

Newsletter

Message from the Forensic Science Regulator

Forensic science has had a turbulent couple of years and the position has not yet improved substantively. However, we have professional, skilled and dedicated forensic scientists and as Regulator, I will continue to support their efforts to provide a high-quality, independent and impartial source of expertise to the criminal justice system.

Before the Government had responded to the last House of Commons Science and Technology Select Committee's report into forensic science and biometrics, the House of Lords Science and Technology Select Committee's inquiry into forensic science began to take evidence. In parallel, the Home Office, National Police Chiefs' Council and Association of Police and Crime Commissioners are conducting a review into forensic science provision. In the meantime, on the ground, the vast majority of forensic science practitioners are doing their utmost to provide a good service, which is timely and of the appropriate quality.

However, as I said in my *Annual Report* last year (www.gov.uk/government/publications/forensic-science-regulator-annual-report-2017), forensic science practitioners are poorly supported by the system in which they are working. It is my view that there is significant under-investment in both commercial and police provision of forensic science and in defence review of forensic science. Alongside and related to critical underfunding is the issue of lack of compliance with regulatory and legal frameworks:

- digital forensics still lags far behind the timescale for accreditation;
- the majority of the fingerprint comparison bureaux failed to gain accreditation by October 2018; and
- forensic scientists are still being called to court to give evidence on the basis of interim or abbreviated reports that do not comply with the Criminal Procedure Rules, yet this lack of compliance is not being challenged by the prosecution, defence or judges.

It would be easy to lose confidence, but my message is that I believe we have reached a tipping point where there will be change for the better. Already I am seeing quality cultures maturing in organisations new to quality management, with errors and issues being used as opportunities to improve rather than being swept under the carpet or addressed punitively. There has been some visible progress, but some organisations are yet to implement effective quality management systems in all their forensic science disciplines so there is still much more to do.



Contents

Page 1 – Message from the Forensic Science Regulator

Page 2 – Communication Plan

Page 3 – House of Lord's Science and Technology Select Committee's Forensic Science Inquiry

Page 3 – What Standards are Required

Page 4 – Referrals About Quality

Page 4 – Whistle-blowing

Page 5 – Integrity

Page 5 – Data/Result Integrity Audit

Page 5 – Cell Site Analysis

Page 6 – FSR-P-300

Page 6 – FSR publications

Page 6 – Changes to FSR Email Addresses

Page 7 – Relevant Events

Page 7 – GDPR and the FSR

Communication Plan

The Forensic Science Regulator (FSR) has reviewed ways of communicating with the forensic science community to ensure that the level, frequency and content of FSR communications are fit for purpose and as beneficial as possible. Below is the communication timetable and a description of the publications.

FSR Newsletter: General communication from the Regulator.

Lessons Learnt: This is a new publication and will contain helpful information gleaned from various quality investigations. All articles will be anonymised and will not contain case-specific details. The hope is that by sharing outcomes and improvement actions this will help to prevent future issues and spread good practice.

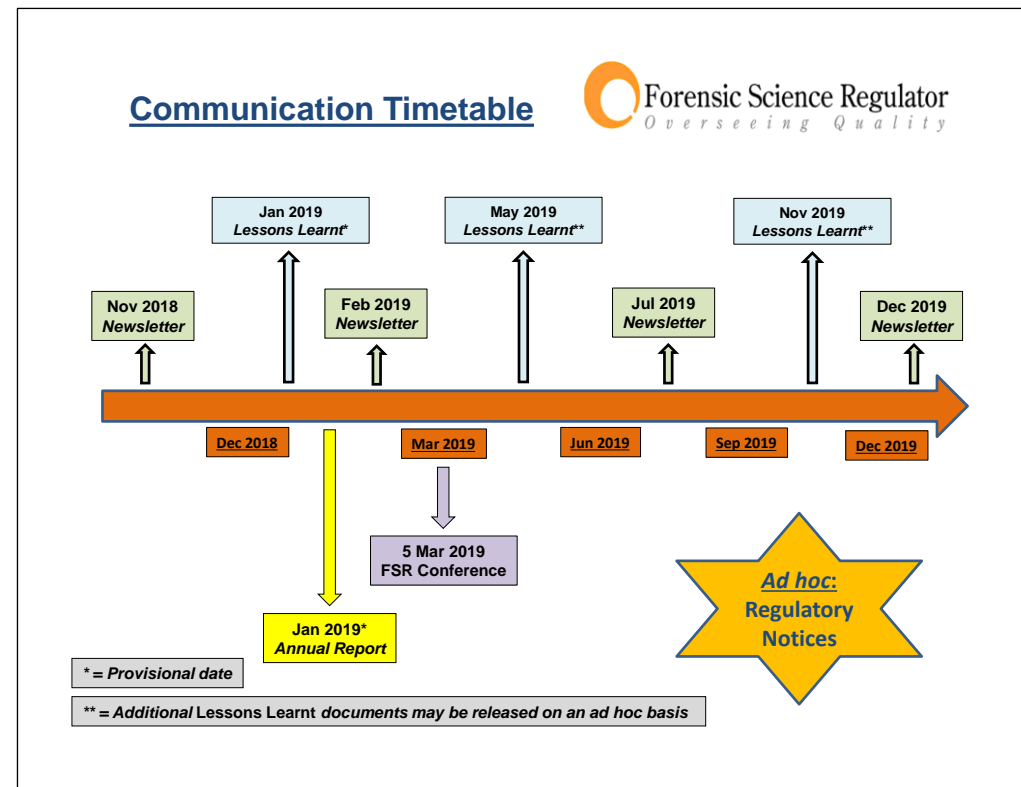
Regulatory Notice: This new publication will be used to announce planned changes to documents between issues, and set out decisions and clarifications.

