



Home Office

Government response to the consultation on new statutory powers for the Forensic Science Regulator

JULY 2015

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1. Introduction

- 1.1 The post of Forensic Science Regulator was established in 2008 and was held by Andrew Rennison until August 2014. The current Regulator is Dr Gillian Tully.
- 1.2 Although sponsored by the Home Office, the Regulator is a public appointee and operates independently of the Home Office, on behalf of the criminal justice system as a whole. The Regulator has jurisdiction throughout England and Wales. The Scottish and Northern Irish authorities follow the Regulator's standards on a voluntary basis.
- 1.3 The Regulator has a number of responsibilities. These include:
 - identifying the requirement for new and improved quality standards in the provision of forensic science services;
 - requiring, where appropriate, the accreditation of those supplying forensic science services to the police, including in-house police services;
 - determining procedures for validating and approving new technologies and applications in the field of forensic science;
 - developing standards that apply to national forensic databases, leading on the development of new standards where necessary;
 - providing advice and guidance to ministers, criminal justice system organisations and service providers on issues related to the quality of forensic services;
 - ensuring that satisfactory arrangements exist to provide assurance and monitoring of the standards, including the management of complaints or referrals about standards of forensic science; and
 - international developments relevant to forensic science quality standards.
- 1.4 The Regulator does not currently have statutory powers to enforce compliance. In November last year, the Government launched a consultation on whether the Regulator should have. The consultation ran for a period of eight weeks and we received a total of 57 responses. A summary of the responses, and the Government's proposed course of action, is set out below. Note that not all respondents responded to every question.

Next Steps

- 1.5 The Home Office is developing a Forensic Strategy to be published by the end of 2015. This will consider current and emerging opportunities and challenges in the forensic landscape. Alongside this work, options for the Forensic Science Regulator are being considered and the way forward will be published alongside the Strategy.

2. Summary of responses

A summary of the responses to each of the questions we asked is shown below.

2.1 Question 15a – Respondents

2.1.1 This question asked: **“Which of the following best describes you or the organisation or sector that you represent? Please give details in the box below.”**

2.1.2 Responses were as follows:

Respondent type	Number of responses
Forensic Service Provider	16
Police forces*	11
Police and Crime Commissioner	4
Legal profession	2
Regulatory body, standards body or inspectorate	4
Civil liberties charity / organisation / pressure group	1
Representative body	2
Member of the public	2
Other	13
TOTAL	55

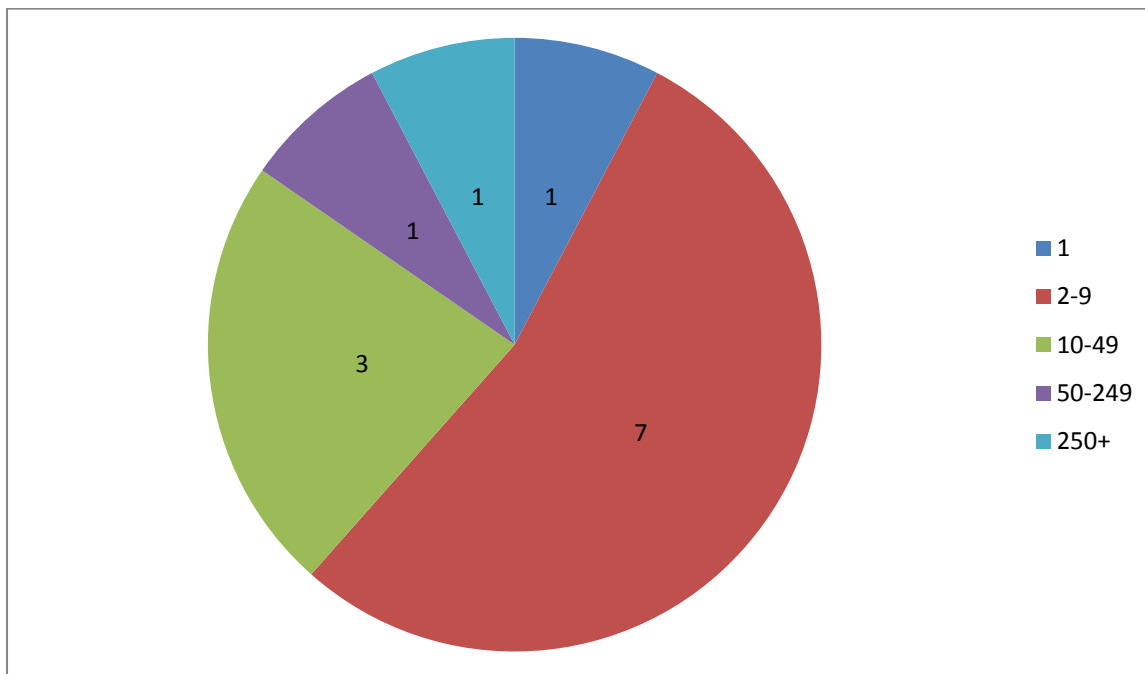
*Some responses were on behalf of several forces within a region

2.2 Question 15b – Forensic Service Providers

2.2.1 This question asked: **“If you represent a Forensic Service Provider, please state the size of your organisation, by approximate number of employees:”**

2.1.3 We received responses from 13 Forensic Service Providers (FSPs).

2.1.4 Responses were as follows:



2.1.5 The majority of FSPs were small organisations, employing between two and nine members of staff.

2.3 Question 1 – Stages of Regulation

2.3.1 This question asked: **“For each of the stages in the forensic evidence process listed below, please state whether you think they should, or should not be covered under the remit of the Regulator’s statutory powers. Please explain your answers, and specify any further stages you think should be under any statutory remit given to the Regulator.”**

