

CONSULTATION

Fingerprint Comparison :

1. Differences of Opinion
2. Reporting Outcomes

This is a consultation issued to allow comments from interested parties; all comments will be given consideration when finalising the fingerprint comparison Appendix FSR-C-128 prior to publication. Comments should be sent to FSRConsultation1@homeoffice.gsi.gov.uk and should be submitted by 20 January 2014. This mailbox is not for general correspondence and is not routinely monitored so no acknowledgement will normally be sent.

1. PREAMBLE

- 1.1.1 In December 2011 the Forensic Science Regulator and Chair of the Fingerprint Quality Standards Specialist Group (FQSSG) set out the basis for the development of quality standards in fingerprint examination¹.
- 1.1.2 They recognised that fingerprint examination is not a science in that it is derived from a theory or coherent set of principles and is best described as a cognitive process which relies on the ability of a competent individual to analyse and compare areas of friction ridge detail, and arrive at a decision as to whether they originate from the same person or not. It is no less valuable than the results of scientific analysis, but it does underscore the absolute need for any process of fingerprint examination to recognise and manage the risk of human error.
- 1.1.3 This requires clear levels of practitioner competence to be set and complied with, within a system that is owned and operated by organisations that provide fingerprint examination to the criminal justice system.

2. INTRODUCTION

- 2.1.1 The Forensic Science Regulator through the Fingerprint Quality Standards Specialist Group (FQSSG) has published the fingerprint comparison appendix FSR-C-128² to his Codes for public consultation alongside a compendium of terminology and definitions FSR-I-402³ as used by fingerprint practitioners.
- 2.1.2 Both documents introduce the concept of reporting outcomes for fingerprint examination in an attempt to standardise some of the terminology used and to

¹ Developing a quality standard for fingerprint examination; Andrew Rennison Forensic Science Regulator, Gary Pugh Chair of the Fingerprint Quality Standards Specialist Group, December 2011.

<https://www.gov.uk/government/publications/fingerprint-examination-developing-a-quality-standard>

² Codes of Practice and Conduct - Fingerprint comparison - FSR-C-128

³ Terminology, Definitions and Acronyms used in Fingerprint Examination - FSR-I-402

differentiate between analysis and comparison results versus investigative outcomes.

- 2.1.3 The cases of human error or heavily disputed fingerprint examination are very rare and the quality standard that has been produced by the FQSSG will go a long way to reduce / mitigate the risk of error, but where there are genuine disputes within or between organisations there needs to be an effective mechanism to deal with these to ensure that accurate and reliable evidence is put before the court.
- 2.1.4 The pathologists through the pathology delivery board have an agreed framework for processing and reporting differences of opinion between pathologists following a review. One proposal is to adopt a similar framework for fingerprint comparison.
- 2.1.5 This consultation is seeking feedback from interested parties on the following aspects:
- a. Framework for dealing with differences of opinion once the evidence has been released by an organisation;
 - b. The terminology and reporting outcomes as defined in the fingerprint comparison appendix FSR-C-128.

3. DIFFERENCES OF OPINION

- 3.1.1 Given the nature of fingerprint evidence and the impact of errors the FQSSG are keen to improve the process for resolving disputed fingerprint evidence and to ensure that fingerprint standards support effective dispute resolution within organisation and/or between organisations.

3.2 Recent Cases of Disputed Fingerprint Evidence

- 3.2.1 The two most high profile disputed cases within the UK in recent years have been the McKie and the R v Smith cases.
- 3.2.2 In the McKie case the fingerprint evidence was contested over many years resulting in the Fingerprint Inquiry Scotland – a public judicial inquiry set up by

Scottish Ministers under the Inquiries Act 2005. This was a very comprehensive and detailed review of all of the fingerprint evidence in the case and concluded that there had been a miss identification. The report⁴ made eighty six recommendations that were far reaching and covered the entirety of fingerprint examination in Scotland.

3.2.3 In the R v Smith case the fingerprint evidence was disputed at the original trial and the Court of Appeal. Following the Court of Appeal a review of the ridge detail that led to the reported identification was undertaken. A panel process was used where three fingerprint examiners from within the same organisation independently carried out an analysis of the ridge detail prior to comparing the features within the prints. All three examiners reported significant differences and the reviewing Senior Responsible Officer formally reported to the Senior Investigating Officer and the Chief Constable that the identification should be regarded as unsafe and it did not provide a reliable basis for the provision of expert opinion into the criminal justice system.

