

Forensic Science Advisory Council (FSAC)

Note of the meeting held on 9 February 2021 via video conference.

1. Welcome, Introduction and Apologies

- 1.1 The Chair welcomed all to the meeting, and welcomed a new member to the group. The new member represented the NPCC Forensic Science Portfolio as the previous representative had retired. A full list of the attendee organisations and apologies is provided at Annex A.

2. Minutes of the last meeting and actions

- 2.1 The minutes of the previous meeting held on 17 September 2020 had been approved by members prior to the meeting and were available on the [GOV](#) UK website.
- 2.2 Action 1: Criminal Bar Association representative to read the law report on R v. FNC [2015] EWCA Crim 1732 and send any relevant comments to the Regulator. The Criminal Bar Association representative agreed to share their thoughts on this with the Regulator. The Criminal Bar Association representative will email the FSR and Secretariat their comments on the R v. FNC [2015] EWCA Crim 1732 report.
- 2.3 Action 3: Approach Mr Justice Wall and the Crown Prosecution Service (CPS) to discuss a briefing on Massively Parallel Sequencing. The FSR had discussed this with the Judiciary and CPS. It was agreed it was too soon to brief the Judiciary on this new technology, and the briefing should occur shortly before the technology is implemented.

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2.4 Action 8: The Chartered Society of Forensic Sciences (CSoFS) to liaise with the International Society of Genetic Genealogists regarding the potential to draft a code of practice for law enforcement work. The (CSoFS) representative presented a paper that included the options and sought views on a code of practice, at a separate meeting held on Genetic Genealogy.

2.5 All other actions were complete.

3. Update to Codes of Conduct

3.1 A draft copy of the updated Codes of Practice and Conduct was circulated to the FSAC prior to the meeting.

3.2 The Codes have been updated to include provisions in relation to data security, which were recommended by the National Cyber Security Centre and were published as a Regulatory [Notice](#), 02/2020.

3.3 The Codes have also been updated to include the extension of the dates for achieving accreditation. This was specifically for Incident Scene Investigation, and Forensic Collision Investigations. It was decided to extend the dates by a year, due to on site assessments that could not be conducted as a result of COVID-19 restrictions.

3.4 The Regulator asked the UKAS representative for their view on the suspension of on-site accreditation visits due to COVID-19 pandemic. The UKAS representative explained that during the lockdowns it was decided to conduct assessments remotely to ensure the protection of assessors and customers, and still uphold the trust and confidence in accreditation. UKAS was exploring the possibility of conducting initial assessments remotely, however this would depend on the activity. Once the lockdown restrictions had been reviewed in March, UKAS would review the practicalities on conducting on site assessments visits.

3.5 The Regulator explained to the FSAC the reasons why some forensic science disciplines accreditation dates had been changed and others had not. Forensic Collision Investigations had been extended by a year, as the Forensic Collision Investigation community had made good progress and was committed to

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achieving accreditation. It had been decided the Fire Scene Examination interim requirement date would be updated, but the end date would remain as October 2023. The accreditation date for evidence recovery during the forensic medical examination of complainants of alleged sexual assault remained as October 2023, however the interim requirement date by which it was recommended that a competency requirement framework be in place, was changed from April 2021 to October 2021. It was explained the reason for this change was due to NHS England & Improvement (NHSE&I) collaborating with professional bodies and colleges to develop a competence framework.

3.6 The Regulator emphasised organisations should use the extension to prepare more for the future assessments. The NPCC representative agreed it was important for organisations to use this time to prepare for their future assessments.

3.7 The draft Codes document will be proofread, and the Regulator will sign it off for publication before demitting.

4. Evaluative Opinion Appendix

4.1 The Regulator provided the FSAC with an overview on the draft Evaluative Opinion Appendix to the Codes document. The document is intended to fill a significant gap in the forensic science standards framework. Some requirements for opinions and interpretations were covered within the ISO 17025 standard, however there were some elements that could not be covered under this scope. It was also highlighted some forensic science disciplines had flawed approaches to interpretation.

4.2 The standard would aim to drive improvement in interpretation evidence by:

- Generation of more data to support interpretation of evidence;
- Better transparency on how experts were reaching their opinions;
- Improving the provision of Proficiency Tests (PT) to ensure the performance of experts in reaching opinions was evaluated effectively; and
- Improving the understanding of opinion evidence in the Courts.

