



Forensic Science Regulator

Protocol

FSS Archive Complaints

FSR-P-301

Issue 2

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1. Purpose

- 1.1.1 This document sets out an agreement between the Home Office and the Forensic Science Regulator (the Regulator) in relation to the handling of complaints about the quality of scientific work undertaken in cases, originally undertaken by the Forensic Science Service Ltd and its predecessors (FSS), stored by the Forensic Archive Ltd (FAL).

2. Scope

- 2.1.1 The creation of FAL has led to position where work undertaken by the FSS will be available to the Criminal Justice System but without any operational forensic science provider to deal with issues raised about that work. In particular, there is no body directly responsible for dealing with concerns or complaints about the quality of the work or the competence of the individuals who undertook the work.
- 2.1.2 The Regulator has agreed to deal with concerns and complaints arising from the operation of FAL in dealing with material related to work originally undertaken by the FSS subject to the following provisions.
- 2.1.3 The Regulator will deal with complaints which are related to the quality of:
- a. The scientific/pathological ¹ examination of material as part of the investigation or prosecution of an offence within the UK;
 - b. The reporting of results of scientific/pathological examination of material whether as evidence or otherwise;
 - c. The scientific/pathological methods employed by the FSS; and
 - d. The performance of the staff of the FSS which undertook any examination.
- 2.1.4 The Regulator will not, in addition to the general provisions which apply to complaints (set out at 5.1.4 below), deal with complaints which:
- a. Relate to the operation of FAL as opposed to the work of the FSS;

¹ In relation to pathology the Regulator will deal with complaints about the quality standards and methods. Complaints about the performance of forensic pathologists will be referred to the Pathology Delivery Board.

- b. Deal with aspects of the FSS operations other than the quality of the scientific/pathological examination of material and the reporting of such work;
- c. Relate to the oversight of FAL by the Home Office; or
- d. Amount to a reconsideration of the scientific/pathological evidence in a case as part of an appeal.

3. Implementation

3.1.1 Issue 1 of this protocol was implemented on 1 May 2013.

3.1.2 Issue 2 of the protocol became effective on 22 September 2020.

4. Modification

4.1.1 This is the **second** issue of this document.

4.1.2 Significant changes to the text have been highlighted in grey.

4.1.3 The modifications made to create Issue 2 of this document were to ensure compliance with The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.²

4.1.4 The Regulator uses an identification system for all documents. In the normal sequence of documents this identifier is of the form 'FSR-#-###' where (a) the '#' indicates a letter to describe the type or document and (b) '###' indicates a numerical, or alphanumerical, code to identify the document. For example, the Codes are FSR-C-100. Combined with the issue number this ensures each document is uniquely identified.

4.1.5 In some cases, it may be necessary to publish a modified version of a document (e.g. a version in a different language). In such cases the modified version will have an additional letter at the end of the unique identifier. The identifier thus becoming FSR-#-####.

² To facilitate compliance with the Regulations significant changes to the document are listed here. The following sections of the document have been altered – 1.1.1, 2.1.1, 2.1.2, 3.1.2, 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.1.6, 5.4.1.b, 5.1.20.a, 5.1.20.f and 6. The following footnotes have been altered – 2, 11 and 13.

4.1.6 In all cases the normal document, bearing the identifier FSR-####, is to be taken as the definitive version of the document. In the event of any discrepancy between the normal version and a modified version the text of the normal version shall prevail.

5. Complaint Handling

- 5.1.1 This section sets out the processes which will normally be followed when dealing with complaints or concerns. Circumstances may arise that have not been foreseen or cases may occur where following these processes would not be in the public interest or may not allow a fair consideration of the issues. The Regulator may alter the processes followed in any particular case if this is, in her opinion, appropriate.
- 5.1.2 A complaint is any information coming to the attention of the Regulator which suggests that some aspect of the delivery of forensic science to the Criminal Justice System (CJS) is operating below accepted quality standards and, consequently, not in a manner that best serves the interests of the CJS.
- 5.1.3 A complaint could be about a problem in quality standards delivered by a provider or practitioner; in the use of a method; or a process that is part of the delivery of forensic science services.
- 5.1.4 Investigation of a complaint will not be led by the Regulator where it:
- a. Amounts to an allegation of the commission of a criminal offence within the UK;
 - b. Falls within the jurisdiction of the Independent Office for Police Conduct;
 - c. Refers to an investigation/prosecution which is still active³ unless, in the opinion of the Regulator, it raises an issue of more general concern which can be dealt with without interfering with the active case; or

