



Forensic Science Regulator Newsletter

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Contact Details

If you have any comments or feedback on this newsletter, please contact the Regulator via the following routes:

The Forensic Science Regulator

5 St Philip's Place, Colmore Row, Birmingham, B3 2PW

Email: FSREnquiries@homeoffice.gov.uk

Web site: <https://www.gov.uk/government/organisations/forensic-science-regulator>

Message from the Forensic Science Regulator

I don't imagine many of us would have anticipated that every part of life would be so impacted by Covid-19 as it is now. You will have seen from Regulatory Notice 01/2020 that I have deferred the incident scene investigation accreditation deadline as a result. Some of you will be working flat out in front-line roles, others will be self-isolating or social distancing at home, trying to continue working in far from normal circumstances. Business continuity plans will be tested to the limit with supply chains for critical consumables disrupted. However, everything we have learned from successive interruptions to forensic science supply in the past few years had already been collated and silver and gold structures have been stood up by the National Chiefs Police Council (NPCC), supported by the Forensic Capability Network (FCN), to coordinate supply, demand and market stability as far as possible.

There will inevitably need to be divergence, in some shape or form, from normal processes. It is critical that all are scrupulous in recording such deviations, making sure that United Kingdom Accreditation Service (UKAS) Assessment Managers are aware and that, in due course, relevant disclosure obligations are fulfilled. While we can and must be pragmatic and should take a risk-based approach, there may be points where we know we cannot deviate or compromise further without undermining the reliability of evidence. So, sometimes, we may have to stop rather than compromise too far, as long as samples can be effectively preserved. If anyone has a concern about quality, please raise it immediately with your management chain. Concerns can also be raised with my office on FSREnquiries@homeoffice.gov.uk or as a last resort via the anonymous reporting line (0800 917 0967 or crimestoppers-uk.org/forensicscienceregulator).

If my team or I can support you as you evaluate risk and alternative ways of working, please do get in touch. We have limited resources but will aim to assist where we can: see for example the article on electronic signatures for statements. In line with Government advice on social distancing, we are not routinely in the office, so would strongly encourage email contact rather than using the office telephone number or the post.



Dr Gillian Tully
Forensic Science Regulator

New Publications

Forensic Science Regulator's Annual Report 2019

This is the fifth annual report from Dr Gillian Tully. The report covers the period 17th November 2018 to 16th November 2019.

The annual report:

- a. informs stakeholders of the Forensic Science Regulator's priorities, progress and plans;
- b. evaluates what has been achieved;
- c. identifies areas where more work is required; and
- d. identifies the main risks to forensic science quality.

The document can be found via the following link:

www.gov.uk/government/publications/forensic-science-regulator-annual-report-2019

Annual Report Clarification

In section 2.3 of the 2018/19 Annual Report, the success of four police forces in gaining/maintaining accreditation for firearms classification was mentioned. The Regulator has been asked to clarify that although the Metropolitan Police Service, in common with West Midlands Police and Greater Manchester Police, supplies data to the National Ballistics Intelligence Service (NaBIS), its firearms accreditation is for a broader scope than its NaBIS (intelligence/microscopy) activities. Its accreditation is held in its own right and not as part of NaBIS.

FSR Regulatory Notice 01/2020

This Regulatory Notice has been issued to assist forensic units with their business continuity planning in relation to the Covid-19 pandemic.

The document can be found via the following link:

www.gov.uk/government/publications/effect-of-covid-19-pandemic-on-accreditation

FSR Codes of Practice and Conduct – Issue 5

The Codes of Practice and Conduct (the Codes) detail standards and norms of practice and should be adhered to by all forensic science practitioners. This is the fifth issue and, like previous issues, builds on feedback as more organisations adopt the Codes; the primary requirements such as having validated methods and competent examiners have remained largely unchanged.

The document can be found via the following link:

www.gov.uk/government/publications/forensic-science-providers-codes-of-practice-and-conduct-2020

Important Information Regarding Firearms Classification Statements

Forces are reminded that all classification of firearms should be conducted by laboratories or organisations that are accredited to ISO 17025. Failure to adhere to this may result in the Crown Prosecution Service (CPS) rejecting evidence produced by forces, and the potential for trials to collapse.

The Regulator does, however, appreciate that there are rare circumstances where it is not possible to secure a classification statement from an accredited supplier, prior to initial court or remand proceedings being instigated. In such circumstances, it is acceptable for an expert from a non-accredited organisation to provide an initial statement for the court. Under these circumstances a further examination must be conducted by an expert from a forensic unit that is accredited to ISO 17025, and that second statement served on the defence. This position is reflected in Issue 5 of the Regulator's Codes of Practice and Conduct.

