Forensic Science Regulator
Overseeing Quality

Forensic Science Advisory Council (FSAC)

Minutes of the meeting held on 11 September 2019
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 30 April 2019 were approved by the members and will be published on the GOV.UK website. Available from: www.gov.uk/government/organisations/forensic-science-regulator/about/membership#forensic-science-advisory-council

2.2 *Action 1: National Police Chiefs' Council (NPCC) representative to confirm the date of the next Senior Investigating Officer (SIO) conference with the Regulator and arrange a slot for the Regulator to present at the conference.* The representative from the NPCC had liaised with the Homicide Working Group lead to organise representation by the Regulator at the quarterly Homicide Working Group meetings.

Action 1: Regulator to confirm whether representation has been arranged

2.3 *Action 2: FSAC members to send Katherine Monnery any feedback regarding ILAC G-19 update before the second week in June.* This action is discharged.

2.4 *Action 3: Forensic Science Regulation Unit (FSRU) representative to contact Forensic Information Databases Service (FINDS) regarding including Forensic Service Provider's (FSP's) feedback in the review of the NPCC retention document.* This action is complete.

2.5 *Action 4: The Scottish Police Authority (SPA) representative to forward FSP's feedback concerning integrity to the FSRU.* The representative to check this and forward feedback.

Action 2: SPA representative to forward FSP's feedback concerning integrity to the FSRU.

2.6 *Action 5: FSRU representative to check with colleagues in the Crown Office to see if the rules are different in Scotland.* The FSRU representative has been in touch with the Crown Office and the requirements are similar, now waiting for feedback from the disclosure expert.

Action 3: FSRU representative to report back on information from Crown Office.

2.7 *Action 6: Members to send any further suggestions to the Regulator.* No further suggestions for methods to measure the impact of quality standard received, however these are still always welcome.

2.8 Action 7: *Association of Forensic Science Provider's (AFSP) representative to share their "heat map" of streamlined reports they are still receiving with the Regulator.* The representative has reached out to all FSPs to collate information for this and present at the Streamlined Forensic Reporting (SFR) group meeting on Thursday.

Action 4: AFSP representative to share the "heat map" after the SFR group meeting.

3. Current issues for update and discussion

a. Cyber Security

3.1 Following the recent cyber security breach at one of the FSPs the Regulator has considered the need to include more on cyber security in the Codes of Practice and Conduct (the Codes) to make controls and protections for data security more explicit.

3.2 The members agreed that cyber security is a quality issue and should be covered in the Codes.

3.3 The National Cyber Security Centre (NCSC) has produced a draft document that is proposed to be incorporated into the Codes. The proposed addition to the Codes is quite directive. This is because the area is complex and without specialist knowledge it may be difficult to implement the changes needed to meet the standard required.

3.4 The members agreed the directives should be implementable by medium-sized and larger FSPs and police forces, however they may present some challenges to small FSPs. Implementation of a change to the Codes will need to consider how the cyber security requirements can be implemented by smaller providers. It was noted that the Regulator did not intend to apply these standards to forensic pathologists but that there are other routes by which such requirements might be imposed on those. The NCSC document had therefore been provided to the British Association in Forensic Medicine (BAFM) for comment.

Action 5: Members to send formal comments to the Regulator on the addition of further cyber security requirements to the Codes.

Action 6: The BAFM to provide comment on the NCSC document

3.5 The representative of the AFSP asked about the accreditation of cyber security if this is added to the Codes. There could be duplication in review of work against the Codes as well as against ISO 27001 or Cyber Essentials, which FSPs may be aiming to achieve. The United Kingdom Accreditation Service (UKAS) representative advised that ISO 27001 would be certified by an organisation other than UKAS however, such an organisation may

also hold UKAS accreditation. The proposed addition to the Codes is currently being circulated around UKAS assessors for comment.

Action 7: UKAS assessors to feedback to the Regulator on the addition to the Codes on cyber security.

4. Forensic Medical Examination Standards

4.1 The Regulator informed the meeting that the practitioners are supportive of the standards and whilst there is not yet buy in from commissioners; NHS England is co-hosting upcoming workshops on the standard which should help with getting them on board. The Regulator has changed the single deadline to a timeline, to assist with making compliance achievable.

4.2 The General Medical Council (GMC) is the statutory regulator for doctors and the Care Quality Commission (CQC) has a statutory remit to inspect medical facilities. The CQC has started carrying out pilot assessments of Sexual Assault Referral Centres (SARCs), however it will only review within its remit, which is medical. The Regulator's standard aims to avoid duplication and ensure there are no gaps in terms of review of forensic science quality.

4.3 The new draft standards are agreed from a technical perspective but are awaiting the scrutiny of the Regulator's Quality Standards Specialist Group (QSSG). Comments from the members at this stage are welcomed.