FSR conference: As in previous years, this is an invite-only event led by the Regulator. It will be held on 5 March 2019 at Villa Park, Birmingham, UK.

Annual Report: Each year the Regulator will continue to release a report on risks and progress in relation to forensic science quality.

What do you think?

- What messages/topics are not being understood?
- What other communication avenues are needed?
- How could the Regulator improve the feedback loop with the forensic science community to hear what is failing and why, what has been improved and what needs to be done?



House of Lord's Science and Technology Select Committee's Forensic Science Inquiry

Written and verbal evidence is available at the following link: www.parliament.uk/business/committees/committees-a-z/lords-select/science-and-technology-committee/inquiries/parliament-2017/forensic-science/forensic-science-publications/

What Standards Are Required?

It is clear from reading the written submissions to the House of Lords inquiry into forensic science that a number of misconceptions persist regarding what standards are required. The standards required are set out in the *Codes of Practice and Conduct for Forensic Science Providers and Practitioners* (the Codes) (www.gov.uk/government/publications/forensic-science-providers-codes-of-practice-and-conduct-2017) and in the Statement of Standards and Accreditation Requirements.

Although accreditation to international standards and the Codes is required in the majority of disciplines, there are exceptions, which include the following.

- Forensic pathology, for which a separate code of practice and performance standards apply (www.gov.uk/government/publications/standards-for-forensic-pathology-in-england-wales-and-northern-ireland)
- Forensic anthropology, for which a separate code of practice applies (www.gov.uk/government/publications/forensic-anthropology-code-of-practice)
- Forensic archaeology, for which a separate standard and guidance apply (www.archaeologists.net/sites/default/files/CIfAS&GForensics_2.pdf)
- Forensic gait analysis, for which a separate code of practice is in development.
- Experts who are infrequently involved in the provision of expert evidence in the criminal justice system (CJS). These should adhere to the Codes and be directed by those instructing them. Section 2.1.3 of the Codes details several obligations and admissibility requirements.
- As yet, no standard has been set for case review, which is where no *de novo* work is carried out but an expert inspects the work previously carried out by others. A pilot study to determine whether ISO 17020 would be appropriate is in progress. There are also discussions with the Legal Aid Agency about how the adoption of a standard could be facilitated, rather than disincentivised by the legal aid system.
- Automatic number plate recognition, manual classification of indecent images of children, crime scene photography, eFit, recovery from a working CCTV system, CCTV replay for viewing with no further analysis are excluded from current requirements for accreditation. However, the Regulator has been asked by image analysis experts to review what standards should apply to recovery from CCTV systems.
- The use of off-the-shelf tools and methods by frontline non-practitioners to recover data for factual reports is permitted, but the organisation must hold accreditation for at least one deployment. Further deployments of the method under central control may be permitted outside the scope of accreditation, provided that the method chosen can be demonstrated to have adequate configuration control (e.g. locked down data recovery methods and control) and that staff are competent.
- Standards for network capture and analysis and for capture and/or use of social media and open source data have not yet been set but are under consideration by expert sub-groups of the Digital Forensics Specialist Group.

There is, additionally, guidance regarding methods that are used infrequently in the CJS, beginning at section 20.2.45 of the Codes.

Referrals About Quality

The Regulator requires that all forensic units have policies and procedures to deal effectively with complaints and non-conforming test results. These should include the requirement to inform the Regulator at the earliest opportunity about any complaint if it has significantly disaffected the customer; for instance if it could attract adverse public interest or lead to a miscarriage of justice. These should also include unexpected performance in proficiency testing/inter-laboratory comparison, e.g. if a technical method is found to be producing erroneous results or staff are failing to follow procedures or norms of integrity that impact on quality. A full list is provided in the Codes. Several disciplines have only recently implemented formal quality management systems, so the reporting requirement may not be as ingrained as it ought to be. For example, several self-referrals received this year have been because of the United Kingdom Accreditation Service requiring escalation. However, in general, reporting is improving.