2.3.2 Responses were as follows:

Stage	Yes	No	Don't know	TOTAL
Manufacture of forensic consumables	31	13	4	48
Collection of evidence at the crime scene	41	6	1	48
Collection of samples from individuals	36	7	3	46
Preservation, transport and storage of evidence	43	6	0	49
Screening and selection of evidence	38	9	0	47
Examination and testing of evidence	40	8	0	48
National forensic databases	37	5	5	47
Assessment or review of examination and test results;	39	8	0	48
Reporting and presentation of results with associated expert interpretations and opinions	33	14	1	48

2.3.3 A majority of respondents agreed that all of the stages of the process should be covered by the Regulator’s statutory powers. The regulation of the manufacture of forensic consumables and the reporting and presentation of results, although still supported by a majority of respondents, attracted the greatest level of disagreement. Respondents expressed the greatest level of uncertainty around regulation of the national forensic databases.

2.3.4 Respondents commented that without regulation, the quality of the evidence in criminal proceedings would be affected. It was felt that regulation would help to ensure quality and consistency throughout the industry. One respondent felt that the destruction of DNA samples and profiles should also be added to the list of stages that the regulator oversees.

2.3.5 However, a minority expressed the view that the current level of regulation was sufficient and there was also concern that statutory regulation might stifle research. There was also a concern that it placed too much power in the hands of a single individual. Several respondents felt that it would be undesirable to regulate the manufacture of forensic consumables because this was a commercial interest and would be difficult to oversee, especially where reagents were produced overseas. The view was expressed that regulation of experts could lead to them producing very rigidly set out reports (as had been observed in other countries) thereby missing opportunities. Additionally, it would add to the burden of bureaucracy. There was also the feeling that regulation was more the remit of the courts and that it might conflict with other regulatory bodies such as the General Medical Council.

2.3.6 Comments in favour of regulation included:

‘Quality assurance is critical throughout the chain of custody, so all these areas should come under the remit of the Regulator’s statutory powers.’

‘If the Criminal Justice System (CJS) is to be able to rely in confidence on the evidence that is the result of forensic analysis, it is vital that integrity is maintained at all stages of the analytical process from the point at which evidence is first collected to the point at which evidence is given at court.’

2.3.7 Comments against included:

‘Giving statutory powers to impose adherence to guidelines or set procedures is not beneficial as it may stifle scientific research and innovation and may give the FR’s advisors too much power to impose their ways of working on everyone regardless of whether they are beneficial.’

‘... given the global nature of the market for manufacture of consumables, and the fact that consumables used in forensic science are manufactured for a broad range of markets (not solely forensic science), it is difficult to see exactly how statutory regulation would work in practice.’

2.3.8 The organisations who disagreed with regulation of one or more of the stages tended to be the same. They were not, however, from any one particular category of respondents and included police forces, police and crime commissioners, forensic service providers and representative bodies.

2.3.9 It was suggested that the following stages should be added:

- screening of substances under the Misuse of Drugs Act; and
- on-site DNA analysis and drugs identification in body fluids.

2.4 Question 2 – Forensic Science Disciplines

2.4.1 This question asked: **‘For each of the forensic science disciplines below, please state whether you think they should, or should not be covered under the remit of the Regulator and his statutory powers (definition of forensics). Please explain your answers, and specify any further areas you think should be covered.’**

2.4.2 Responses were as follows:

Discipline	Yes	No	Don't know	TOTAL
DNA extraction and profiling	40	3	4	47
Fingerprint enhancement, development and comparison	40	3	4	47
Toxicology (alcohol/drug testing)	40	4	4	48
Footwear comparisons	39	4	4	47
Trace evidence examination such as fibres, glass and paint	39	4	4	47
Facial identification	34	9	4	47
Other CCTV analysis e.g. gait analysis (CCTV cameras themselves come under a separate regulatory regime – only scientific analysis of the images is covered here)	33	11	4	48
Drug identification and analysis	38	4	4	46
Firearms and ballistics	39	4	4	47
Gun shot residue	39	4	4	47
Explosives	39	4	4	47
E-forensics (Computer / mobile phone analysis)	40	7	0	47
Blood pattern analysis	38	4	5	47
Toolmarks	39	4	4	47
Tyre examination	39	4	4	47
Document analysis	39	5	4	48
Medical forensics including victim and suspect sampling in sexual assault cases	36	4	6	46
Forensic pathology	36	5	7	48
Forensic dentistry/odontology	35	6	6	47
Fire examination	36	5	6	47
Vehicle examination	37	5	6	48
Forensic anthropology	32	7	8	47
Forensic archaeology	32	7	8	47
Forensic palynology ¹	34	5	8	47
Accident investigation and reconstruction	37	4	7	48
Disaster victim identification	32	9	6	47
Forensic accountancy	27	10	10	47
Forensic psychiatry	27	8	11	46
Forensic psychology	27	8	11	46

2.4.3 A majority of respondents agreed that all of the disciplines identified should be regulated although the number of ‘don’t know’ responses indicated a level of uncertainty about the inclusion of forensic accountancy, psychiatry and psychology under the Regulator’s powers. Respondents were least in favour of the regulation of closed camera television and forensic accountancy.

¹ Palynology is the study of particles such as dust, pollen or spores.

2.4.4 There was concern expressed by a couple of respondents that some of the areas (such as accountancy, psychiatry and psychology) were already regulated elsewhere. One respondent cautioned against applying a single “one size fits all” regulation regime.

2.4.5 Comments in favour of the disciplines identified included:

‘All the forensic science disciplines listed above have the potential to be utilised in support of judicial processes and therefore should be subject to the statutory power of the Regulator.’

