



Forensic Science Advisory Council (FSAC)

**Minutes of the meeting held on 04 September 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 25 April 2017 had been approved by members prior to the meeting and were published on the GOV.UK website¹.

2.2 *Action 3: The 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.* This action was outstanding and a meeting with the Director of Public Prosecutions would be taking place shortly where this issue would be raised.

2.3 *Action 4: The CPS representative to share a copy of CPS expert guidance booklet with the Regulator.* This action was outstanding as the guidance had not been cleared yet.

2.4 *Action 5: The Association of Forensic Science Providers (AFSP) representative to report to the Regulator regarding their forensic science provider company policy on indemnity insurance for ex-members of staff.* Private sector members of AFSP had been consulted, all of whom had professional indemnity insurance in place which would apply if they left the business. This would provide cover to a forensic scientist to give evidence in court, even if they had been made redundant. It was less clear what the situation would be if a company went out of business and insurance premiums were no longer being paid. The Regulator had referred this issue to Home Office policy-makers who were considering it as part of the ongoing forensic science review.

2.5 All other actions were complete.

3. Current issues for update and discussion

a. House of Lords Science & Technology Committee Inquiry into Forensic Science

3.1 An inquiry into forensic science had been launched by the House of Lords Science and Technology Committee. The Regulator would be providing a written response and

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

anticipated that she would also be required to give oral evidence. A member asked about the timing of the inquiry with respect to the ongoing Home Office review on forensic science. The Home Office was in liaison with the clerk of the House of Lords Science and Technology Committee.

3.2 It was unclear whether the House of Lords Inquiry covered forensic pathology. It was considered that the British Association of Forensic Medicine (BAFM) may wish to provide a submission with respect of the availability of toxicology testing services.

b. Home Office/NPCC/APCC Review of Forensic Science Provision

3.3 This item was presented by a representative from the Home Office Data and Identity Directorate. The Home Office was jointly reviewing forensics provision with the National Police Chiefs' Council (NPCC) and the Association of Police and Crime Commissioners (APCC) to address the concerns of policing, the Regulator and CJS partners. The aim of the review was to identify what needed to change to maintain stakeholders' confidence in the long-term provision of forensic science to the CJS. It was initially expected that the review would be published in Autumn 2018 but this could change given the current House of Lords Inquiry. It was hoped that implementation of the outcomes from the review would improve market stability and resilience in the short term, and engender a strong ethos of quality and continuous improvement in the medium term.

3.4 Members raised issues concerning a need for improved market management and oversight. A strategic vision would be required to manage provision of forensic science, which was regarded as a specialist capability fundamentally different from commodity-based services. Alongside growing demand and investment in digital forensics, steady investment was required in other areas of forensic science. It was felt that the market had been intentionally shrunk, meaning it was not attractive to be part of the market. A member shared that a value based system for forensics was being explored in Northern Ireland in collaboration with the University of Ulster. A number of members felt that the summary of the review presented was insufficient to address the fundamental issues facing forensic science.

3.5 The NPCC representative welcomed the review and agreed that a strategic and scientific approach is required in terms of the value added to per specific forensic discipline. Issues continued to exist around public confidence in the Criminal Justice System (CJS) despite improved forensic provision compared to the past. It was felt that it could be worth capturing opinions expressed in the media, for example Private Eye had published several articles on forensic science provision and that a public debate on forensic science provision may be required.

3.6 The CPS representative felt that there was an imbalance between access to services of the prosecution and police to services as compared to the defence. It was felt that the report appeared biased to the prosecution service but that it would be necessary to maintain a focus on justice across the entirety of the CJS.

c. Home Office Biometrics Strategy & Law Enforcement Facial Images and New Biometric Modalities Oversight and Advisory Board

3.7 The Regulator informed members that the Home Office Biometrics Strategy had been published in July 2018 and part of the Strategy was to establish the Home Office Law Enforcement Facial Images and New Biometric Modalities Oversight and Advisory Board (the 'Board'). The Regulator had been invited to sit on the Board along with the Biometrics Commissioner (BC), Security Camera Commissioner (SCC) and Information Commissioner (IC), all of whom shared the concern that the Strategy did not provide for any legislative changes to create a more robust legislative framework for biometrics in line with the Protection of Freedoms Act 2012 (PoFA) for DNA, but agreed to participate in the Board for a trial period.

