

Code of Conduct - recommendations from the editorial meeting

Issue

1. The editorial group of the Quality Standards Specialist Group (QSSG) reviewed the content of the Code of Conduct on behalf of the Regulator and recommend the following revised requirements (annex A).

Background

2. The Quality Standards Specialist Group meeting on September 16th 2010 concluded that the contents of the Code of Conduct should also be revisited by the editorial group.
3. The Code of Conduct was adopted into the draft standards text from the former Council for the Registration of Forensic Practitioners (CRFP) and as such was seen as established and was therefore not included in the original editorial process. The CRFP used their text as the standard against which the CRFP would judge any information that called into question an individuals fitness to stay on their register¹ and therefore it was relevant at the time to have a wide remit.
4. The editorial group were given the steer that that the Regulator was willing to consider a more significant rewrite than indicated purely by the comments received if that was the recommendation of the editorial group.
5. The group² met to consider the Code of Conduct on October 22nd 2010 makes the following recommendation to the Regulator.

Recommendation

6. The group concluded some of the draft Code of Conduct clauses were now covered in the Code of Practice section of the Codes and/or elsewhere such as through legislation and that although they remained valid, these clauses were now redundant.
7. The group recommend the ten revised requirements (annex A) be adopted as the Regulator's Code of Conduct.

¹ e.g. Cooper, J. E. Cooper M. E. (2007) *Introduction to Veterinary and Comparative Forensic Medicine*, Appendix G: The CRFP's Code of Practice. Blackwell. Accessed from the internet on 08.10.10 from

<http://onlinelibrary.wiley.com/doi/10.1002/9780470752944.app7/pdf>

² QSSG members present: Ric Treble (LGC), Kevin Sullivan (FSS), Chanda Lowther-Harris (MPS) and Katherine Monnery (UKAS).

Annex A: Recommended amendments to the draft Code of Conduct

The group recommend the following ten clauses be adopted as the Regulator's Code of Conduct.

1. Your overriding duty is to the court and to the administration of justice.
2. Act with honesty, integrity, objectivity, impartiality and declare any personal interest that could be perceived as a conflict of interest.
3. Provide expert advice and evidence only within the limits of your professional competence.
4. Take all reasonable steps to maintain and develop your professional competence, taking account of material research and developments within the relevant field.
5. Establish the integrity and continuity of items as they come into your possession and ensure it is maintained whilst in your possession.
6. Seek access to exhibits / information which may have a significant impact on your findings.
7. Conduct casework using methods of demonstrable validity.
8. Be prepared to review any casework if any new information or developments are identified that would significantly impact on your findings.
9. Inform a suitable person within your organisation if you have good grounds for believing there is a situation which may result in a miscarriage of justice.
10. Preserve confidentiality unless the law obliges, a court/tribunal orders, or a customer explicitly authorises disclosure.

Annex B: Code of Conduct for Forensic Science Practitioners

Original Clause	Respondents' Comment	Respondents' Suggestion	Editorial Group Response
1. Recognise that your overriding duty is to the court and to the administration of justice: it is your duty to present your findings and evidence, whether written or oral, in a fair and impartial manner.	References to the provision of evidence that 'fair and impartial' (p. 8, 1); acting with 'objectivity and impartiality' (p.8, 2); working according to 'established principles of the profession (p.8, 11); in respect of 'independence, impartiality and integrity' (p. 13,8); and providing 'objective, unbiased opinion' (p.43, 5c) need to be supported more in the document.	Liaise with the AFSP concerning their principles of 'balance, logic, robustness and transparency' and incorporate these in the code of conduct. This could be done in the section on validation of interpretive methods, starting on p. 28.	If the high level principles envisioned for the Code of Conduct need more supporting text in the main Code of Practice then this would be considered separately. Shortening this and other clauses to render them more memorable was the consensus view of the editorial group.
2. Act with honesty, integrity, objectivity and impartiality.	Could expand and link with the AFSP principles of balance	consider	The group agreed that it would be difficult to be seen to be impartial if one has a conflict of interest so merging the relevant part of clause eight into this was the recommendation of the group. There was little support in the meeting to add "balanced" to the list as impartiality appeared to cover the issue.