‘Any area where expert evidence is adduced in a criminal trial should fall under the remit of the Forensic Regulator.’

2.4.6 Comments against included:

‘Not sure about forensic psychiatry and forensic psychology and on what basis that would be regulated.’

‘We do not believe that the Regulator should be given statutory powers.’

2.4.7 It was suggested that we consider regulating the following additional areas:

- audio forensics;
- podiatry;
- forensic radiography;
- hand writing comparison;
- facial reconstruction;
- soil forensics;
- Isotope Radio Mass Spectrometry (IRMS);
- other biometrics (apart from face, gait, fingerprints and DNA) etc.;
- cyber (including virus analysis);
- cell site analysis;
- analysis and interpretation of communications and Internet Service Provider data;
- open source data recovery, analysis and interpretation;
- height analysis;
- photogrammetry;
- photo response non-uniformity;
- categorising Indecent images; and
- forensic entomology.

2.5 Question 3 – Role of the Regulator: Further Comments

2.5.1 This question asked: **‘If you have any other comments on the role of the Regulator that you would like us to take into consideration, please outline them below:’**

2.5.2 One respondent believed that it was the role of the Regulator to ensure the reliability of forensic evidence presented in court. Another highlighted the difference between digital forensics and other forensic disciplines; the differences would make it difficult to have a single accreditation system for all of them. One respondent highlighted the fact that sometimes non-criminal investigations (e.g. by insurers into fire damage) could lead them to conclude that a criminal act had in fact taken place. They wondered whether such investigators should also come under the remit of the Regulator.

2.5.3 Some of the comments received included:

The Regulator’s involvement in the work of the courts:

‘The Regulator should have the power, in exceptional cases, to intervene and make a submission to the Court, where serious quality issues in forensic science in a live case have been identified.’

‘We recommend that the Regulator should be empowered by statute to consult all court rule making bodies or office holders (including the Family Justice Council, the Civil Justice Council and the Office of the Chief Coroner) on matters relating to the admissibility and reliability of scientific and medico-legal evidence. Likewise those bodies and office holders should have the authority under statute to require the Forensic Regulator to consult them on matters affecting the regulation of scientific and medico-legal evidence within their jurisdictions.’

Allowing sufficient time for the introduction of accreditation:

‘Whilst we support the introduction of statutory powers for the Forensic Science Regulator, we caution against the use of mandatory timelines for accreditation of activities which have traditionally tended to be undertaken within the police environment.’

Call for greater clarity over what is meant by regulation:

‘I would like to see the regulator provide even more formal guidance as to what accreditation and regulation really means with respect to the different forms of Quality.’

Need to provide training:

‘The role could also be extended to incorporate education and training as these can be viewed as the foundations to personal and corporate quality standards especially within continual professional development and competency (CPD [continuing professional development] and CPC [continuing professional competence]).’

‘Adequate training and monitoring of those carrying out the audits/assessments within police forces and forensic providers will be required to ensure that everyone is being assessed in a similar and set manner for continuity and standardisation of the quality, processes, procedures and reporting carried out by each of the individuals/laboratory.’

2.6 Question 4 – Statutory Code of Practice

2.6.1 This question asked: **‘For each of the groups listed below, please state whether you think they should, or should not be required to have regard to a statutory Code of Practice on forensic standards. Please explain your answers, and specify any further groups you think should have regard to the Code.’**

2.6.2 Responses were as follows:

Group	Yes	No	Don't know	TOTAL
Manufacturers of forensic consumables	34	8	3	45
Suppliers of ‘DNA free’ components to manufacturers	39	5	3	47
Police forces	42	3	2	47
Other law enforcement agencies, such as the Serious Organised Crime Agency and military police.	42	3	2	47
Police and Crime Commissioners	41	3	3	47
Forensic Service Providers – for the police / prosecution	43	3	1	47
Forensic Service Providers – for the defence	41	4	2	47
Individual experts	39	5	3	47
Legal Aid Agency	40	4	2	46
The Crown Prosecution Service	41	4	1	46
The Home Office (as the organisation responsible for the national DNA and fingerprint databases)	39	3	2	44

2.6.3 A majority of respondents agreed that all of the groups identified should be regulated although the greatest level of disagreement concerned the regulation of manufacturers.

2.6.3 Respondents were broadly in agreement that it was important to have regard to a statutory Code of Practice although several questioned the meaning of the phrase. One respondent felt that a breach of the code should be admissible as evidence in court.

2.6.4 Comments in favour of the groups identified included:

‘Without regard to the Code of Practice, organisations may not be aware of the quality issues surrounding the evidence that they will be reliant upon in due course.’

‘In addition, professional and learned Societies should also have regard for the specific areas they deliver such as accredited / recognised and CPC and CPD.’

2.6.6 Comments against included:

‘I am not certain that the Forensic Science Regulator’s powers should extend into the manufacturing industry.’

‘None - we do not believe that the Regulator’s Codes should be statutory. The Regulator Codes of Practice are still unproven.’