3.8 The Regulator and the Commissioners had been asked to put together some principles for proper and proportionate use of biometrics, including facial comparison. The Regulator was keen that validation of new methods was carried out according to the Forensic Science Regulator Codes of Practice and Conduct (the Codes) prior to live deployments of the method. To date, pilots of live facial recognition (LFR) had been carried out without a controlled validation study. It was felt that the technical and scientific performance should be understood in a controlled study prior to deployment and that this should be reported scientifically.

3.9 In Scotland, use of LFR was being considered as part of a legal framework for all biometrics in a consultation exercise being directed by an Independent Advisory Group.

3.10 A risk was highlighted by the Chartered Society of Forensic Sciences (CSoFS) representative that the empirical side of comparing facial images could be neglected. As the resolution of images improved it was likely that the scientific basis for comparison would be more reliable.

d. Annual Report outline

3.11 The Regulator was putting together thoughts on items to be covered in this year's annual report and was considering aiming to summarise what level of assurance there is in each of the various scientific disciplines. It was felt that it would be interesting to use this approach to look at the potential risks in terms of quality standards and assurance around different types of evidence in each discipline. In addition, the Regulator would make comment on high level issues presenting a risk to the quality of forensic science.

3.12 It was asked whether comment could be made on the developing Transforming Forensics (TF) programme.

3.13 It was asked whether the Regulator would cover the issue of the transition of the EU framework legislation and the impact on UK provision of services, i.e. fingerprint bureaux. This would be addressed.

3.14 The impact of Brexit on the forensic science sector was raised as an issue that may need to be considered in the report. The Regulator asked members for their opinions on the potential impacts of Brexit. Supply-chain disruption was felt to be an issue for consumables. Continuation of participation in EU funding schemes for research was also

an issue. Concerns had been raised around capital goods and their service contracts post-Brexit, e.g. spectrometers, if they had been manufactured outside of the UK.

3.15 The report was anticipated for completion in December 2018 and members were asked to provide any additional thoughts to the Regulator ASAP.

Action 1: FSAC members to send ideas for items to be included in the annual report to the Regulator.

e. Report Content – Fair Picture of Expertise

3.16 Requirements existed in the Criminal Procedure Rules (CrimPR) and Practice Directions for experts to give a summary of their expertise and training. The Regulator had observed that some expert witnesses were not being balanced in their self-reporting and were leaving out key pieces of information, such as previous judicial criticism. The Regulator had sent a letter to the Secretary of the Criminal Rules Procedure Committee outlining these concerns. Members echoed the Regulator's concerns and felt that it was important to have clear rules on what information individuals must report as a matter of course, as negative reports were easily lost between courts in different cities. The Regulator would keep the FSAC updated on this issue.

f. Judicial Criticism

3.17 The Regulator informed members that she had sent a letter to the Lord Chief Justice of England and Wales outlining her concerns around the lack of a reporting mechanism to the Regulator when concerns were raised about expert witnesses by the judiciary. It was discovered that there had been significant criticism of work carried out in the family court by a laboratory that had been implicated in alleged malpractice prior to the uncovering of data manipulation at Radox Testing Services (RTS) in January 2017. If criticism of experts took place in lower courts then the Regulator would not be informed as a matter of course. The Regulator was awaiting a response from the Lord Chief Justice. The CPS representative informed members that a scheme was intended to be set up around reporting of advocates, but this had been put on hold. It was thought that a scheme could be devised whereby under a set range of circumstances reporting to the Regulator would be required. The Regulator would inform the FSAC when she had received a response.