3.2.4 The independent review failed to resolve the dispute or to provide a meaningful framework for the presentation of the fingerprint evidence to the court. The fingerprint evidence was presented in great over several days. In her summing up the judge stated;

‘One thing that is patently obvious from what you have seen and heard you may think is that fingerprint analysis is in the eye of the beholder. It is admittedly subjective. Experience no doubt sharpens the expert’s powers of observation, but there is much room for differences of opinion between acknowledged experts. In this case, very unusually, you have fingerprint experts who are almost completely at odds with the interpretation of the other side. I have already given you directions about how to approach expert evidence. Your task is to determine which, if any, of either group of experts you accept’

⁴ Sir A. Campbell, The Fingerprint Inquiry Report. Edinburgh: APS Group Scotland, 2011. <http://www.thefingerprintinquiryscotland.org.uk/inquiry/3127-2.html>

- 3.2.5 The FQSSG are aware of other cases where the fingerprint evidence has been in dispute. It appears that a variety of approaches have been taken in an attempt to resolve the issues; including canvassing the views of a larger number of fingerprint examiners (greater than ten) to try to arrive at a consensus which resulted in court attendance warnings for everyone, to more recently the referral to a panel of fingerprint examiners unconnected with the original identification within the same organisation.
- 3.2.6 Whether the difference of opinion is internal or external to an organisation, then an independent review process, such as the use of a panel of independent experts who have no prior knowledge or involvement in the original examination should be undertaken and the outcome reported.
- 3.2.7 Internal differences of opinion can be dealt with through the organisations quality management system.
- 3.2.8 When the opinions reported outside of the organisations quality management system are disputed, for example, when an examiner engaged by the defence challenges the reported identification and reports a different opinion.
- 3.2.9 The reports of cases undertaken on behalf of the Police Forces of England and Wales by fingerprint experts can be subjected to a critical conclusions check in all cases where another organisation engaged in fingerprint comparison disputes the conclusions of examinations reported to the Criminal Justice System.
- 3.3 Proposed Process for Resolution of Difference of Opinion for the CJS**
- 3.3.1 A list of reviewing competent fingerprint experts and technical leads to coordinate, and manage the process and to take responsibility for the production of the final report; these individuals will be nominated and sponsored by their organisation and will be held by a nationally nominated organisation⁵, independent of fingerprint bureaux.

⁵ National organisation not currently identified.

- 3.3.2 The case will be referred to the nationally nominated organisation, whom will administer the review process.
- 3.3.3 A technical lead and 3 - 5 experts⁶ will be randomly selected and forwarded the relevant details to their organisation via the selected individuals, with details of the completion response time.
- 3.3.4 The experts will have no knowledge of the initial ACE-V examination, just the initial opinion. The reviewing experts will each be allocated a copy of the report and copies of the original material, for example the mark and the relevant set of prints.
- 3.3.5 The fingerprint experts will independently consider the information that is made available to them and must conduct an independent examination of the test material.
- 3.3.6 Each of the fingerprint experts will send a report detailing their findings including and conclusion(s), including the adequacy of the examination and the reasonableness of the original conclusions reached to the nominated technical lead.

Decision:

- 3.3.7 If all the checking fingerprint experts reach the same conclusions, then the technical lead shall document this in their report.
- 3.3.8 The nominated technical lead will communicate the results of the review to the originating organisation and produce a report which is suitable for use by the court and a copy to be filed with the nominated national organisation.
- 3.3.9 If the checking fingerprint experts do not reach the same conclusions or is not able to confirm either that the fingerprint examination was adequate or that the conclusions reached were reasonable, then the nominated technical lead shall document, the areas of agreement, i.e. critical finding and areas of

⁶ The number of experts required can be agreed with the selected technical lead and national organisation co-ordinating the review.

disagreement and will facilitate a discussion between all the experts at a convenient meeting place to reach a consensus opinion. The experts must consider all the conclusions and arrive at a safe and reasonable conclusion that all experts are satisfied with. This may mean reporting the original conclusion as unsafe.

3.3.10 If the result of the review is that the identification has been declared as unsafe the originating organisation must take the responsibility to withdraw their report pertaining to that examination and conclusion. It must not be pursued as 'identification'.

3.4 This consultation seeks responses on the following questions;

3.4.1 *In the absence of knowing the true result how can disputes in fingerprint evidence be resolved to ensure that accurate and reliable evidence is put before the courts?*

3.4.2 *To what extent in a dispute should the jury or the court be invited to arbitrate on the dispute?*

3.4.3 *How can an accredited quality management system ensure that disputes are resolved and what are the organisational responsibilities and accountabilities?*

3.4.4 *Can the Criminal Procedure Rules contribute to resolving disputed fingerprint evidence?*

3.4.5 *How can the quality standards framework ensure that disputes are resolved and that accurate and reliable evidence is put before the courts?*

3.4.6 *Can the proposed framework for processing and reporting differences of opinion provide an effective mechanism to deal with these to ensure that accurate and reliable evidence is put before the court?*

3.4.7 *If such a framework is to operate, who should be the nominated national organisation to administer such a process for the fingerprint community?*

4. REPORTING OUTCOMES

4.1.1 Fingerprint examination will deliver in the opinion of the practitioner one of the following outcomes.

[Identified](#)

[Excluded](#)

[Insufficient](#)

[Inconclusive](#)

4.1.2 Some reports could include the '[status of mark](#)' following an action i.e. searched with a negative response and remains [unidentified](#).