2.6.7 It was suggested the Regulator should also be responsible for regulating the following organisations:

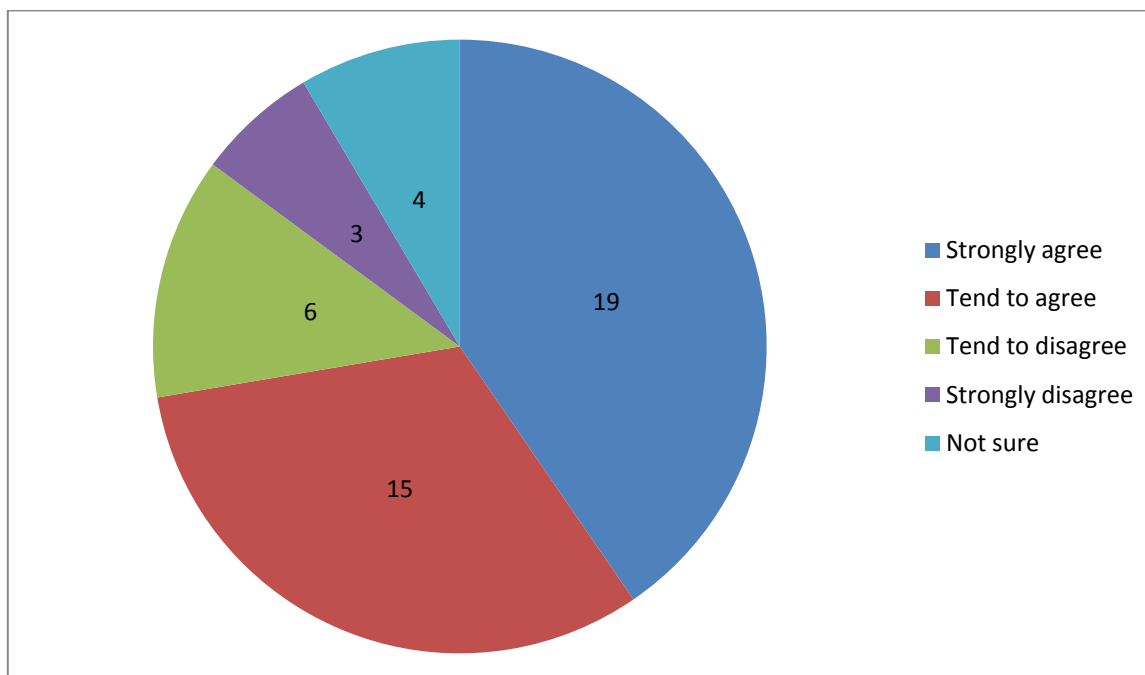
- United Kingdom Visas and Immigration;
- the security services;
- Serious Fraud Office;

- Her Majesty's Revenue and Customs;
- defence lawyers;
- the judiciary;
- professional and learned societies;
- National Crime Agency; and
- those responsible for the collection of forensic samples.

2.7 Question 5 – Compliance with the Code

2.7.1 This question asked: **‘To what extent do you agree or disagree that admissibility of the Code in court, contractual penalties and a power to investigate serious breaches, is sufficient to ensure compliance with the Code? Please explain your answer, and specify any additional measures which could be taken to maximise compliance with the Code.’**

2.7.2 Responses were as follows:



2.7.3 A considerable majority of respondents tended to agree or strongly agreed that admissibility of the Code in court, the ability to levy contractual penalties and a power to investigate serious breaches would be sufficient to ensure compliance.

2.7.4 One respondent felt that any breaches needed to be made public to ensure compliance. Another supported the proposals but highlighted the need to consider smaller organisations whose work may not cover all of the areas of the Code.

2.7.5 Comments in agreement with these methods of ensuring compliance included:

‘The importance of forensic coding in the judicial system cannot be overstated and so sanctions should apply to those who are unable to verify the efficacy of their product.’

‘Mrs Bourne [the Sussex Police and Crime Commissioner] is confident that admissibility of the Code in court is sufficient on its own to ensure compliance.’

2.7.6 Comments against included:

‘...the net effect of this kind of sanction will drive many small or independent e-forensic suppliers out of business.’

‘Sanction via admissibility in court alone may not be sufficient to challenge or test breaches of or non-compliance with the code.’

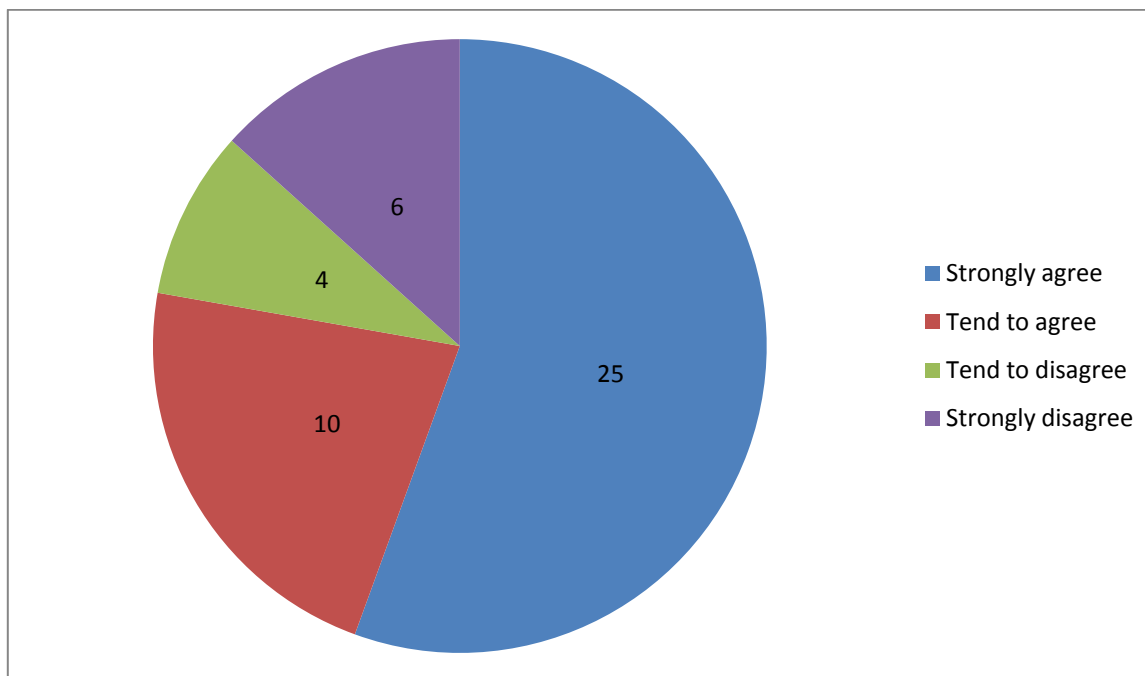
2.7.7 The following additional measures to maximise compliance with the Code were suggested:

- pay only those experts who agree to abide by the Code;
- require all statements submitted to the criminal justice system to include a statement saying whether or not they were compliant with the Code;
- the Regulator should have the power to refer non-compliant police forces to the Independent Police Complaints Commission;
- in conjunction with the United Kingdom Accreditation Service (UKAS), the Regulator should be able to instigate the removal of accreditation;
- suspend the person or organisation's the person or organisation forensic activities;
- allow complaints to the Regulator; and
- financial penalties.

2.8 Question 6 – Making the Code of Practice Statutory

2.8.1 This question asked: **‘To what extent do you agree or disagree that putting the existing Code of Practice on a statutory footing will be beneficial?’**

2.8.2 Responses were as follows:



2.8.3 A considerable majority of respondents tended to agree or strongly agreed that making the Code statutory would be beneficial. No respondents were unsure about their response to this question.

2.9 Question 7 – Making the Code of Practice Statutory: Further Comments

- 2.9.1 This question asked: **‘If you have any other comments on putting the Regulator’s Code of Practice on a statutory basis that you would like us to take into consideration, please outline them below:’**
- 2.9.2 Several respondents cautioned against adopting too ambitious a timescale for the introduction of a statutory Code. A number of respondents also expressed concern about the costs of gaining accreditation. Two respondents recommended that we develop a number of good practice guides rather than introducing a Code of Practice. One highlighted the lack of a mention of the Forensic Science Advisory Council in the consultation document and wondered what our vision of its future role was.
- 2.9.3 Some of the comments received included:

The existing Code:

‘The existing Code is too prescriptive and based too much on the issues of DNA evidence...Rather than going for a statutory code, one or more Good Practice Guides may be more beneficial, cheaper to administer, and still be admissible for the courts to consider.’

Making the Code statutory:

‘I do not believe allowing the FR to mandate codes of practice is beneficial. This puts too much power into that post.’

‘A statutory code of practice will bring greater clarity, improved compliance, and enhanced credibility.’

‘[We] [d]o not support the provision of statutory powers around the Codes of Practice until such a time they can be proved to be beneficial, proportionate and deliverable.’

Risks with International Standard Organization accreditation:

‘I am concerned that in concentrating on only volume crime-related forensic science, we risk losing sight of the needs and value of niche experts. They are a critical part of the CJS system and we need to ensure flexibility of approach. If it became a requirement for all professional bodies or sole practitioners to seek ISO accreditation then this will fail as it is outwith their financial ability.’

Amendment to the Code:

We recognise that there may need to be flexibility to make minor changes to the Code without full public consultation but we disagree that the criteria for public consultation should be limited to changes with significant cost implications. Any change to the Code with potential to impact significantly on miscarriages of justice or trust in the CJS should be subject to public consultation.

2.10 Question 8 – Powers of the Forensic Science Regulator

2.10.1 This question asked: **‘For each of the powers below, please state whether you think they are necessary on a statutory basis: Please explain your answers, and specify any further powers you think the Regulator needs to carry out an investigation.’**

2.10.2 Responses were as follows:

Group	Yes	No	Don't know	TOTAL
Powers of entry	27	17	1	45
Access to information (documents and records)	36	8	1	45
Power to impose an improvement plan	34	9	2	45
Discretionary power to produce a report	37	7	1	45

2.10.3 A majority of respondents agreed that the Forensic Science Regulator should have all of the powers identified although a sizeable minority disagreed with giving the Regulator the power to enter premises.

2.10.4 Respondents were broadly in agreement that it was important to have regard to a statutory Code of Practice although several questioned the meaning of the phrase. One respondent suggested the addition of solicitors, barristers and the judiciary to the list of those required to have regard to the Code.

2.10.5 Comments in favour of the powers identified included:

‘All of the above powers should be available to the Regulator.’

‘Yes. The Forensic Regulator should have these powers, but of course having powers doesn't necessarily mean enforcing them as a first resort. We would expect that the Forensic Regulator's office would engage in a co-operative approach in the first instance, resorting to the powers above only in the most severe of circumstances.’

2.10.6 Comments against included:

‘These areas could form part of the contractual agreement and as such would not need statutory powers.’

‘No powers should be given’

2.10.7 The following additional power was suggested to enable the Regulator to carry out an investigation:

- a power to summon witnesses to give or produce evidence.

2.11 Question 9 – Sanctions for Non-compliance with the Code

2.11.1 This question asked: **‘For each of the sanctions below, please state whether you think they would or would not be effective for organisations that refuse to co-operate: Please explain your answers, and specify any further powers you think the Regulator needs to carry out an investigation. Please explain your answers, and specify any alternative sanction powers you think the Regulator should be given.’**

2.11.2 Responses were as follows:

Group	Yes	No	Don't know	TOTAL
Refer organisation to UKAS for review of accreditation status	39	8	0	47
Give the Regulator the power to recommend an organisation be suspended from the procurement framework	42	4	0	46
Financial penalty per day of non compliance	25	18	2	45
Removal or suspension of work written into any public sector contracts	39	4	2	45
Public report or register	40	3	1	44
Requirement to disclose that subject to an improvement plan	38	6	2	46
Requirement for contracts with FSPs to require compliance with any Regulator investigation.	37	5	1	43

2.11.3 A majority of respondents agreed that the Forensic Science Regulator should have the power to impose all of the sanctions identified. However, a sizeable minority were opposed to the power to impose fines.