³ Whether a case is active will be a matter for the determination of the Regulator. The Regulator will, normally, consider a case to be active if a criminal investigation has been started and there has been no final determination of that case. A final determination of the case will have occurred when there has been a final judgment of a competent court which is not (and can not) be subject to appeal, or other challenge, and is not being investigated by the Criminal Cases Review Commission or Scottish Criminal Cases Review Commission

- d. Amounts to a collateral challenge to the judgment of a court, or amount to an appeal against the judgment of any other person or body (including, but not limited to, professional or regulator bodies).

5.1.5 The Regulator will, following receipt of a complaint satisfying the conditions set out above, undertake an initial consideration of a complaint.

5.1.6 At this stage the Regulator will determine whether the investigation of a complaint should be pursued, referred elsewhere or terminated. Termination will be justified in the following circumstances.

- a. The complaint does not identify a significant failure in the delivery of forensic science to the CJS.
- b. The complaint is, in the opinion of the Regulator, malicious or vexatious.
- c. The complaint refers to matters which have already been dealt with.

5.1.7 The Regulator may decide that the complaint falls within the remit of a different person or body and that this person/body should deal with the complaint. In particular the Regulator will, normally, refer complaints as follows.

- a. Complaints about the performance of Home Office registered forensic pathologists will be referred to the Pathology Delivery Board.
- b. Complaints against medical practitioners which deal with issues of ethics or general medical competence (rather than issues specific to the forensic process) will be referred to the General Medical Council.

5.1.8 Where a complaint does not warrant further investigation, the details will be retained in case a composite picture is provided by other information or subsequent complaints which would justify further investigation by the Regulator.

5.1.9 Where the Regulator terminates or refers the consideration of the complaint, she will write to the complainant explaining the situation.

- 5.1.10 Where the Regulator decides to look into a complaint, she will ⁴ write to the subject(s) ⁵ of the complaint (or appropriate representative of the subject(s)) other than the FSS.
- 5.1.11 The letter will include the following matters:
- a. The fact a complaint has been made;
 - b. Setting out the substance of the complaint in sufficient detail to allow the subject to respond; ⁶
 - c. Asking for comments on the complaint
 - d. Setting a deadline for the receipt of the comments.
- 5.1.12 The Regulator will write to the Home Office setting out the nature of the complaint.
- 5.1.13 The Home Office will assist the Regulator by, subject to the point below, facilitating access to all relevant material held by FAL. Access to casework material related to a specific case shall only be provided to the Regulator where the police force (or other investigating authority) involved authorises the access.
- 5.1.14 At this stage the Regulator may also contact others to seek views on the complaint. In particular the Regulator may contact bodies including the following.
- a. Where the subject, or any of the subjects, of the complaint was an employee (in relation to the matter complained of) of the FSS the Regulator may contact the current employer(s).
 - b. Where the subject, any of the subject(s) (other than the FSS) or current employer of any of the subject(s), of the complaint is accredited, registered or supervised by any other body the Regulator may contact that body. ⁷

⁴ If the Regulator believes communication with the subject (or any of the subjects), at this stage, might compromise the investigation of the complaint she may proceed without such communication.

⁵ Where the complaint refers to a person or the FSS the person/FSS will be the subject. Where the complaint refers to standards, guidance etc. the subject will be the FSS or organisation responsible for their issue.

⁶ The Regulator may (but is not required to) provide a copy of the complaint. Where the complaint is provided, she may redact the complaint to protect information she considers sensitive.

⁷ The Regulator may act in the same manner if the subject was accredited or supervised at the time of the incident which led to the complaint.

- c. Where the complaint could have an impact on the way in which any standards employed within forensic science operate the Regulator may contact any body responsible for setting and monitoring such standards.