Even when a forensic unit believes their error and complaint investigation is running properly, there is always a possibility that an individual in the organisation has concerns about practices but does not believe they can be heard. Such individuals ought to try raising the issues directly with their company management using the internal whistle-blowing procedure. Failing that, individuals may wish to refer issues to the Regulator in confidence, or even anonymously. Anonymous reporting is not ideal, but if this is the only way that the Regulator is likely to be alerted to potential serious failings in the criminal justice system that fall within her remit, then provided sufficient detail is available the Regulator will respond appropriately. (See 'Whistle-blowing' opposite.)

Whistle-blowing/Anonymous Reporting

Individuals with a concern about quality ought to try raising the issue directly with their company management using the internal whistle-blowing procedure that should be in place. If this is ineffective, or not practical, individuals may wish to refer issues to the Regulator in confidence, or even anonymously. If information is given anonymously, for instance by letter or phone, sufficient information must be included as there is no way to seek clarification. Alternatively, complainants could set up an anonymous web-based email address (e.g. Hotmail), which would allow for further clarification. The Regulator is also commissioning an anonymous reporting telephone and web service for use in the future.

The advice the Regulator is currently giving to individuals wishing to remain anonymous is that they also consider highlighting in their correspondence:

- any details that might, if not redacted, identify them (membership of a team, project, etc.);
- if they are the only individual, or even one of a few individuals, who would be aware of these issues; and
- if they have raised this issue with management before, such that the management might recognise who is raising the concern.

They should also consider:

- whether raising the issues directly with their company management using their internal whistle-blowing procedure (and requesting that the company makes the Regulator aware of concerns) might be appropriate;
- if they are using company systems to contact the Regulator, system administrators may have access to the communication (including web-based mail) and any related internet searches; and
- if the matter is raised by the Regulator, is it likely that someone in their organisation may ask them about it?

The overall message is that the Regulator wants to hear genuine concerns from people with first-hand knowledge about forensic science quality failings in the criminal justice system.

Integrity

The obligation to act with integrity is a common feature of most codes of conduct for professionals. The Forensic Science Regulator's (FSR's) Codes require individuals to adhere to the code of conduct in respect of their independence, impartiality and integrity.

The Codes do not currently define integrity. However, most practitioners should recognise deviation from the Codes should they encounter it, and know what to do should they believe that there is such an issue in their organisations. The Regulator is considering including definitions of personal integrity, data/results integrity and organisational integrity in the next version of the Codes. The working definition is:

“The quality of being honest and having strong moral principles. This is a concept that is elusive to define fully in a vacuum, but deviation from it should be readily recognisable by those with specialist knowledge and/or experience in a particular market. Lack of integrity and dishonesty are not entirely synonymous; a person may lack integrity even though not established as being dishonest. This may be recklessness as to the truth of statements made to others who may rely on them, or wilful disregard/omission of information contradicting the truth of such statements.”

All individuals working in forensic science should understand the importance of acting with integrity, whether personally reporting casework, ensuring the continuity of the results or testing the underpinning validity of the methods. All staff should know how to suggest improvements to procedures, know the difference between a short cut and the intentional flexibility included in the method, and how exercising that flexibility is to be recorded in notes. Instances of staff failing to follow procedures or norms of integrity that impact on quality should be referred to the Regulator.

Data/Result Integrity Audit

The forensic unit is required to have procedures to protect electronic records from loss, corruption (actual or suspected) and unauthorised access/amendment. Protecting critical data is something that ought to be integral to the method employed, including ensuring data integrity upon entry/transfer into or within the method.

In order to be compliant with the Codes, forensic units are required to have an annual audit programme that covers all aspects of the management system including, but not limited to, information security. A risk-based approach is advocated to determine the frequency of specific aspects of the management system in the audit schedule. However, all methods are required to be audited at least once every four-year cycle. The next version of the Codes will be more explicit that checking data integrity is included in audits.

Cell Site Analysis

In June 2016 the United Kingdom Accreditation Service (UKAS) invited expressions of interest from UK-based organisations that undertake cell site analysis. Several organisations signed up but much of the work stalled as validation studies proved more challenging than the participants had anticipated. Since then, an improved route to gain access to ground truth data for these validation studies has been achieved.

One forensic science provider that was not ready to join the initial pilot in 2016, reports that should the pilot be opened again, they would be interested in participating. Before asking UKAS to reopen and/or re-launch the pilot, the Regulator is inviting initial expressions of interest from all organisations interested in participating, to be sent to: FSRConsultation2@homeoffice.gov.uk by December 8, 2018, to gauge the best approach forward.