2.11.4 It was recommended that all experts used in court were either regulated by their organisation or by an alternative system (e.g. a professional body). It was suggested that we needed to exercise caution where the failure to follow the Code was not entirely due to the provider. There was also concern expressed that UKAS inspectors would not have sufficient knowledge of digital forensics.

2.11.5 Comments in favour of the sanctions identified included:

‘I do not agree with statutory accreditation but do favour a Code of Practice with sanctions as listed above.’

‘All the sanctions would be effective and work as a deter[r]ent.’

2.11.6 Comments against included:

‘The view of the FFLM [Faculty of Forensic and Legal Medicine within the Royal College of Physicians] is that this should not be a financial penalty as this may be draconian for smaller organisations’

‘Many of these sanctions would have no effect on individual experts who generally operate outside the procurement framework.’

2.11.7 The following additional sanctions were suggested:

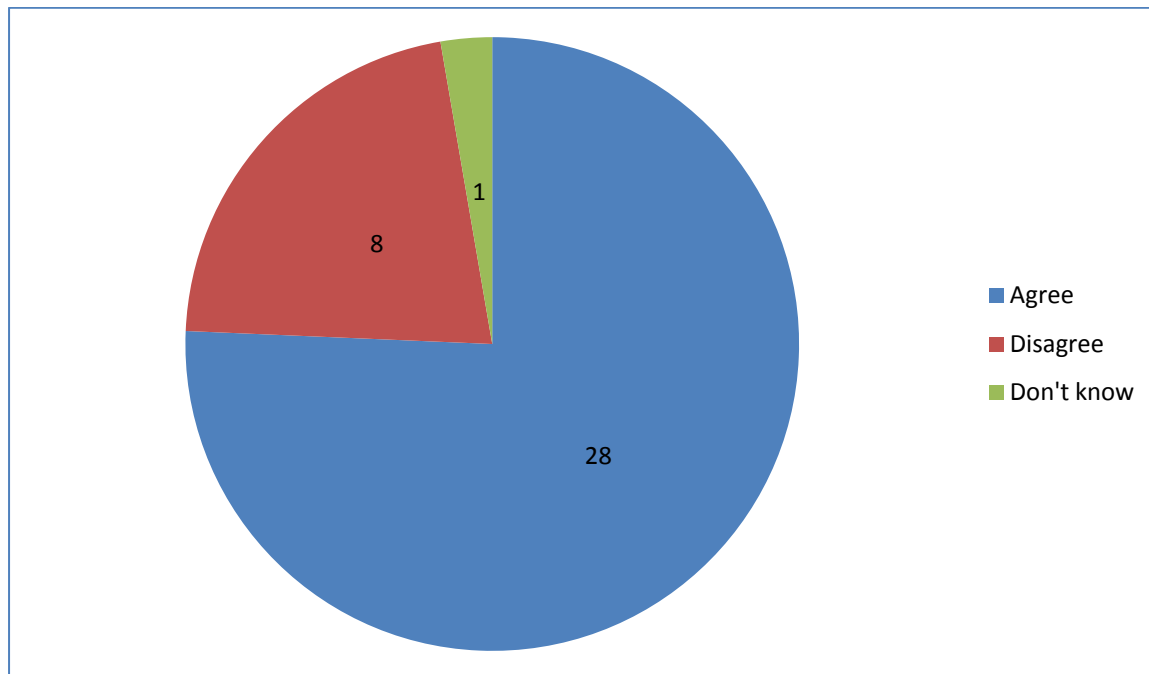
- make it a requirement that the contents of any improvement plans in force be disclosed with an expert's report to court;

- the costs associated with any transfers to an alternative service provider should be passed on to the uncooperative organisation; and
- any ongoing investigations of an organisation should be disclosed.

2.12 Question 10 – Access to UKAS records

2.12.1 This question asked: **‘To what extent do you agree or disagree that the FSR should have a statutory power to access information supplied to UKAS and subject to its confidentiality requirements? Please explain your answer.’**

2.12.2 Responses were as follows:



2.12.3 The vast majority of respondents agreed that the Regulator should have access to information held by UKAS.

2.12.4 There was a general level of support for protection for whistleblowers. One respondent called for the final reports of investigations into breaches of the Code to be made public. Another felt that information held by forensic organisations should be exempt from disclosure under the Protection of Freedoms Act 2012. One respondent cautioned that the Regulator should not simply rely on information held by UKAS but should carry out their own investigation into any breach. It was felt that access to information held by UKAS should be limited by the scope of the investigation.

2.12.5 Comments in favour of allowing the Regulator to have access to UKAS records included:

‘Agree but UKAS would need to have ‘waiver of confidentiality’ agreements in place with accredited organisations.’

‘We agree strongly that there should be a statutory power to obtain information. Without it the statutory framework will be ineffective.’