It is essential that this happens, even in the event of an early guilty plea resulting from the initial statement from the non-accredited organisation. This is because of the risk of miscarriages of justice occurring; incorrect classifications offered in statements from unaccredited units have been accepted by the defence.

Should any further information be required on this position, please contact either the Regulator (FSREnquiries@homeoffice.gov.uk) or the National Ballistics Intelligence Service (NABIS) Chief Scientist, Martin Parker (nabis@west-midlands.police.uk).

Contamination Elimination Databases and Scene Accreditation

Although the deadline for accreditation of incident scene investigation activities has been deferred due to the Covid-19 pandemic, the Regulator wishes to reiterate the requirement for those at high risk of contaminating crime scenes, with their own DNA, to be included on the Contamination Elimination Database (CED) (see section 11.1.5a of FSR-G-206, The Control and Avoidance of Contamination In Crime Scene Examination involving DNA Evidence Recovery) from October 2018. As noted in the 2018/19 Annual Report, the CED has continued to show its value, with over 1,100 profiles having been removed from the National DNA Database because they had been demonstrated to be contaminant profiles from police officers and staff rather than crime-related profiles. Having staff who are a high contamination risk continue to investigate scenes without a means to detect if they have contaminated samples is not compatible with accreditation of scene investigation.

Expert Reports

The Regulator has seen a number of expert reports that refer to primary or secondary legislation in an inappropriate manner. Examples include the following.

- a. Reports with a header at the start referring to the Magistrates' Courts Act 1980 (sections 5A and/or 5B). These provisions were repealed in 2013

- b. Reports with a header at the start referring to Rule 27.2 of the Criminal Procedure Rules. The relevant rule has been Rule 16.2 since 2015.
- c. Reports containing references to Part 33 of the Criminal Procedure Rules. The part of the Rules dealing with expert evidence became Part 19 in 2015.

Forensic units should review their template documents to ensure that references to legislation are appropriate.

Expertise

The Regulator has had a number of issues referred to her about expert reports and, more generally, has reviewed a significant number of expert reports. This has identified a number of issues with the manner in which the question of expertise is dealt with in reports.

The CrimPR requires that an expert report must contain (a) a clear statement as to what the witness claims to be an expert in and (b) a description of the qualifications and experience of the witness. The purpose of the latter is to allow the court to determine whether the claim to expertise is justified and the evidence should be admitted. It follows that the information provided as to qualifications and experience should be relevant to the expertise claimed.

It is also important that the information provides an accurate picture. It is not acceptable to report the range of courts which have accepted the expert's evidence without also including any cases where the evidence has been ruled inadmissible. Similarly, it is inappropriate to highlight positive comment without including criticism where any has been made.

The reports reviewed by the Regulator contain examples of practices which are sub-optimal. These include the following.

- a. The listing of every publication regardless of whether the subject is relevant.
- b. The listing of every course attended regardless of whether it was relevant to the expertise claimed.
- c. Providing details of courses which are not relevant (e.g. the location it was held).
- d. The description of experience which has no relevance to the case.

Particular concerns have been raised with regard to the manner in which qualifications are reported. These include the following.

- a. Reporting the membership of an organisation as a qualification when the membership was obtained by the payment of a fee alone. Such membership is not a qualification.

- b. Reporting membership of an organisation without making clear the level of membership is below that which would normally be expected of someone acting as an expert witness.
- c. The use of the term 'emeritus' to describe a membership which has ended (e.g. emeritus fellow) when the designation has not actually been granted by the organisation involved.

The report must provide a concise description of relevant information.

Electronic Signatures

The response to the Covid-19 pandemic has led forensic science providers to consider new ways of working. One issue that has been raised is whether reports/statements have to be physically signed with ink. This matter has been discussed with the Crown Prosecution Service.

The signature on a report/statement does not have to be created by physically signing the report/statement using ink. Electronic signatures are acceptable. Rule 5 of the Criminal Procedure Rules recognises this and section 7 of the Electronic Communications Act 2000 provides that such signatures are acceptable. There are no specific requirements (technical or otherwise) for electronic signatures but the signature must be added to the report/statement by, or on the authority of, the person making the report/statement.