- 5.1.15 The Regulator may choose to protect ⁸ the identity of the complainant, and others if the Regulator considered it appropriate, when communicating with the Home Office and others.
- 5.1.16 After expiry of the deadline for a response from the subject(s) of the complaint, from others contacted as described above and relevant information obtained from FAL the Regulator will review the complaint, the responses and such other information as the Regulator considers appropriate. If any response is not received by the deadline (subject to any extension of the deadline) the consideration will only deal with the complaint, such responses as were received by the relevant deadline and such other information as the Regulator considers appropriate.
- 5.1.17 Upon such consideration the Regulator may terminate the consideration of the complaint, terminate the consideration in relation to certain subjects, certain aspects, or initiate an investigation of the complaint.
- 5.1.18 Where the Regulator terminates the consideration of the complaint (or any part thereof), in total (or against some subjects) she will write ⁹ to the complainant and the subject(s) explaining the outcome of the consideration of the complaint.
- 5.1.19 Where the Regulator decides a complaint should be investigated ¹⁰ she shall arrange an investigation of the type, nature and extent that she considers appropriate.
- 5.1.20 When instigating any investigation, the Regulator will consider working with other relevant bodies, for example:

⁸ The Regulator may take such steps as she considers appropriate.

⁹ The Regulator may omit this communication if, in her opinion, it may interfere with her consideration of the complaint.

¹⁰ The investigation may extend beyond the initial complaint to address all concerns held by the Regulator resulting from the complaint, the material provided by the subject(s) and others and the consideration of the complaint.

- a. Professional bodies such as the Chartered Society of Forensic Sciences, Royal Society of Chemistry, Institute of Biology, Royal Statistical Society and the Royal College of Pathologists;
- b. Regulatory bodies such as the General Medical Council;
- c. Official bodies such as the Independent Office for Police Conduct and the Criminal Cases Review Commission;
- d. Standard setting or accreditation bodies such as UKAS;
- e. Any relevant police force; and/or
- f. HM Inspectorate of Constabulary, Fire and Rescue Services and equivalent bodies.

5.1.21 Where the subject, or any of the subjects, of the complaint is currently employed (in relation to the matter which was subject to complaint) the Regulator may choose to work with the current employer in investigating the complaint.

5.1.22 The Regulator may allow other bodies take the lead in the investigation of any complaint.

5.1.23 Whilst the Regulator may work with others in the investigation of a complaint, she is not bound to accept their views on the outcome of the complaint.

5.1.24 Similarly, the Regulator is not restricted in her actions by the sanctions, if any, imposed by any other body.

5.1.25 The Regulator may also seek such additional advice and/or evidence as she considers as appropriate as part of the investigation.

5.1.26 Where the Regulator finds the complaint (or any part of the complaint) substantiated or determines that the investigation has established cause for concern over the subject(s) practices she shall contact the subject(s) (or the subject(s) over whom concern exists) other than the FSS. This letter shall deal with the following matters.

- a. The substance of the complaint.
- b. The outcome of the investigation of the complaint and the resulting concerns in sufficient detail to allow the subject to make an informed response in relation to the concerns.
- c. Offering the opportunity to make representations.

d. Setting a deadline by which such representations must be received.

5.1.27 The Regulator shall write to the Home Office providing similar information to that set out above. The Home Office will be offered the opportunity to make representations.

5.1.28 Where the subject (or any of the subjects) is, currently employed (in relation to the matter complained of) the Regulator may contact the current employer) to offer the opportunity to make representations.

5.1.29 After expiry of the period for response the Regulator shall consider the complaint, the outcome of the investigation, the representations, if any, received by the deadline and such other information she considers appropriate.

5.1.30 The Regulator will then determine what steps should be taken to address the concerns noted above.

5.1.31 The Regulator may take such steps as she considers appropriate to address the concerns.

5.1.32 In relation to subjects other than the FSS these steps may include the following.

- a. Issue a “letter of concern” to the subject(s) and such employers as are appropriate setting out the Regulator’s concerns and, if known, the steps she believes necessary to address those concerns. This letter will ask recipients to:
 - i. Develop a programme of work to address the concerns;
 - ii. Set a timescale for the programme to be completed;
 - iii. Establish processes to show the concerns have been addressed;
and
 - iv. To provide this information to the Regulator.
- b. Work with the subject(s) and such employers (and previous employers) as are appropriate to address the concerns.
- c. To work with other organisations to address the concerns (e.g. by modifying existing standards).
- d. To refer the subject(s) to any relevant professional and/or regulatory bodies.