2.12.6 Those against it included:

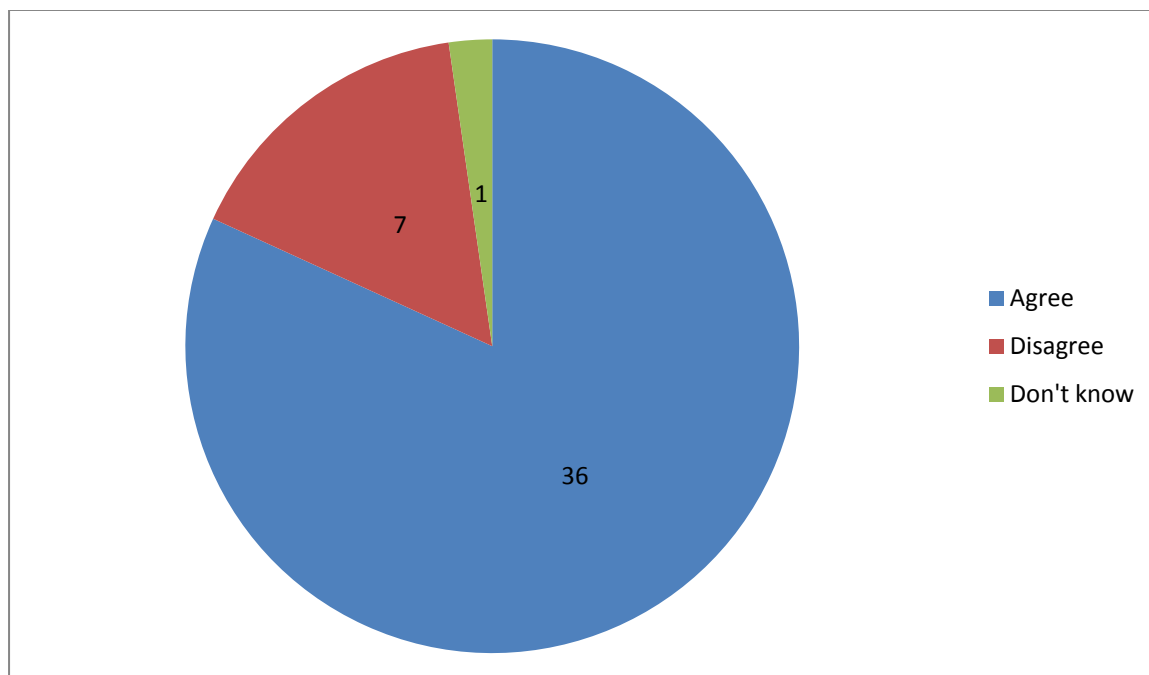
‘I do not believe that it should be the FSR’s responsibility to establish the existence, or otherwise, of [an] [o]rganisation’s accreditation.’

'We do not believe that such a power is necessary if [the] powers discussed in [question] (8) are granted.'

2.13 Question 11 – Statutory Powers of Investigation

2.13.1 This question asked: **‘To what extent do you agree or disagree that statutory powers to investigate will be beneficial? Please explain your answer.’**

2.13.2 Responses were as follows:



2.13.3 The vast majority of respondents agreed that the Regulator should have the power to investigate any breaches of the Code.

2.13.4 The importance of the Regulator acting impartially was stressed. One respondent suggested that the Regulator should not only have the **power** to investigate but should actually be under a **duty** to do so where necessary. Another suggested that, where there were concerns about the robustness of forensic evidence, it shouldn't be necessary for the party who had commissioned the evidence to raise a complaint with the Regulator (as is currently the case). It was felt that giving the Regulator statutory powers to investigate would enhance public confidence in the criminal justice system.

2.13.5 Comments in favour of giving the Regulator statutory powers to investigate included:

‘We agree that statutory powers are necessary to prevent the growth of sub-standard evidence driven by cost-cutting.’

‘Investigative powers would be required in order to fully understand any issues with the evidence presented in court.’

2.13.6 Those against it included:

‘I disagree that statutory powers to investigate are necessary’

‘I do not think we are at this stage yet. If we were to impose ISO17025 on all digital forensic laboratories and individuals providing digital forensics services within the criminal justice system, I think it would be a complete disaster.’

2.14 Question 12 – Statutory Code of Practice: Further Comments

- 2.14.1 This question asked: **‘If you have any other comments on putting the Regulator’s Code of Practice on a statutory basis that you would like us to take into consideration, please outline them below.’**
- 2.14.2 It was recommended that the judiciary should be able to require the Regulator to conduct an investigation into an organisation that was required to follow the Code. It was also recommended that the Regulator should offer help and guidance first before considering the use of any sanctions. Concern was expressed at how the Regulator would be able to carry out their functions without additional staffing. One respondent stressed the importance of the Regulator being truly independent of the Government. It was suggested that employees with concerns should be required to report them internally first before going to the Regulator.
- 2.14.3 Some of the comments received included:

Support for regulation:

‘Without statutory powers there remains the possibility for non compliance from a forensic service provider in an investigation into potential problems with the evidence presented in a case.’

Against Regulation:

‘I would argue that there are adequate powers available to the institutions regulating the relevant primary professions. ...I consider the whole idea of regulating the process of investigation, reporting and giving evidence to be misconceived.’

Privacy:

‘There are serious concerns over privacy issues with sharing staff profiles to a central database.’

Merger with Independent Police Complaints Commission:

‘We would like to suggest that the Forensic Regulator’s office become a department within the IPCC (or its successor) so that it can share administrative and investigative resources within a body which has been set up to deal with similar issues on a much larger scale; whilst maintaining independence from the Home Office and other interested parties internally and externally to the government.’

Consultation focus too narrow:

‘The focus of this consultation and associated Code of Practice concentrates almost entirely on the Police and the larger providers of forensic services to the Police and Criminal Justice System. There appears to be very little (if any) consideration given to other areas of law enforcement that conduct criminal investigations where forensic services are required.’