<p>3. Not discriminate on grounds of race, beliefs, gender, language, sexual orientation, social status, age, lifestyle or political persuasion.</p>	<p>Disability</p>	<p>Add disability</p>	<p>This was the first of several clauses which were believed to be covered elsewhere, in this case by legislation. So agree that “disability”, or “other irrelevant factors” could be added but recommend retiring the clause entirely.</p>
<p>4. Comply with the Code of Conduct of any professional body of which you are a member insofar as there is no conflict with the obligations of this Code of Conduct.</p>			<p>This clause was considered self evident and mildly circular, and although no comment was received the group recommend retiring the clause entirely.</p>
<p>5. Provide expert advice and evidence only within the limits of your professional competence and only when fit to do so.</p>	<p>As no definition of competency or expert status is provided in these codes for each forensic area, some sort of general description of what the Home Office expect an expert or competent witness to possess in terms of qualification, experience and skills should be provided.</p>	<p>Provide a footnote for a definition</p>	<p>Agree that competency should be defined in the glossary, although a high level Code of conduct is not the place for being prescriptive on qualifications etc. The “fit to do so” was considered be superfluous and the group recommend deleting it.</p>
	<p>It will be interesting to know how statistical / probabilistic findings will be presented, if required, when most fingerprint</p>		<p>General observation, not for the editorial group to address.</p>

	<p>experts would not have the knowledge or understanding to deliver this. There is also a risk that fingerprint experts would not have the faith or belief in this technique.</p>		
<p>6. Inform a suitable person in your organisation, and the Regulator, in confidence where appropriate, if you have good grounds for believing there is a situation which may result in a miscarriage of justice.</p>	<p>At the very least this is so vague as to be of no practical guidance to a practitioner. The general rule for experts giving evidence is that they should answer questions asked of them by the court within their area of expertise. But this clause is much wider - it covers miscarriage of justice which could take the practitioner outside their area of expertise or their instructions - even into such matters as the framing of the indictment or what evidence is to be used or not used by counsel.</p>	<p>Remove or rewrite to restrict definition.</p>	<p>Overall, the group recommended rewriting to direct practitioners to reporting through their organisations chain with escalation to the Regulator built into the providers (sole or otherwise) required policy.</p>
	<p>"Inform a suitable person in your organisation, and the Regulator, in confidence where appropriate, if you have good grounds for believing there is a situation which may result in a</p>	<p>The inclusion of the first comma makes it possible to construe the meaning as being 'only tell the Regulator where appropriate and then in confidence'. Do you</p>	<p>Furthermore, any escalation requirements were felt better placed in the Code of Practice section of the Codes.</p>

	miscarriage of justice."	intend this meaning or should you be told whenever there is a risk of a miscarriage (the better approach in my view since the organisation may not act appropriately on receipt of the information)?	
	We would agree that the Regulator should be informed of any grounds for believing that a miscarriage of justice has occurred but we contend that it is more important (of a higher priority) to bring the matter to the attention of the prosecuting authority in the first instance.	Include additional consultation step in the requirement	
	Inform regulator of a miscarriage of justice	consider who else should be informed i.e. PPS/CPS or UKAS also.	
7. Take all reasonable steps to maintain and develop your professional competence, taking account of material research and developments within the relevant field and practising techniques of quality assurance.			No comments received; redrafted as a more positive statement
8. Declare to your customer or	This should be with the written		The high level nature

<p>employer, if you have one, any prior involvement or personal interest which gives, or may give rise to, a conflict of interest, real or perceived, and act in such a case only with the explicit written consent of the customer or employer, as appropriate.</p>	<p>consent of the employer and the customer, otherwise conflict may occur</p>		<p>envisioned for the Regulators Code of Conduct has resulted in the recommendation for this clause to be combined with “Act with honesty, integrity, objectivity and impartiality”</p> <p>Furthermore, any additional escalation requirements are better placed in the Code of Practice section of the Codes.</p>
<p>9. Take all reasonable steps to ensure access to all available exhibits which are relevant to the examinations requested; to establish, so far as reasonably practicable, whether any may have been compromised before coming into your possession; and to ensure their integrity and security are maintained whilst in your possession.</p>	<p>This requirement places a large responsibility on practitioners to request additional items and investigate item integrity. We would expect practitioners to follow up on these matters when the case submission / circumstances suggest such actions are warranted but not routinely in all cases. This issue is likely to be further confused if Forces continue to in-source elements of the forensic examination (e.g. the recovery process) – in which case they become part of the forensic supply chain and we would not</p>	<p>Amend wording so that the requirement only applies if the customer request, the submitted items or the attendant information suggests that such avenues should be pursued.</p>	<p>The group felt there were several clauses together in one here which were better separated. The first part requiring seeking access and the other was concerning continuity. The group recommend having these as separate clauses for clarity.</p>