4.4 The FSNI representative highlighted that the standard mentions male and female patients, however the standard should refer to facilities appropriate for the patient which may need to consider more that the biological sex of the patient. The Regulator also pointed out that there is also an issue with insufficient suitable facilities for examining female suspects.

4.5 The SPA representative informed the group that Police Scotland has carried out a review of SARCs and has support of Scottish Government. The review recommended that examinations should no longer be carried out in custody suites, will all need to be done in specialised facilities.

Action 8: SPA representative to share the findings from this review with the FSRU.

4.6 The NPCC representative supported the quality standards and would like to see standardisation of medical examination facilities.

4.7 The Crown Prosecution Service (CPS) representative asked about elimination samples and who would need to provide them, for example crisis workers and cleaners. The Regulator said that elimination samples have presented some issues in terms of searching, the Contamination Elimination Database (CED) can only be searched nationally not locally, therefore the standard includes the option to have a local database. There is a pilot at the moment using the CED for elimination samples.

4.8 The SPA representative asked about elimination samples and cold case review. The Regulator explained that there would be issues with either central or local databases

for cold case as elimination samples are destroyed after 12 months, storage for longer was not agreed to be proportionate.

4.9 The representative from Forensic Science Northern Ireland (FSNI) has specific issues with the details on how to decontaminate surfaces and the storage and making up of solutions. The Regulator responded that she would like to see sharing of validation data on cleaning methods and chemicals. There is no issue of competition and the SARCs are not labs and not set up for this validation work.

5. Pilot of accreditation for case review

5.1 A representative of the FSRU introduced the work looking into of accreditation of case review. Accreditation to ISO 17020 was concluded by UKAS to be a suitable standard for case review. However, the costs of this accreditation may be difficult for small providers, particularly if the provider carries out testing as well as review.

5.2 The UKAS representative explained that testing would routinely come under ISO17025 however the Regulator stated that in DNA cases the review is generally re-interpretation not re-testing and therefore would not be covered by ISO17025. In terms of case review this would fall under professional judgement and so ISO17020 would be the correct standard.

5.3 The paper considered other options including mandatory participation in proficiency trials and assessment against an interpretation standard. The overall issue is how case review should be regulated in a way that balances the assurance level provided with the cost of that assurance.

5.4 The representative from the AFSP pointed out that case review also covers review of unsolved cases. The FSRU will look at whether unsolved case review and defence case review can be grouped for accreditation, however more referrals to the FSRU relate to defence case review.

5.5 The current legal aid maximum for defence scientists is £72/hour for chargeable work. The concern of the FSRU is that this is not sufficient to cover the costs of accreditation. A member pointed out that the costs would be tax deductible.

5.6 The representative from the SPA asked if there was any support from legal aid for this accreditation – e.g. a different charging mechanism for accredited scientists. The Regulator has approached the Legal Aid Agency in the past and certainly thinks a selective mechanism is essential to support quality standards in this area. The current system of selection and payment to defence experts does not support adoption of quality standards.

5.7 An alternative to accreditation could be personnel certification, however, this has failed before. What individuals are prepared to pay is in the few hundred pounds whereas the certification schemes are expensive to run. The Regulator has costing from the Netherlands Board of Court Experts, the most established register. This is state funded and has a budget of around €1.2 million per year to run the register and each assessment costs around €1,300.

5.8 The SPA representative suggested that highlighting the benefits from accreditation, such as reduced court time, less cases collapsing, may support funding for the cost.

5.9 The representative from the CPS stated that there needed to be parity between experts as defence experts are not accredited while experts for the prosecution are.

5.10 The Regulator will take the issue to Forensic Policy Steering Group which is now a sub-group of the Criminal Justice Board and ask it for a view on how to tackle this from a systems perspective.

Action 9: The Regulator to seek the views of the Criminal Justice Board Forensics Sub-Group on accreditation of defence case review.

6. Modification of reports

6.1 The Regulator has not issued any formal guidance on reissue of reports however as cases have been raised with the Regulator the members are asked to comment on whether the Regulator should issue guidance on this. Specifically on cases where one of the following three scenarios applies; an amended report has been issued without making it clear that it is an amended version, a report is issued dealing with a sub-set of information from a previous report without declaring the previous report, or a report is issued with a different conclusion to a previous report without being clear that a different conclusion has been reported.

6.2 Following a question from a member it was confirmed that this proposal relates only to signed and released statements not to iterative drafts.

6.3 A member asked whether this is an issue for the Regulator or whether it should be left to the courts. A representative from the FSRU informed the members that they had been referred cases where defence scientists have been asked to issue new statements and not mention original statements. This appears contrary to the requirements of Criminal Procedure Rules.