g. Defence Review – minimum requirements

3.18 An issue had been raised by the CSFS representative to the Regulator whereby it was felt that defence experts who used to physically inspect items in a case they had been instructed on were moving to viewing evidence on paper only. Although uncertain for the reason(s) for this, it was thought that this could be down to expert competency, or could result in an impact on the defense expert's competency. The Regulator felt that this was very case-specific and that not all cases required inspection of items, with which members agreed. The Regulator would feed-back to the CSFS representative that the group agreed

that whether or not items needed to be examined could only be determined on a case-by-case basis.²

4. Proposed changes to the codes in relation to issues at Randox Testing Services (RTS)

4.1 The Regulator was considering whether there needed to be any changes made to the Codes in light of the data manipulation which was uncovered at RTS in January 2017. The first issue related to the definition of integrity.

a. Integrity paper

4.2 The Codes required individuals to act with integrity and yet did not define integrity. It was proposed that a definition of personal integrity and integrity of data and results were inserted into the Codes. A member felt that the integrity of organisation should also be covered, different organisations could each have a different ethos. An example where an organisation had upfront values was the Civil Service Nolan Principles.³ This would set the culture of the organisation and could be incorporated into inductions.

4.3 UKAS had quite a clear picture of integrity with respect to assessment and this tended to be illustrated by absence rather than presence. It was felt by the UKAS representative that it was unclear whether a definition would help and may actually confuse the matter. It was thought that a definition would not pin integrity down as an objective measure and that UKAS tended to focus more training and awareness, which were regarded as objective.

4.4 Generally, FSAC members were supportive of developing definitions of integrity, but did not inadvertently want to cause problems for assessors. The Forensic Science Regulation Unit (FSRU) would draft wording around organisational integrity and share this with members. The definitions would then go to the Regulator's Quality Standards Specialist Group (QSSG) for their consideration, who were assessing the practical aspects of an integrity definition.

Action 2: FSRU to draft wording on organisational integrity and share with the FSAC.

b. Audit paper

4.5 Following the events at RTS, the Regulator asked all forensic units with significant forensic toxicology provision to undertake a data integrity audit to assess the risk of similar events elsewhere. This exercise had proved very helpful, and the Regulator wished to ask FSAC members for their views regarding the possibility of making the Codes more explicit around data integrity through internal audits. In particular, it was asked whether the Codes

² Note: after the meeting the CSFS representative clarified that their concern was somewhat wider than was discussed at the meeting and also extended to the Legal Aid Agency (in their opinion awarding work in preference to those offering a paper review. In addition, those experts undertaking paper reviews were questioning the need for accreditation given they are not examining exhibits for themselves. The concern being, in combination, this does not offer an equal, robust challenge for the criminal defence services.

³ Available from: <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

should require an annual data integrity audit and, if it should, what that data integrity audit would look like.

4.6 A member asked what types of data would be covered. This would depend on the type of audit that was being carried out that year as part of a rolling-programme of audits. It would be important to reflect this in the wording of the Codes to ensure that it was not perceived that all data should be audited each year.

Action 3: FSAC members to send comments the Regulator by the end of September regarding whether the Codes should require an annual data integrity audit

c. Integrity training

4.7 The obligation to act with integrity is a common feature of most codes of conduct for professionals. The Regulator's Codes required individuals to adhere to the Code of Conduct in respect of their independence, impartiality and integrity. In recent years a number of incidents had occurred where individuals working within forensic units had acted, or appear to have acted, in a manner incompatible with the normal interpretation of integrity. The Regulator asked FSAC members whether they thought the Codes should mandate forensic units to provide suitable training to staff about integrity, and whether guidance should be developed to facilitate this.