FSR-P-300

Some years ago, the use of casework material for the purpose of validation caused concern within the Crown Prosecution Service (CPS). This was because all results on that casework were required to be disclosed, even after the case was complete. The level of concern was such that the then Director of Public Prosecutions determined that such use posed an unacceptable risk to the criminal justice system and should not occur.

The Regulator worked with the CPS and the police to establish a framework in which the use of casework material for validation would be considered acceptable. This framework is set out in protocol FSR-P-300. The protocol can be found via the following link: www.gov.uk/government/publications/protocol-using-casework-material-for-validation-purposes. There are now three organisations approved to operate under the Protocol. These comprise two commercial forensic providers and one police in-house forensic unit. Any enquiries about the Protocol should be sent to: FSREnquiries@homeoffice.gov.uk

FSR Publications

New Publication

The *DNA Mixture Interpretation* guidance (FSR-G-222) and the *Software Validation for DNA Mixture Interpretation* guidance (FSR-G-223) were published in July 2018.

Issue two of the *DNA Mixture Interpretation* guidance (FSR-G-222) has just been released and updates the position for guideline 16 – the qualitative evaluation of the strength of evidence and the major/minor approach discussed in the ISFG's *DNA commission of the international society for forensic genetics: Assessing the value of forensic biological evidence – Guidelines highlighting the importance of propositions Part I: evaluation of DNA profiling comparisons given (sub) source propositions*.

FSR-G-222 DNA mixture interpretation available at: www.gov.uk/government/publications/dna-mixture-interpretation-fsr-g-222

FSR-G-223 Software Validation for DNA Mixture Interpretation available at: www.gov.uk/government/publications/software-validation-for-dna-mixture-interpretation-fsr-g-223

New Consultation

The draft medical forensics standard and associated questionnaire (FSR-C-116) for sexual assault referral centres (SARCs) have now been published for consultation. The closing date for feedback is 11:45 p.m. on 28 December, 2018. An associated draft guidance document (FSR-G-212) will be published for consultation shortly. These documents can be found via the following link:

www.gov.uk/government/publications?departments%5B%5D=forensic-science-regulator&publication_filter_option=consultations

Changes To FSR Email Addresses

The 'gsi' in FSR email addresses has been removed to fall in line with other government departments. This is part of a wider government initiative as the 'gsi' has become unnecessary. Email security has not been affected. Additional information can be found via the following link:

www.gov.uk/government/publications/changing-government-email-migrating-from-gsi/changing-government-email-migrating-from-gsi

This means that if you would like to contact the Regulator please use the following email address:

FSREnquiries@homeoffice.gov.uk

Please update your records.

Relevant Events

Forensic Science Regulator's Annual Conference

5 March, 2019

Villa Park, Birmingham, UK.

This is an invite-only event.

Forensics Europe Expo

5 to 6 March, 2019

Olympia, London, UK.

This year, the expo will be focusing on:

- the need for robust standards;
- the vital role that digital forensics is now playing in the investigation process, and the innovation that is developing in this area as a result;
- a look at the developing role of industry and academia in spearheading research and best practice that is helping to transform working practices on the frontline;
- new ways of working, and the forging of new partnerships involving the police, industry and academia that is helping to keep the 'innovation momentum' spinning.

More information can be found via the following link: www.forensicseuropeexpo.com/welcome

ICFMT 2019: 21st International Conference on Forensic Medicine and Toxicology

21 to 22 March, 2019

Prague, Czech Republic.

This conference aims to bring together leading academic scientists, researchers and research scholars to exchange and share their experiences and research results on all aspects of forensic medicine and toxicology. It also provides a premier interdisciplinary platform for researchers, practitioners and educators to present and discuss the most recent innovations, trends and concerns, as well as the practical challenges encountered and solutions adopted in the fields of forensic medicine and toxicology.

More information can be found via the following link:
<https://waset.org/conference/2019/03/prague/icfmt>

GDPR And The FSR

The General Data Protection Regulation 2016/679 (GDPR) is implemented in the UK through the Data Protection Act 2018 and came into force on 25 May, 2018. The regulation and Act set out various legal bases on which an individual's personal information can and cannot be processed, and principles on which any such processing can be carried out. It also sets out the rights of the individual data subject, including restricting any processing of their information or having it deleted.

The Regulator has published a privacy notice that describes how the personal information that she receives may be processed on her behalf by the civil servants of the Home Office who support her in fulfilling her role, these primarily being the staff of the Forensic Science Regulation Unit. This privacy notice has recently been updated and can be found at:

www.gov.uk/government/organisations/forensic-science-regulator/about/personal-information-charter

Any comments or feedback would be greatly appreciated

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