	<p>expect suppliers further down that chain to assure the quality of that activity.</p> <p>The principle of this point is clear but the practice may be difficult to implement with the customer as the customer will develop an initial forensic strategy as they attend the crime scene.</p>		
10. Accept responsibility for all work done under your supervision, direct or indirect.	<p>Accept responsibility for all work done under your supervision, direct or indirect. This is acceptable for internal and brokered work. A clarity for accepting the responsibility of defence representatives work would be appropriate, as to what extent will the forensic provider need to validate the competency of a defence representative so as to accept responsibility for their work, not practical</p>	clarity required	The point was generally accepted, however this clause is recommended to be retired as the Code of Practice covers the requirement.
11. Conduct all work in accordance with the established principles of the profession, using methods of proven validity and appropriate	<p>I see no reason why new methods should not be developed provided they are identified as such and fully documented. "Methods of</p>	Rewrite	Relevant clause has been rewritten recognising the points made.

<p>equipment and materials.</p>	<p>proven validity" can be a misleading phrase. A method may be perfectly valid in one circumstance - in one range or when applied to one chemical. It will then tend to be applied generally without retesting in another circumstance which appears to be similar - after all, it is a "method of proven validity"</p>		
<p>12. Make and retain full, contemporaneous, clear and accurate records of the examinations you conduct, your methods and your results, in sufficient detail for another practitioner competent in the same area of work to review your work independently.</p>	<p>A definition of competence would improve the understanding of this point.</p>	<p>include a competence definition or foot note reference</p>	<p>Again this clause was considered quite correct and important, but it was felt it is now adequately covered under 4.13.2 Technical records. However, agree to inclusion of a definition in the glossary.</p>
<p>13. Report clearly, comprehensively and impartially, setting out or stating:</p> <p>a. your terms of reference and the source of your instructions;</p> <p>b. the material upon which you based your examination or test</p>	<p>Point written from the perspective of a supplier and this approach will introduce a tension with the customer as they filter submissions.</p> <p>It is not clear from the context whether this is referring to a report for internal purposes or a report to the court.</p>	<p>Restructure.</p> <p>Clarify whether this is</p>	<p>This clause, or set of clauses, was considered to be now more than adequately covered by the Code of Practice section of the Codes.</p> <p>The whistleblower protection point is well</p>

<p>and conclusions;</p> <p>c. summaries of your work, results and conclusions, including and identifying any contribution from others;</p> <p>d. any ways in which your examinations, tests or conclusions were limited by external factors, especially if your access to relevant exhibits was restricted; or if you believe unreasonable limitations on your time, or on the human, physical or financial resources available to you, have significantly compromised the quality of your work; and</p> <p>e. that you have carried out your work and prepared your report in accordance with this Code.</p>	<p>A report to the court must be prepared in accordance with the Civil or Criminal Procedure Rules (as appropriate) which change from time to time. Their content should not be repeated here.</p> <p>It is particularly important that there is no conflict between the Code of Conduct and the Criminal Procedure Rules. However I believe that 13a is consistent with the Civil Procedure Rules but inconsistent with the Criminal Procedure Rules.</p> <p>d) ".....any ways in which your examinations, tests or conclusions were limited by external factors, especially if your access to relevant exhibits was restricted; or if you believe unreasonable limitations on your time, or on the human, physical or financial resources available to you, have significantly compromised the quality of your work. "</p>	<p>referring to a report to the court.</p> <p>Incorporate the relevant Procedure Rules (from time to time) by reference).</p> <p>Make it clear whether the Code of Conduct imposes any additional requirement not imposed by the relevant Procedure Rules</p>	<p>made and will be looked into by FSRU.</p>
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	<p>This has massive implications - given the restricted and directive submissions we, and other suppliers, currently experience from some forces</p>		
	<p>d) Is it envisioned that every s9 statement would contain a paragraph dealing with this? As under 17025, the casefile constitutes the 'report' - would it be sufficient to be dealt with solely within the casefile? If the answer is the latter than there is no real transparency, if it is the former it would create considerable chaos at the reporting stage, for example how would an organisation conduct peer review of this component? It would appear that this note requires practitioners to make an allegation against either there employer, or there employer's customer based on a "belief". Surely there would have to be evidence of how examinations were restricted and by whom? If you request</p>	<p>Should the scientist be offered 'whistleblower' type protection external from its employer organisation? If so who would offer such protection and how? Where the outcome of proposed tests are unknown how can one predict whether or not a test would compromise the quality of your work if it is not done? If this was enforced to the letter I think allegations could be made in nearly every case - particularly on grounds of financial resources. Suggest this is thought through a little more in terms of the legal implications of scientists making an allegation that the scientist was unable to do their work properly due to the actions</p>	