4.8 Members agreed that specific training on integrity would be helpful and that it would be very easy to incorporate this as part of a company's induction process. In the medical field, these issues formed part of training from the outset.

4.9 The Regulator had provided a list of examples where a lack of integrity had been demonstrated within FSPs in recent years. Members felt that this could be expanded to cover inappropriate use of social media and threats to impartiality, e.g. processing a sample from family member.

d. Competence paper

4.3 The Regulator asked members whether the Codes definition of competence⁴ should be expanded to ensure it explicitly included issues beyond technical ability (e.g. behaviour).

4.4 A member felt that differences existed between scientific competence and behavioural competence. It would be possible for an individual to be scientifically competent but not behave in a manner befitting of their role. The UKAS representative felt that from an assessment perspective, it would be wrong to think that behaviours wouldn't be taken into account and that if an individual did not have correct behaviours, they could not be trusted to do work and would thus not be deemed as competent.

4.5 The Regulator would take these comments on board when further developing the definition of competence.

⁴ Competence was defined in the Codes as: "The skills, knowledge and understanding required to carry out a role, evidenced consistently over time through performance in the workplace".

5. Documents for discussion and/or approval

a. Defence access guidance

5.1 A draft appendix to the FSR's Codes concerning defence access was presented. The original draft of the Codes contained a large section on defence access, which was pared down for publication, but the remaining material was intended to be issued as an appendix later. FSAC members were invited to comment on the draft appendix.

5.2 A different process existed in Scotland for the way experts instructed by the defence could get access to information and material in the possession of the prosecution. The Scottish Police Authority (SPA) representative wished to clarify whether this was compatible with the current guidance presented before making further comment. It was noted that the paper did not cover Scotland but the SPA wanted to check as it would wish to adhere to the spirit of the Regulator's publications.

5.3 The CPS representative was supportive of the guidance and felt it was useful as problems existed in the system around how disclosure was to be made, who was in charge of which document and how the procedure should be applied.

Action 4: Members to provide the FSRU with any final comments on the guidance within one month, prior to its publication

b. Expert Report guidance

5.4 The Regulator's expert guidance set out the legal requirements for expert reports and requirements imposed by certain prosecuting authorities. It also provided advice in relation to the application of those requirements and more generally. The guidance had been updated to address recent changes to the Criminal Procedure Rules (CrimPR). One of the requirements of the CrimPR (19.4e) required all assistants who worked on a case to be listed along with their qualifications. This caused several issues, especially in DNA analysis work where many different teams would be working on a case; at times, up to 60 different individuals.

5.5 The CrimPR Committee had changed the Rules to make clear that the only people that should be listed are those who have provided representations of fact and opinion. The document was amended to reflect this. A separate document was being developed with the assistance of forensic science providers and CPS that would include more detail about facts and opinions within statements.

5.6 The document addressed criminal justice statements produced by expert witnesses for a justice system, for example the CJS, which were also used for another system, for example the family court, without the consent or knowledge of the expert witness. The guidance document had been updated to include an optional declaration, which stated the following: "This report must not be used outside of the criminal justice system without prior agreement".

5.7 The FSAC committee were happy with the documents presented and agreed to sign them off.

c. Legal Obligations

5.8 Guidance from the Regulator had been published which provided details of the obligations placed on expert witnesses in the CJS in England and Wales.⁵

d. Lessons learned draft publication

5.9 The Regulator wanted a formal method to disseminate lessons learned from investigations into quality failures. A public-facing document which would be made available on the FSR website was in development.

5.10 Occasionally quality failures prompted reports on specific events and minor revisions to the Codes, however, often the issue was due to ineffective processes and procedure rather than the headline quality requirement. In these cases, a narrative approach was considered to be more appropriate in disseminating lessons learned. The Regulator asked FSAC members to consider the appropriateness of producing a regular standalone publication featuring examples and lessons learned, and the format and approach that might be used.