6.4 The representative from the CPS suggested that this request may relate to a change in instructions for the scientist in cases where disclosure of a previous statement puts doubt on the client. For example, in drink and drive cases a scientist may be asked to evaluate the findings based on one scenario and the finding is that the blood/alcohol levels are not consistent with this. Therefore, the defence counsel requests a second statement evaluating the levels against a second scenario and ask that the first statement is not disclosed as this may prejudice the defendant who has changed his account. The representative from the British Association of Forensic Medicine pointed out that the defence can always seek a second statement from a second defence scientist and there would be no requirement to disclose the first scientist's work.

6.5 The representative from the CPS advised the members that there is a section in the Criminal Justice Act, 2003 that required the defence to inform the court of the experts they have instructed which would mean that if a second scientist is instructed this would be declared. However, this section of the act has not been implemented.

6.6 The Regulator considers that there are issues with integrity and she will consider approaching the Criminal Procedure Rules Committee to ask it if they could add rules on disclosure of previous statements.

7. Fingerprint Research Considerations

7.1 This item is for the members information. The FSRU has worked with Fingerprint Quality Standards Specialist Group (FQSSG) to produce a list of suggested research areas in fingerprints to allow it to be accessible to the research field. When finalised, it will be published on the Regulator's website and will be publicised in the Regulator's newsletter. Members are invited to forward it to interested parties once published.

7.2 A member asked who would fund the research and the Regulator advised that the hope was that the research councils would support it and that Home Office is working with UK Research and Innovation (UKRI) to establish if sufficient funding is available for forensic science research. The Regulator also reminded the members that she is happy to provide written support for relevant funding applications. The research doesn't need to be UK based.

8. Referrals

8.1 The number of referrals received by the Regulator is going up year on year, as more disciplines implement quality managements systems and start identifying issues and/or are more aware of what the quality expected. This is a mix of self-referrals and third-party referrals. The FSRU is getting more referrals that involve forensic science quality, but some are focused on attempting to achieve a different outcome of a case. There are some cases referred to the Regulator which are outside of the role's scope and complainants are advised that if have already tried to appeal in the usual way through the courts they may be able to make an application to the Criminal Cases Review Commission (CCRC).

8.2 This item is about formalising policy on referrals in the expectation of statutory powers. The Regulator wants to encourage openness not blame and needs to manage credibility issues that may result from referrals.

8.3 A member asked if part of the issue with referrals is how far to take them. The Regulator agreed and stated that she would also like to clarify the position if the referral relates to a live case where the judicial position is that it is best to pass information on as quickly as possible.

8.4 A representative from the FSRU advised that if there were issues with a forensic provider that may impact on justice then the case would be referred to the CPS but the Regulator would not refer every case. The representative from the AFSP agreed with this approach as FSPs would like to be able to self-refer in confidence.

8.5 The current process is to write to the person/organisation to say that they have been referred. This letter sets out the Regulator's concerns and asks for a response to the concerns and how they will be addressed. The person/organisation who referred the case would also be informed that the Regulator is looking into the case and, in outline, the eventual outcome.

8.6 The SPA representative asked what the Regulator would do if a person or organisation has been written to by the Regulator and has done nothing to address the concerns raised. The Regulator advised the members that in this case they would send a disclosable letter to the individual/organisation detailing their concerns. Criminal Procedure Rules and the Criminal Practice Directions cover the disclosure of any criticism from the Regulator.

8.7 The representative of the British Association in Forensic Medicine highlighted the issue with the risk to credibility for the individual or organisation who has been referred having had similar problems with referrals to the GMC and subsequent appeals.

8.8 The representative from the CPS asked about what is revealed in the referral process, does the brief for statutory powers set out the rights of the referee? The FSRU clarified that there is no specific detail on this and the Regulator stated that this is something she would like to formalise.

8.9 The cases causing concern are those linked to a specific legal case rather than general forensic issues. The outcome may be that the person/organisation referred was in error or that the Codes needed to be changed, however clarity is needed on who should have access to these findings. The case may have been referred as part of an appeal process against a conviction and anything produced by the Regulator could be part of the evidence presented for the appeal.

8.10 One of the members suggested that for this type of referral the Regulator could seek legal guidance.

8.11 The agreed approach is that the referring person/organisation will be informed that the referral has been accepted by the Regulator and will be investigated. The results of the investigation will not be released. After this it would be for information to be sought from the referred person/organisation via legal process.

8.12 The representative from the CPS asked about referrals that, if the statutory powers are introduced, result in prohibition of work, these would need to be released. A representative from the FSRU stated that these would be published on the Regulator's website.