	<p>access to information and do not get a response - does that constitute a denial of access? Are we expected to make an allegation against an individual that could potentially be interpreted as a criminal offence - such as obstructing the course of justice? If so, what protection does the code offer the individual in this regard?</p>	<p>of others either internal or external to the organisation.</p>	
	<p>d) Whilst we are in favour of making such declarations efforts to do so in the past has been met unfavourably by the customer. We would not want this requirement to be changed but emphasise that its implementation is likely to lead to conflict between supplier and customer. What would be helpful to suppliers would be a form of words, agreed by customers, that could be used in such instances.</p>		
	<p>d) This is extremely interesting for Fingerprint Experts, as they often do not have access to the</p>		

	<p>object or surface that the finger / palm marks were found.</p>		
	<p>e) This could not be implemented until the supplier was confident that it could demonstrate that it meets all of the requirements of the Code.</p>		
	<p>Is this really necessary or is it merely to give publicity to the Forensic Regulator. All unnecessary info should be kept out of reports/statements to improve readability and clarity.</p>		
	<p>It is not clear from the context whether this is referring to a report for internal purposes or a report to the court.</p> <p>A report to the court must be prepared in accordance with the Civil or Criminal Procedure Rules (as appropriate) which change from time to time. Their content should not be repeated here.</p> <p>It is particularly important that there is no conflict between the</p>	<p>Restructure.</p> <p>Clarify whether this is referring to a report to the court.</p> <p>Incorporate the relevant Procedure Rules (from time to time) by reference).</p> <p>Make it clear whether the Code of Conduct imposes any additional requirement not imposed by the relevant</p>	

	<p>Code of Conduct and the Criminal Procedure Rules. However I believe that 13a is consistent with the Civil Procedure Rules but inconsistent with the Criminal Procedure Rules.</p>	<p>Procedure Rules</p>	
	<p>Is this really necessary or is it merely to give publicity to the Forensic Regulator. All unnecessary info should be kept out of reports/statements to improve readability and clarity.</p>		
<p>14. Reconsider and, if necessary, be prepared to change your conclusions, opinions or advice and to reinterpret your findings in the light of new information or new developments in the relevant field; and take the initiative in informing your customer or employer promptly of any such change.</p>			<p>Recommended to be redrafted to be shorter and punchier.</p>
<p>15. Preserve confidentiality unless: a. the customer explicitly authorises you to disclose</p>	<p>Care required here as this could be considered as encouraging law breaking. Perhaps some limit should be</p>		<p>The group were unsure how the requirement to comply with the law could be encouraging law breaking.</p>

<p>something;</p> <p>b. a court or tribunal orders disclosure;</p> <p>c. the law obliges disclosure; or</p> <p>d. your overriding duty to the court and to the administration of justice demands disclosure.</p>	<p>set as to whom disclosure may be made in these circumstances.</p>		<p>Notwithstanding, the group felt this should be rewritten to be shorter and puncher.</p>
<p>16. Preserve legal professional privilege: only the customer may waive this. It protects communications, oral and written, between professional legal advisers and their customers; and between those advisers and expert witnesses in connection with the giving of legal advice, or in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.</p>	<p>under point 16 'legal privilege' an additional sentence should be included to the effect that point 6 'miscarriage of justice' will however override that legal privilege. This makes it clearer as to which of the two points take priority</p>		<p>This clause was felt to add little to the confidentiality requirements and the group recommend retiring the clause.</p> <p>The potential conflict between confidentiality and the need to escalate potential miscarriages to the attention of the Regulator is noted and will be looked into by FSRU.</p>
	<p>The word 'only' should start with a capital as it is following a colon</p>	<p>change only to Only (5th word in para)</p>	
	<p>A conflict between legal confidentiality and the wish to bring cases of possible miscarriage to the regulators attention</p>		
	<p>"Preserve legal professional privilege: only the customer may waive this. It protects communications, oral and written, between professional</p>	<p>I was not aware that experts had any duty to preserve legal privilege, believing that to be a protection that only exists between a lawyer and</p>	

	<p>legal advisers and their customers; and between those advisers and expert witnesses in connection with the giving of legal advice, or in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings."</p>	<p>his client. Indeed, the Civil Procedure Rules (which I realise don't apply here, but still...) explicitly states that instructions to experts should not be privileged (which makes sense since experts aren't lawyers and so ought not be asked to make legal judgements about what does or doesn't attract privilege). So, I can follow you up to the first semi colon, but what do you take as authority for the phrase "and between those advisers and expert witnesses"?</p>	
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