5.11 Members were supportive of the approach, in particular the use of case examples which made the document easy to follow, (provided that the information included was not sufficient so that the company and/ or individuals could not be identified).

5.12 Other potential means of circulation, such as via publications from the CSoFS or CPS were discussed. Members agreed to share the lessons learned draft document amongst their networks to obtain feedback which would be shared with the FSRU.

Action 5: Members to share the lessons learned document within their networks and provide comments and suggestions to the FSRU on the format and distribution strategy

e. Image Enhancement and Image Comparison: Statement of Principles

5.13 The forensic image comparison community had struggled to agree how it should articulate the strength of evidence resulting from image enhancement and comparison, as a function of both image quality and the features in common in a comparison. The CSoFS had adopted a significant section of the community as its Forensic Image Analysis Division (FIAD) and had facilitated discussion of the issues. A number of referrals to the Regulator had concerned image comparison. The Regulator and the CSoFS shared concerns that image analysis experts were, on occasion, failing to stay within the bounds of their expertise and were failing to communicate effectively to the courts the limitations of work carried out. A difference existed between image enhancement and image comparison so those who enhance images could not necessarily provide expert opinions on comparison.

5.14 A paper was presented to members outlining relevant case law and an overarching statement of general principles which was proposed to apply when presenting expert opinion in relation to image enhancement and/or image comparison. Members were asked to comment of the principles.

⁵ Available from: <https://www.gov.uk/government/publications/legal-obligations-issue-6>

5.15 Members agreed that there was a need for a clear set of principles and that these would be very helpful to help those involved in the CJS understand the boundaries between enhancement and comparison. Unless the witness was a comparison expert, there existed the possibility for them to overlook exclusionary features.

5.16 If FSAC members were supportive of the principles, then the Regulator would present them to stakeholders within policing, the CPS and the Home Office to try obtain buy-in and present this as an agreed position. Members were asked to further reflect on the principles and send comments to the FSRU for consideration.

Action 5: Members to send general comments to the Regulator on the Image Enhancement and Image Comparison: Statement of Principles by the end of September

Action 6: Judiciary and CPS representatives to provide feedback on the interpretation of case law presented in the Image Enhancement and Image Comparison Statement of Principles

6. Medical Forensics

6.1 An update was provided on the Regulator's Medical Forensics Specialist Group (MFSG). A new chair of this group had been appointed and would be taking up the position on 05 September 2018.

6.2 In the first instance the scope of the group would cover examinations in sexual assault referral centres (SARCs), including appropriate storage and transportation of samples, and the information included in statements. Custody medical forensics would be covered in a second stage. There was a significant set of challenges to be considered for custodial settings and the responsibilities in policing did not sit within the forensic science portfolio.

6.3 A major contamination incident had been reported to the Regulator, after which anti-contamination guidance had been published in 2016. The guidance which stated that different examiners should be used except for in very extreme circumstances and remote locations.

6.4 A draft FSR standard for SARCs would be considered by MFSG at their meeting the following day. It was likely that some SARCS would need to be entirely rebuilt to comply with these standards, so dates for compliance with the standard would need to be decided. Members felt it would be important to ensure that SARCs were moving as quickly as possible to reach the standard as this was a very high impact area. One possible compromise would be that a staged approach for compliance could be used.

6.5 As soon as the SARC standard had been agreed, the Regulator would begin work on a standard for custody suites, which was likely to be more complex. It would be important to flag the issues with custody suites early to enable the changes required to be anticipated.

7. Evaluative Interpretation

a. Interpretation Standards

7.1 The need for standards for the interpretation of evidence had been discussed at the FSAC previously. A sensible approach to interpretation had been adopted by the Association of Forensic Science Providers (AFSP), but this approach appeared to have been criticised by the Court of Appeal (Criminal Division) in the case of *R v T* [2010] EWCA Crim 2439. A meeting with stakeholders and experts had been held to discuss how the AFSP paper could be developed into a standard which addressed the legal position. Following the meeting a draft standard had been prepared. Once this was finalised, it would be shared with that group for comment, after which it would go out for a limited consultation, before being presented to the FSAC.

