

# FORENSIC SCIENCE ADVISORY COUNCIL

## Note of the meeting held on 1 November 2011, Home Office, 2 Marsham Street, London SW1P 4DF

### Present:

Andrew Rennison	Forensic Science Regulator (Chair)
Jane Beaumont	United Kingdom Accreditation Service
Stan Brown	FSNI
David Charlton	Guest
Roger Derbyshire	AFSP
Ian Evett	Guest
Andrew Goymer	Judiciary
June Guinness	Forensic Science Regulation Unit
Kath Mashiter	Lancashire Police
Tom Nelson (via telecon)	Scottish Police Services Authority
Nigel Pilkington	CPS
Ann Priston	Forensic Science Society
Basil Purdue	British Association in Forensic Medicine
Roger Robson	Forensic Access
Ewen Smith	CCRC
Charles Welsh	Skills for Justice
Derek Winter	Council for the Coroners Society of England and Wales
Soheel Joosab	Forensic Science Regulation Unit

### 1. Welcome and apologies

1.1 Andrew Rennison welcomed those present to the meeting and said that the main theme for the meeting would be fingerprint examination.

1.2 Apologies were received from:

Roger Coe-Salazar	CPS (Nigel Pilkington attending)
DCC John Fletcher	ACPO
Julie Goulding	CCRC (Ewen Smith attending)
Alan Woods	Skills for Justice (Charles Welsh attending)

### 2. Minutes of the last meeting

2.1 The minutes of the last meeting were agreed as accurate.

### **3. Matters arising from the last meeting**

#### **a) EU Framework Decision (FSAC/01.11.11/02)**

3.1 Mr Rennison introduced the paper. He said that the document had been produced to set out his views as Regulator, and were based on prior advice from the FSAC on the interpretation and approach to be adopted in the implementation of the Framework. The paper seeks to articulate where there is a lack of clarity/ambiguity within the text of the decision. Further comments from the Council were invited:

- It was noted that there is no reference to pre-trial enquiries;
- Where it is stated that a *FSP must be accredited to ISO 17025...*(pages 6&7) wording should be added to read...*by a national accreditation body which is a signatory to a Mutual Recognition Agreement*; and
- It was noted there was reference that procurement processes and contractual terms should reinforce accreditation requirements. As there are no contracts between public law enforcement bodies, the term '*service level agreement*' should be inserted to cover this point.

#### **b) Meetings with LJ Thomas and others**

3.2 Mr Rennison advised that he, and Prof. Paul Roberts, had met with Lord Justice Thomas, and briefly with Lord Justice Hughes, to discuss the consequences of the decision on *RvT*. Mr Rennison said that both the Lord Justices' hold a keen interest in the work to develop guidance and standards for the interpretation of evidence, and will be nominating a High Court Judge and a Circuit Judge to join the Interpretation Specialist Group. Lord Justice Hughes expressed an interest in being personally involved and offered to attend meetings, when able; Mr Rennison said he would take that offer into consideration when planning future meetings of the Interpretation Group.

3.3 Mr Rennison said that Lord Justice Hughes was keen to seek consensus from the forensic science community on how best such evidence (i.e. relating to databases/likelihood ratios) should be presented. If such an accord could be reached, consideration could possibly be given to producing a future practice direction.

3.4 On a related matter, the Council was informed that a Court of Appeal case (South [2011] EWCA Crim 754) had referred to the judgment of the *RvT* case. Andrew Goymer agreed to consider the judgment and provide commentary, where appropriate, for the Council's information.

**Action: Andrew Goymer**

3.5 Mr Rennison also advised that he had met with His Honour Judge John Phillips who said that he may be able to offer routes to training judges and others through his work at the Judicial College (formerly the Judicial Studies Board).