2.15 Question 13 – Requirements for Additional Legislation

2.15.1 This question asked: ‘**Are there other issues relating to the regulation of standards in forensic science not mentioned in this paper for which new legislation may be required?**’

2.15.2 It was suggested that an investigation should be carried out into the extent to which matches with partial crime scene DNA profiles are used in court. One respondent felt that there needed to be greater regulation of the activities of defence teams. It was felt that the courts must have the power to exclude deficient forensic evidence. One respondent felt that, although the Regulator has jurisdiction only throughout England and Wales, we should consider the implication for Scotland. It was suggested that an initial tranche of powers be introduced with additional powers added only if initial powers prove to be inadequate. Powers should then be reviewed after a period (perhaps two years). Another respondent felt that we needed to consider the impact of legislation on existing legislation such as the Employment Rights Act 1996, Codes of Conduct of Professional Bodies and the Criminal Procedure Rules. There was a suggestion that the accreditation market be opened up to providers in addition to UKAS. The importance of ensuring that regulation applies equally to the public (e.g. police laboratories) and private sectors was highlighted.

2.15.3 Some of the comments received included:

Support for our proposals:

‘The proposals in the Consultation are a measured and proportionate response to concerns within the criminal justice system around the integrity of forensic evidence in an increasingly commercialised market.’

Role of the Regulator in assessing new scientific techniques:

‘We would welcome a role for the [R]egulator in assessing and monitoring the scientific quality of new forensic technologies and techniques. In the past these have tended to be introduced amid a blaze of enthusiasm and in some cases become controversial as their limitations become apparent later on, necessitating a review of large numbers of past cases.’

Annual report highlighting deficient forensic evidence:

‘The FSR should be collecting from the police and the courts, all reports where forensic science has been deemed inadequate. It should publish an annual report summarising these reports and use the information to modify and develop its regulatory regime.’

Need to consider value for money:

‘Before undertaking a potentially very costly accreditation process and at a time of austerity we should be determining if it is really needed and if so if it is value for money. Might other changes be more effective in maintaining/improving standards? If statutory regulation is value for money and is needed surely there is a more appropriate standard than ISO17025?’

2.16 Question 14 – Cost/Benefit Analysis

2.16.1 This question asked: **‘If you have any alternative cost / benefit estimates to those used in the Impact Assessment published alongside this consultation document, please explain them below.’**

2.16.2 Only around 30% of respondents replied to this question. Those that did were generally critical of the Impact Assessment. It was felt that we should not only consider the impact in terms of monetary costs we should also consider the impacts on staffing and time. Concern was expressed at the impact of the costs of accreditation on micro businesses and on sole traders. It was felt that we should exclude the costs of the Quality Manager from the Impact Assessment.

2.15.3 Some of the comments received included:

Impact Assessment underestimates the costs:

‘I think the cost estimates for digital forensic laboratories has been massively underestimated. I think the real cost will be several times higher, mostly because ISO17025 doesn’t really fit and therefore a great deal of completely pointless administration is brought in. In terms of cost benefit I don’t think there will be any.’

‘We believe, the real cost of imposing statutory requirements for 17025 accreditation and meeting the Forensic Regulator’s Code, even supposing it were possible in half of these areas, will be many times that proposed in the impact assessment.’

Impact Assessment not broad enough:

‘...we would question how widely the Impact Assessment has examined organisations beyond the Police and larger suppliers of forensic services, particularly in respect of other public sector organisations and smaller suppliers of forensic services.’

Costs to police not considered:

‘Currently the cost and time impact to police forces having to inspect contractor generated results and liaise with the case officer does not seem to have been included anywhere in any of the IA cost calculations. This is a process which I thought is a requirement for both ISO17025 and the regulator Codes of Practice, and is quite a significant overhead which in my opinion definitely has to be included in any sensible cost calculations for police forces.’

Impact Assessment incomplete:

‘I note the number of occasions in which it has proved impossible to “monetise” some [of] the impacts. But without this information, proper policy decisions are difficult to make. In particular the IA needs to look at the impact on the profitability of forensic science providers and consider whether the range of services and of providers will be reduced, which in turn may impact on the criminal justice system’

3. List of respondents

3.1 We are grateful to all those individuals and organisations who took the time to respond to the consultation. They are as follows:

Bedfordshire, Hertfordshire and Cambridgeshire	Sussex Police and Crime Commissioner
Joint Protective Services	Sysnet GS
Bericon Forensics	Teeside University
Birmingham City Council	Trading Standards South East Limited
British Standards Institute	United Kingdom Accreditation Service
CCL Forensics	University of Dundee
City of London Police	University of Strathclyde
College of Physicians	Warwickshire and West Mercia Police
Contact Traces	Gregory Webb
Crown Prosecution Service	West Midlands Police
CY4OR Legal Limited	West Yorkshire Police and Crime Commissioner
Peter Downes	
Dyfed Powys Police	
East Midlands Police Collaboration	
Evidence Partnership Limited	
Stephen Falkner	
Fleet Forensics Limited	
Forensic Context Limited	
Fulcrum Data Forensics	
Genewatch UK	
Alan Given QPM	
Phill Hatton	
Heart of England National Health Service	
Foundation Trust	
J P French	
Keith Borer Consultants Limited	
Laboratory of the Government Chemist	
Life Technologies	
Lincolnshire Police and Crime Commissioner	
London Borough of Brent	
Manlove Forensics Limited	
Metropolitan Police Service	
National Trading Standards eCrime Centre	
Police Service of Northern Ireland	
Northumbria Police and Crime Commissioner	
Northumbria University at Newcastle	
Principal Forensic Services	
Royal Courts of Justice	
Mike Silverman	
Smartwater Foundation	
Smartwater Technology Limited	
Peter Sommer	
South Wales Police	
Surrey and Sussex Police	