9. Terminology

9.1 With the expectation of coming statutory powers the FSRU would like to formalise what is in the scope of the Regulator. The draft Bill regarding statutory powers sets the scope broadly as "forensic Science" so the aim of the terminology document is to define what is in and what is out of scope. This document is a work in progress.

9.2 The members agreed that this was good to define and the UKAS representative highlighted that this was useful for accreditation.

9.3 The UKAS representative asked how the document would respond to emerging technologies. A representative of the FSRU stated the document was written in such a way to cope with developments as if the FSR gets statutory powers all the documents will

need to be laid before Parliament for 40 days and be approved by both chambers, which would delay updates. Revisions would be carried out by the Regulator.

9.4 The representative from the AFSP highlighted the need to future-proof the DNA section to include the use of genealogy.

9.5 The scope also identifies area of forensics that are not covered by the Regulator such as forensic engineering, forensic accountancy and forensic psychology. A representative of the FSRU added that there would be a wider consultation after the document is complete including with the AFSP and the NPCC quality management group to identify any areas missed.

10 Freedom of Information Act (FOIA)

10.1 The Regulator would like the members to consider what information the FSR should keep and how the unit should respond to FOIA requests if, as a result of gaining statutory powers, the Regulator becomes subject to the FOIA. All information held prior to statutory powers would be covered. Records are held electronically and data is retained to review trends.

10.2 The representative from UKAS asked if non-disclosure agreements can be taken into account. The Regulator informed the members that if a decision was appealed non-disclosure agreements would be taken into account but would not necessarily prevent disclosure.

10.3 The members were provided with a draft response and a list of the exemptions that apply to information held by the Regulator. The members were happy with the response and commented that the FSRU would need more resources to cope with requests.

10.4 The members agreed that it would be good to have a defined approach for how they deal with requests similar to that used by the police.

Action 10: Members to feedback details of approaches to handling of FOIA requests.

Action 11: UKAS representative to feedback specific confidentiality agreements in place between the FSR and UKAS.

11 Parliamentary Scrutiny

11.1 The members were informed that the Regulator wrote to the Chair of the House of Commons Science and Technology Select Committee in June on the implications of the cyber-attack on one of the Forensic Service Providers. This was followed by an oral briefing.

11.2 The Regulator has written a second letter to the Committee following the resumption of business of the Forensic Service Provider and permission has now been given to publish this letter.

12 Imagery

12.1 Following the release of the regulatory notice on the provision of opinion on imagery an opinion piece has been published in the journal Forensic Science International: Synergy. This piece states that the notice over-reaches the Regulator's remit and usurps the role of the trial judge.

12.2 The Regulator is preparing a letter to the editor in response to this paper. A draft of this letter has been sent to a legal academic and an interpretation expert for review.

12.3 The Regulator has had a significant number of referrals on analysis of images and the members agreed that the regulatory notice is not over-reaching the Regulator's remit.

12.4 The representative from the British Association in Forensic Medicine stated that the Regulator guidance gives the court the information it needs to question an expert on their expertise rather than usurping the role of the court.

13 Forensic Policy Steering Group

13.1 The Forensic Policy Steering Group is now a sub-group of the Criminal Justice Board and is jointly chaired by the Home Office and the Ministry of Justice.

13.2 The terms of reference for this group are being drafted and the Regulator is seeking to increase the forensic science representation on this committee. A number of members of FSAC will now sit on this Steering Group. The Regulator is also seeking the addition of a digital forensics representative on to the Group.

14 Any other business

14.1 The Regulator gave her best wishes to the representative from the Northern Ireland Forensic Science Service on his retirement and thanked him for his contributions to the Forensic Science Advisory Council.

The next meeting will be held on **10 December 2019** at the **Home Office, 2 Marsham Street, London, SW1P 4DF**

Annex A

Representatives present:

- Gill Tully - Forensic Science Regulator
- David Lewis - NPCC Forensic Science Portfolio
- Lorraine Turner - UK Accreditation Service
- Mark Bishop - Crown Prosecution Service
- Stan Brown - Forensic Science Northern Ireland
- Jamie Grieve - British Association in Forensic Medicine
- Tom Nelson - Scottish Police Authority
- Mark Pearse - Association of Forensic Science Providers
- Jeff Adams - FSRU
- Simon Iveson – FSRU
- Ashleigh Johnston - HO Science Secretariat
- Jennifer Guest – HO Science Secretariat

Apologies received from:

- Abigail Bright - Criminal Bar Association
- Dave Compton - UK Accreditation Service
- Derek Winter - Coroners' Society of England and Wales
- Karen Smith - NPCC National Quality Managers Lead
- Mark Lucraft - Chief Coroner
- Mark Wall – Judiciary
- Anya Hunt - The Chartered Society of Forensic Sciences
- Roger Robson - The Chartered Society of Forensic Sciences