3.6 Mr Rennison said, in light of *RvT*, and his subsequent meeting with Lord Justice Thomas, that he intend to convene a small working group on 1 December

with an aim to produce an outline guidance document that will, in the short-term, assist trial judges, and others, in relation to the issues from *RvT* and resulting decisions.

**Action: Andrew Rennison**

3.7 Andrew Goymer informed the Council that he had a meeting with Lord Justice Thomas. At the meeting a matter was raised by Mr Goymer in that trial judges are looking for guidance from the Court of Appeal in relation to such cases; in particular how such cases might be summed-up and explained to a jury to help them best test the quality of the forensic examination process and the methodology applied.

3.8 Andrew Goymer said that there is great interest in the notion of producing primers (possibly abbreviated) on the diverse aspects of forensic scientific evidence; but, essentially, these should come from the scientific community. Such primers would help in explaining to juries aspects of the science being applied in a clear and concise way. However, there would be a question around the legal and evidential status that such primers may have, and possibly would be something to be resolved (possibly on a case by case basis).

3.9 Tom Nelson advised that in Scotland primers, in the form of DVDs, for the areas of DNA and fingerprints have been produced and are available to courts. It was agreed that, if possible, the DVDs might usefully be shared with the Council.

**Action: Secretariat/Tom Nelson**

3.10 Mr Rennison said that he is currently developing a proposal for a DNA primer, and will keep the Council informed of progress. Allied to that, an annex for the Codes of Practice is currently under draft setting out how expert witness statements should be construct and presented in court – the draft will be circulated to Council members' for their comment.

**Action: Secretariat**

#### **c) Skills for Justice: Forensic Science Vision 2020**

3.11 Charles Welsh introduced the item saying that FSAC members had provided useful feedback on the draft vision paper. He added that he had attended an ACPO Forensic Science Portfolio Board to discuss the vision and had also spoken at length with the CPS. Following those discussions it is proposed that Skills for Justice, in hand with stakeholders, set about creating an 'investment' in a draft strategy.

#### **4. Code of Practice and Conduct (CoP): (FSAC/01.11.11/03)**

4.1 Mr Rennison advised that the CoP were at the final draft stage, and anticipated they would be signed off shortly by the Quality Standards Specialist Group. The CoP are the result of comprehensive consultations and the comprehensive feedback from two 'dry-runs' conducted by UKAS.

4.2 Following the dry-runs, UKAS are seeking to invite providers to express an interest to participate in a number of pilot studies. Feedback during the implementation of these pilots will be used to inform later editions of the CoP.

4.3 Members suggested a few minor editorial revisions. Stan Brown recommended that it would also be of benefit if there were additional clarifications/definitions for inclusion under the section of '*Contamination avoidance*'. Accordingly, Mr Brown agreed to provide appropriate text for possible inclusion.

**Action:** Stan Brown<sup>1</sup>

## **5. DNA Appendix: FSAC/01.11.11/04**

5.1 Mr Rennison said that the draft appendix had been circulated to the FSAC for note. The appendix had been produced by the DNA Analysis Specialist Group and is ready to be published for wider consultation.

## **6. DNA Interpretation: FSAC/01.11.11/05**

6.1 Mr Rennison said he had commissioned the report to research and build upon existing knowledge in the field of DNA interpretation (not just complex DNA interpretation). The overall aim of the report was to explore options for a regulatory structure whereby a number of diverse interpretive methods can operate, yet be analogous in quality. A number of the considerations from the report have been incorporated into the DNA Analysis Appendix.

6.2 The report has been signed-off by the DNA Analysis Specialist Group and is now ready for publication for wider consultation. Ahead of that, FASC members were invited to provide any feedback on the report, to Mr Rennison, at their convenience. It was proposed, by Mr Rennison, that the report should be an item for further discussion at the next FSAC meeting – this was agreed.

## **7. Presentation by Ian Evett: Quantifying the weight of evidence from a forensic fingerprint comparison: a new paradigm**

7.1 The Council was presented with details of an ongoing research project which is to develop, and validate, a model framework to support fingerprint examiners in their casework. More generally, the proposed approach is based on the notion of calculating a likelihood ratio (LR).