- e. To refer to subject(s) and/or employer(s) (past and/or present) to relevant accreditation or supervisory bodies.
- f. Report to CJS stakeholders ¹¹ on the concerns, the risk to the CJS and the steps taken to address those concerns.
- g. Report to Ministers ¹² and/or devolved authorities on the concerns, the risks to the CJS and making recommendations as to the best means to protect the CJS.
- h. Make a public statement setting out the concerns and the risks to the CJS.

5.1.33 In relation to the FSS the steps may include the following.

- a. Make recommendation to the Home Office in relation to any of the following.
 - i. Investigation of review of work to determine the extent to which the CJS may have been affected by the subject matter of the complaint.
 - ii. Steps to be taken to protect the integrity of the CJS.
- b. To work with other organisations to address the concerns (e.g. by modifying existing standards).
- c. Report to CJS stakeholders ¹³ on the concerns, the risk to the CJS and the steps taken to address those concerns.
- d. Report to Ministers ¹⁴ and/or devolved authorities on the concerns, the risks to the CJS and making recommendations as to the best means to protect the CJS.

¹¹ In this regard stakeholders shall include (but not be limited to), as appropriate to the case under consideration, chief officers of police (including NPCC), the Crown Prosecution Service, the Public Prosecution Service, the Crown Office and Procurator Fiscal Service, coroners, the judiciary, the Criminal Cases Review Commission, the Scottish Criminal Cases Review Commission, the Home Office, The Ministry of Justice, HM Attorney General and the Legal Aid Agency.

¹² The Regulator may refer matters to such Ministers as she considers appropriate including, but not limited to, the Secretary of State for the Home Department, the Lord Chancellor and Secretary of State for Justice, HM Attorney General and any Ministers of State or Parliamentary Under Secretaries of State within the Departments supporting the Ministers named.

¹³ In this regard stakeholders shall include (but not be limited to), as appropriate to the case under consideration, chief officers of police (including NPCC), the Crown Prosecution Service, the Public Prosecution Service, the Crown Office and Procurator Fiscal Service, coroners, the judiciary, the Criminal Cases Review Commission, the Scottish Criminal Cases Review Commission, the Home Office, The Ministry of Justice, HM Attorney General and the Legal Aid Agency.

¹⁴ The Regulator may refer matters to such Ministers as he considers appropriate including, but not limited to, the Secretary of State for the Home Department, the Lord Chancellor and Secretary of State for Justice, HM Attorney General and any Ministers of State or Parliamentary Under Secretaries of State within the Departments supporting the Ministers named.

e. Make a public statement setting out the concerns and the risks to the CJS.

- 5.1.34 The Regulator will write to the complainant, the subject(s) (other than the FSS) and the Home Office to inform them of the outcome of the investigation and the steps to be taken in response to the investigation.
- 5.1.35 Where the Regulator has established grounds of concerns and a programme of work is established to address those concerns the Regulator will implement measures to review the work and ensure the concerns are addressed.
- 5.1.36 Where necessary and to ensure appropriate disclosure to defendants within the CJS the Regulator shall ensure the relevant prosecution authorities are aware of the matters under consideration.
- 5.1.37 The Regulator will normally advise relevant prosecution authorities that a matter is under consideration when she initiates an investigation. However, where the Regulator believes the matter under consideration may raise significant issues for the CJS she may provide such notification earlier in the process.
- 5.1.38 Once the prosecution authorities have been notified of an investigation they will be kept briefed of developments.

6. **Abbreviations and Acronyms**

Text	Meaning
CJS	Criminal Justice System
FAL	Forensic Archive Limited
FSS	Forensic Science Service
HM	Her Majesty's
NPCC	National Police Chiefs' Council
UK	United Kingdom of Great Britain and Northern Ireland

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