4.2 This consultation seeks responses on the following questions;

4.2.1 *Is the assertion that these are the four reporting outcomes for fingerprint comparison accepted?*

4.2.2 *Are the definitions assigned to each outcome accepted or is further refinement required? (Please comment on any or all of the 6 terms listed above).*

4.2.3 *Does the terminology listed in the 'Terminology, Definitions and Acronyms used in Fingerprint Examination - FSR-I-402' reflect the meaning of the language used by fingerprint practitioners?*

4.2.4 *Does the reporting outcomes and terminology listed in the 'Terminology, Definitions and Acronyms used in Fingerprint Examination - FSR-I-402' adequately replace the 'tool box'⁷ terminology previously used?*

5. CONSULTATION FEEDBACK

5.1.1 Feedback should be submitted on the feedback form and submitted by 20 January 2014 to FSRConsultation1@homeoffice.gsi.gov.uk.

⁷ Terminology introduced to formalise the reporting fingerprint examination when it moved away from a numeric to a non-numeric standard.

6. **DEFINITIONS**

EXCLUSION/EXCLUDED: Is the opinion of a practitioner that there are sufficient features in disagreement to conclude that two areas of friction ridge impressions did not originate from the same donor or person.

IDENTIFIED/IDENTIFICATION (IDENT): A practitioner term used to describe the mark as being attributed to a particular individual. It is the opinion of the practitioner that there is sufficient quality and quantity of ridge flow, ridge characteristics and / or detail in agreement with no unexplainable differences to conclude that two areas of friction ridge detail were made by the same person.

INCONCLUSIVE: The determination by a practitioner that the level of agreement and / or disagreement is such that, it is not possible to conclude that the areas of friction ridge detail originated from the same donor, or exclude that particular individual as a source for the unknown impression.

The outcome may be inconclusive for a number of reasons:

The quantity and quality of the ridge flow, ridge characteristics and / or the detail present in the two areas of friction ridge detail is not sufficient to conclude that they were made by the same person, but there is nothing in disagreement to conclude that they were not made by the same person. The practitioner is unable to exclude an individual because some similarity exists;

or

The quantity and quality of the ridge flow, ridge characteristics and / or the detail present in two areas of friction ridge detail is not sufficient to conclude that they were made by the same person or sufficient disagreement to conclude that they were not made by the same person. There may be some disagreement that maybe difficult to rationalize and therefore the person cannot be excluded;

or

The area of ridge detail cannot be compared as the corresponding area of ridge detail on the known impressions (print) is not revealed or not fully revealed.

INSUFFICIENT: The opinion that the ridge flow and / or ridge characteristics revealed in the area of friction ridge detail (mark) are of such low quantity and/or poor quality that a reliable comparison cannot be made. The area of ridge detail contains insufficient clarity of ridges and characteristics or has been severely compromised by extraneous forces (superimposition, movement etc) to render the detail present as unreliable and not suitable to proffer any other decision.

MARK STATUS: This is the description or standing of an area of ridge detail following comparisons and/or searching. It describes the status of an area of ridge detail when all actions have been completed. The mark may be **Identified** **Unidentified** or **Insufficient**. Where a mark is **Unidentified** it may be **Excluded** for certain individuals.

UNIDENTIFIED: The status of a mark after it has been compared to a nominated individual (elimination or suspect) or has been searched on a database and has not been attributed to any individual.

7. REFERENCES

1. Developing a quality standard for fingerprint examination; Andrew Rennison Forensic Science Regulator, Gary Pugh Chair of the Fingerprint Quality Standards Specialist Group, December 2011.
<https://www.gov.uk/government/publications/fingerprint-examination-developing-a-quality-standard>
2. Codes of Practice and Conduct - Fingerprint comparison - FSR-C-128
3. Terminology, Definitions and Acronyms used in Fingerprint Examination - FSR-I-402
4. Sir A. Campbell, The Fingerprint Inquiry Report. Edinburgh: APS Group Scotland, 2011. <http://www.thefingerprintinquiryScotland.org.uk/inquiry/3127-2.html>