7.2 It was emphasised that the work is not to challenge the overall reliability of the conclusions of the majority of fingerprint comparisons performed, or to lessen the contribution made by fingerprint examination to the CJS.

7.3 Some of the key areas covered were:

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<sup>1</sup> Action completed: text provided and has been added incorporated in Codes

- Certainty of assessing and identifying a mark, and the question of uniqueness;
- Questioning the 'notion' of evidential weight of evidence cannot be absolute;
- Both the legal and scientific communities are now questioning the notion that an expert opinion is absolute – resulting a number of court challenges on the notion of uniqueness;
- Looking at imperfections - marks from scenes of crime and if sufficient to justify an opinion of identity;
- The current culture within fingerprint communities' world wide demands that fingerprint identifications should be presented at court as categorical opinions;
- It is not uncommon for a fingerprint examiner to inform the court that, on the basis of a careful and detailed comparison, he or she is absolutely certain that a particular mark was made by the person who provided the control print to the exclusion of all other individuals;
- The notion of absoluteness of identification can lead to an overstatement of the evidence when presented in court;
- How over the last decade has seen a growing body of literature that questions this assumption; and
- The work has been peer reviewed by statisticians.

7.4 On behalf of the FSAC, Mr Rennison thanked Mr Evett for an informative presentation; with the remaining time Mr Evett responded to a number of questions.

## **8. Presentation by David Charlton: *An Industrial Revolution for Fingerprint Science?***

8.1 Mr Charlton opened the presentation by providing a brief overview of the history of fingerprints as a means of identification, and outlined two key cases of Mayfield and McKie. In considering examination of a print, and how the decision making process can be influenced, Mr Charlton put forward a number of observations that covered such aspects as motivation, biases, aspirations, environment, cognitive processes and professional circumstances.

8.2 Given the number possible influences, there was discussion around the needs of recruitment, training and on-going assessment of examiners and the possibility of 'blind' examination of marks. The presentation concluded with a number of suggested recommendations, (the recommendations were included in the presentation handout circulated at the meeting).

8.3 Mr Rennison thanked Mr Charlton for his detailed presentation, and added that he is aware of a number of police forces are currently taking (or are preparing to take) the ISO17025 route on fingerprint examination.

## **9. The Fingerprint Inquiry, Scotland**

9.1 Ahead of the publication of the Inquiry<sup>2</sup>, Mr Nelson advised the Council that about a year ago that the SPSA had already begun looking at six proposed work-streams within fingerprints. These are, note-taking, court reports, objectivity, dealing with complex marks, human factors (e.g. possible cultural bias of expert opinion) and validity/probabilistics with an aim to move towards ISO17025 accreditation by early 2012.

## **10. UK use of fingerprint methods and preparing for the future**

10.1 With the SPSA work already well underway, Mr Rennison, as Regulator, said that he would be working closely with the SPSA, the Forensic Science Fingerprint Specialist Group, the MPS, F21 and others to best ensure this work moves forward in a cohesive and joined-up manner and, as appropriate, will support the recommendations coming out of the Scottish Inquiry.

## **11 Any other business**

11.1 Jane Beaumont highlighted she had previously voiced some concerns that, given the potential for increase in work, UKAS would not a position to engage additional resources until there was more clarity from police forces, FSPs and others in terms of expectations, demand and forward planning. Ms Beaumont was pleased to report that many organisations have, significantly, now established ISO17025 strategies. Accordingly, UKAS is now in a position to recruit additional staff and allocate appropriate resources to meet prospective demand.

## **12 Date of next meeting**

28 February 2012, 11:00am Conference room 6, Home Office, 2 Marsham Street, London, SW1P 4DF

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<sup>2</sup> The Inquiry was published on 14 December 2011