Drugs Licensing

The Home Office has issued guidance for forensic units that handle substances controlled under the provisions of the Misuse of Drugs Act 1971, on the requirements to hold a license under that Act. This is available at:

[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857614/Forensic Analysis Reference Standards- FAQs - December 2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857614/Forensic_Analysis_Reference_Standards-FAQs_-_December_2019.pdf)

Forensic units that hold controlled drugs should read the guidance and consider whether the required licenses are held.

Evaluation of Fire Investigation Activities for the Purpose of Accreditation to ISO/IEC 17020

In order to assist the Regulator to confirm the appropriate quality framework and timeframes for obtaining accreditation in fire investigation activities, and for the United Kingdom Accreditation Service (UKAS) to determine an assessment approach, UKAS undertook a pilot assessment exercise in October 2019.

The report provides some recommendations for the fire investigation community to assist in progressing accreditation in this area.

A copy of the report can be found via the following link:

www.ukas.com/download/development_pilot_programmes/Outcome-of-the-UKAS-Dry-Runs-for-Crime-Scene-Investigation-Report-20_02_20.pdf

Additional information can be found via the following link:

www.ukas.com/services/technical-services/development-of-new-areas-of-accreditation/current-pilot-projects/isoiec-17020-accreditation-for-fire-investigation/

Document Accessibility

Under the Public Sector Bodies (Website and Mobile Applications) (No. 2) Accessibility Regulations 2018 (the accessibility regulations) the Regulator is obligated to ensure that published documents are accessible according to Web Content Accessibility Guidelines version 2.1 level AA.

Documents published from January 2020 have been produced to specifically satisfy the Adobe Acrobat PDF criteria for accessibility and the Regulator is committed to the significant undertaking of making all relevant active documents accessible.

Over the coming months the Regulator's active documents will be reviewed to make them accessible.

New documents and those with technical content updates will be published as accessible documents when they are ready. Where only minor updates such as references and links are made, the accessible documents will be published together as a managed release by September 2020.

The format of this newsletter has been changed to ensure compliance with the accessibility regulations.

Bad Debt (Legal Aid)

The Regulator has raised the issue of late payments to experts from solicitors with the Ministry of Justice and the Solicitors' Regulation Authority. Whilst it is not within the Regulator's power to resolve payment of individual invoices, she can collate and provide examples to the relevant authorities, to enable them to investigate ways in which the situation could be improved for the future. If you have examples of outstanding debts, please could you send as much of the following information as possible to FSREnquiries@homeoffice.gov.uk, with the subject line as 'Bad Debt':

- a. Legal Aid reference (or case reference);
- b. instructing solicitor (or customer);
- c. date invoice was submitted;
- d. date invoice was due for payment; and
- e. invoiced amount.

It would also be helpful to know the total value of outstanding invoices per firm; this information would be anonymised and used to gauge the extent of the issue.

Information concerning invoices from forensic science providers to police forces that are outstanding has been collated recently, so is not required for this exercise.

Forensic Science Regulator's Conference 2020

The Regulator's annual conference took place on the 10th of March 2020, returning to Villa Park stadium. The event was well attended despite the Covid-19 outbreak and the collapse of Flybe, and delegates representing many areas of the forensic community were present.

The Regulator introduced the conference looking at lessons from the past and how to take that learning forwards to shape the future of high-quality forensic science provision. Christophe Prince, Director of the Home Office Data and Identity Directorate, spoke on the continued commitment of the Home Office to support the delivery of high-quality forensic science and on the ongoing support of the call for statutory powers for the Regulator. Christophe also took the opportunity at this, the last conference for Dr Tully, to offer thanks on behalf of all the delegates for her determination and drive to raise standards across forensic science.

A brief summary of the presentations is given below.

Police Vision for Forensic Science – Chief Constable James Vaughan (National Lead for Forensic Science, National Police Chiefs' Council [NPCC])

CC James Vaughan highlighted the important role of forensic science in policing, in protecting the public and supporting justice in all types of crime. CC Vaughan described the challenges facing police forces in forensic science including: cyber security; market place fragility; the examination of digital devices; and a shortage of skills in both digital forensics and toxicology.

CC Vaughan spoke on the Forensic Capability Network (FCN), a national capability providing support for police forces. The FCN provides an integrated approach to and support for forensic science while allowing forces the flexibility to organise their own forensic delivery.