7.2 The Regulator felt that development of a robust evaluative interpretation standard would be important to close an existing gap in the standards framework of interpreting in a structured way the findings from forensic analysis and how this is communicated in the courts in a way that reflects the amount and relevance of data used for interpretation.

b. Drug Driving Interpretation

7.3 The interpretation of results of the analysis of blood for drugs in relation to the offence under s5A Road Traffic Act 1988 had previously been discussed at the FSAC. Following those discussions, a consultation paper was provided to several organisations as part of a focussed consultations. The responses were now being analysed to determine whether there would be any substantial issues with the approach being proposed.

8. Communications strategy

8.1 The Regulator and the FSRU were running a project with the objective to ensure that the level, frequency and content of communication from the FSRU/FSR was fit for purpose, and was as beneficial to the forensic science community as possible. The initial outcome was a new publication plan and a refresh of the Newsletter type documents that would be published. Members were asked for feedback on the strategic communications plan.

8.2 Issues that members felt could be highlighted was the importance of quality and why was good quality cheaper overall, rather than merely presenting an administrative burden. In terms of how the communication was disseminated, it was suggested that some universities may be interested in engaging with the content from a continuing professional development perspective.

9. NPCC progress on compliance

9.1 With regards to accreditation, overall compliance to the Codes was at 48%. 19% of digital forensic units had some form of accreditation. Within fingerprint bureaux accreditation compliance was only 11% in England and Wales; three fingerprint bureaux had currently received accreditation and four more had been recommended. Several more bureaux had second assessment visits arranged, from which it was hoped accreditation would be recommended.

9.2 An update was provided on issues relating to DNA contamination. A questionnaire had been circulated to all force leads so the NPCC could get a picture of how serious the situation was regarding contamination. The responses would be analysed by a working party, including an NPCC quality manager, the Forensic Information Databases Unit and the Home Office to work through some of the challenges and issues presented. This would be summarised to the FSAC at a future meeting.

10. Case handling issue at MPS

10.1 Cases had been allocated to a scientist within the MPS but some of the cases were not 'visible' to the management on any of the systems used to track work. It appeared that this was due to the conduct of the scientist involved. Work in these 'invisible' cases was not progressed in an effective and timely manner and management were unable to identify the problem and intervene at an earlier opportunity. The fact the work had not been progressed had potential implications for the CJS. The current position is that approximately 30 cases are affected. Other forces have been notified of the issue.

11. AOB

11.1 Martin Evison was attending his final meeting as the Chartered Society President. He was thanked for his contributions.

Annex A

Attendance list:

- Gill Tully – Forensic Science Regulator (Chair)
- Jeff Adams – Forensic Science Regulation Unit
- Stan Brown – Forensic Science Northern Ireland
- Penny Carmichael – Home Office Science Secretariat
- Martin Evison – The Chartered Society of Forensic Sciences
- Adrian Foster – Crown Prosecution Service
- Jamie Grieve – British Association of Forensic Medicine
- David Lewis – NPCC Forensic Science Portfolio
- Tom Nelson – Scottish Police Authority
- Mark Pearse – Association of Forensic Science Providers
- Lorraine Turner – UK Accreditation Service
- Mark Wall – Judiciary
- Graeme Willmott – Forensic Science Regulation Unit

Apologies received from:

- Abigail Bright - Criminal Bar Association
- Anya Hunt - The Chartered Society of Forensic Sciences
- Mark Lucraft - Chief Coroner
- Andrew Rennison - Criminal Cases Review Commission
- Roger Robson - The Chartered Society of Forensic Sciences
- Karen Smith - NPCC National Quality Managers Lead
- Derek Winter - Coroners' Society of England and Wales