic Science Regulator (Chair)
- Forensic Science Regulation Unit
- BSI Group
- The Chartered Society of Forensic Sciences
- College of Policing
- Crown Prosecution Service
- Expert Witness Institute
- Independent
- Forensic Science Northern Ireland
- HO Science Secretariat
- Legal Aid Agency
- National Police Chief's Council
- Orchid Cellmark Ltd
- Scottish Police Authority Forensic Services
- United Kingdom Accreditation Service