Forensic Science Research: The Role of the Home Office and UK Research and Innovation (UKRI) – Rupert Shute (Deputy Chief Scientific Advisor to the Home Office)

Rupert spoke about the establishment of the Forensic Science subgroup of the Criminal Justice Board, which aims to provide high-level leadership and oversight of forensic science in the CJS. He also described the work of UKRI, which brings together research councils and Innovate UK. Rupert stated that forensic science was an excellent example, showing the benefits of this cross-cutting exercise.

Investigation of research needs in forensic science was currently in the early stages of a six-month review. It was announced that there would be a Chief Scientific Advisor who would be dedicated to the police forces and would sit within the wider Chief Scientific Advisor community. This advisor would provide more focus on scientific issues in policing.

Professionalism in Forensic Science – Anya Hunt (CEO, Chartered Society of Forensic Sciences)

The message from this presentation was that competence, effective training and continued professional development are critical. Anya highlighted that while no one would intentionally set out to do a bad job there remain challenges to providing a consistent, high-quality forensic service. Where these challenges prevent forensic scientists from doing their best job, we should be honest about what changes are needed to ensure both professionalism and public confidence.

Learning from the Cyber-attack affecting Eurofins Forensic Services – Joint Presentation from Assistant Chief Constable Paul Gibson (NPCC Marketplace Lead) and Mark Pearse (Commercial Director, Eurofins Forensic Services)

Mark spoke on the events that occurred when Eurofins Forensic Services discovered that they had been the victim of a cyber-crime. ACC Gibson spoke on the significant impact that this event had on the delivery of forensic science in the UK. The presentation covered the seven weeks from the discovery of the crime to recommencing forensic casework, and the steps that Eurofins Forensic Services and the NPCC took to maintain confidence. ACC Gibson reflected on the challenges of providing direction and leadership in a situation with many uncertainties. Both presenters spoke on the need for a co-ordinated, open response and the importance of communication with staff and stakeholders.

Evidence Retention – Louise Shorter (CEO, Inside Justice)

Louise Shorter spoke on the frustrations that her charity had encountered when reinvestigating cold cases and being unable to locate evidence because it had been lost or destroyed. The intention of the presentation was to raise awareness of the evidence retention requirements within policing.

Combining Evidence in Complex Cases – Jan de Koeijer (Interdisciplinary Forensic Investigator, Netherlands Forensic Institute)

This presentation was on a multidisciplinary approach to casework and reporting in major crime cases, where alternative scenarios from prosecution and defence could be considered. Using a fictional case to demonstrate the technique, Jan explained how likelihood ratios from activity level and source level results across a range of items and evidence types could be combined to compare the likelihood of the scientific findings under different scenarios. Jan also spoke about training judges in this approach.

Report on the House of Commons Science and Technology Select Committee – The Rt Hon. Sir Norman Lamb (Former Chair), via video

The Rt Hon. Sir Norman Lamb spoke on the need for consistent high standards in forensic science because the system of justice depended on it. He highlighted that there continued to be unacceptable variation in standards between commercial and public sectors and across the country. The Rt Hon. Sir Norman Lamb stated that Darren Jones MP would be presenting a statutory powers bill as a Private Members Bill and he hoped that the Government would take this up. He also paid tribute to Dr Tully and her pursuit of standards in forensic science.

Events and Courses

The Accreditation of Sexual Assault Referral Centres (SARCs) – An Update from the United Kingdom Accreditation Service (UKAS)

Due to the impact of Covid-19, the arranged SARC workshop has been delayed. However, UKAS will be holding a virtual meeting for interested parties on 5 May 2020. Those wishing to continue learning and progressing towards accreditation are invited to attend a series of drop-in sessions (sessions will be free of charge). These will provide an opportunity to understand the pilot process and the UKAS Assisted Application Scheme that will be made available.

UKAS is planning for drop-in sessions to be held on a monthly basis starting from 12th of May 2020. If you would like to join, please contact UKAS by emailing Louise.sanders@ukas.com. Please note that due to the ongoing Covid-19 situation, all meetings and drop-in sessions will be held remotely by teleconference using Microsoft Teams.

Forensic and Medical Examinations for Rape and Sexual Assault Course 2021

University of Manchester Innovation Centre, UK

The Regulator has been asked to include information on a course provided by St Mary's SARC in Manchester. This two-module course presents doctors and nurses with the opportunity to train towards conducting forensic medical examinations of rape and sexual assault complainants, under the direction of the UK's longest established Sexual Assault Referral Centre.

For more information please visit: www.stmaryscentre.org/professionals/sexual-assault-training-courses-and-events

Alternatively, please email Josh Edgar at: Josh.edgar@mft.nhs.uk