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- 4.3 The standard was drafted based on an Association of Forensic Science Providers (AFSP) paper on “Standards for the formulation of evaluative forensic science experts’ opinions”, published in 2009. Additional evidence had been gathered from a workshop hosted by the FSR and the Royal Statistical Society (RSS) and relevant court judgements. There has been considerable consultation with relevant experts.
- 4.4 A draft was produced that was sent for wider consultation to the Regulator’s Quality Standards Specialist Group (QSSG), forensic science experts specialising in interpretation of evidence, experts in a range of forensic science disciplines, the RSS, judiciary, legal academics, policing forensic leaders, and the AFSP.
- 4.5 The judiciary and other stakeholders raised concerns during the consultation about the use numerical likelihood ratios (LR) where data were limited. After discussions with the judiciary it was proposed this would be amended to on an “order of magnitude” assignment and reported with the verbal equivalent.
- 4.6 During consultations there were philosophical objections to the lack of references to alternatives to the subjective Bayesian approach. Additional references to alternative approaches were added, and the Regulator clarified in the foreword of the document that it was not for the Regulator to determine which philosophical view was correct.
- 4.7 Those consulted also raised concerns regarding the requirement for blind proficiency trials. The Regulator acknowledged they were not conducted in many forensic science disciplines; however academic literature had shown blind proficiency trials were an effective way to improve and measure performance.
- 4.8 Further comments on the draft were received on case management, specifically around when the policing submission unit responsibilities began and ended, and when the forensic scientists’ responsibilities began and ended. It was explained the document had been shared with the Forensic Capability Network (FCN) who had conducted a piece of work on the submissions process. The recommendations from that piece of work were similar to the information in the draft document.

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- 4.9 There were also issues raised concerning the verbal scale changes and including the Likelihood Ratio (LR) approach for disciplines where it had not been used before. There were conflicting views on cognitive bias, some had felt it was not mentioned enough and others felt it was mentioned too much.
- 4.10 The implementation date for the evaluative opinion standard of October 2026 was viewed by some of the respondents as too far in the future, and others felt meeting this date would be a challenge for some forensic science disciplines. The Regulator had agreed a phased approach for specific forensic science disciplines, as some disciplines, for example, source DNA analysis would find the standard easier to implement than others.
- 4.11 All comments received on the draft document were considered, and the document had been updated. The updated document had been circulated to the judiciary, and interpretation experts for a final review. The QSSG was content with the document, and additional comments had been received from the judiciary and interpretation experts that had been incorporated. It was noted the judiciary agreed it had addressed their main concerns and noted that it would be tested over time in cases.
- 4.12 The document was almost ready to be published as issue 1. A record would be kept of comments and suggestions that could be included in future versions of the standard. A separate guidance document would be developed for calibration of expertise and proficiency trials.
- 4.13 The Regulator asked the FSAC if the consultation had been wide enough, and if so, were they content with the document being published. The Regulator advised the FSAC that the RSS, and the CSoFS had agreed to support and co-brand the standard. The member representing the AFSP said that the AFSP Board would like to discuss the final version but that this need to delay publication of issue 1. The FSAC members agreed that there had been a wide consultation and the standard and should be published.
- 4.14 It was suggested that workshops on the new standard would be beneficial for the forensic community. The Regulator agreed workshops would be useful in providing assistance to individuals on how to implement the standard. The Regulator would add this to their handover note for the new Regulator to

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consider. The Regulator suggested this could be run jointly with the CSoFS starting with the Image Comparison community. A CSoFS representative agreed once the standard had been published, they could look into a workshop for the Image Comparison community.

5. Meeting of Experts

- 5.1 The representative from the FSRU presented the FSAC with a draft guidance document on meetings between forensic experts. The document contained some basic ground rules on how these meetings should be approached.
- 5.2 The FSAC was asked if a guidance document on this topic was required and if so, whether this document would meet the requirements.
- 5.3 A member of the council highlighted that meetings should be held between the experts only and should not include counsel for either party.
- 5.4 The representative from the FSRU observed that the Criminal Procedure Rules did state that meetings should be between experts and not anyone else. The Regulator was not able to set rules for the judiciary but the FSRU could raise this with the Crim. Proc. Rules Committee. It was noted that the guidance document could also include reference to this.
- 5.5 The representative for the ASFP stated that if there had been issues regarding meeting of experts then the document should be created and the ASFP would be supportive.
- 5.6 The Regulator replied that feedback had been that generally these meetings worked well, however there had been issues with overseas experts not understanding UK law and procedures, and with experts having questionable credentials.
- 5.7 The FSAC was in agreement with the creation of this guidance document.

Action 1

- 5.8 FSRU to produce a guidance document on meetings of expert witnesses.

Action 2

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5.9 FSRU representative to highlight to the Crim. Proc. Rules Committee the issues raised about attendance at such meetings

6. Misconduct charges against a Forensic Scientist

6.1 The FSAC had been made aware of an announcement by the Metropolitan Police Service that a forensic scientist had been charged with misconduct in public office. The Regulator sought to understand whether the announcement had led to concerns among forensic staff about potential repercussions for not following procedures.

6.2 The Regulator had communicated with Council members ahead of the meeting to highlight that the FSRU had dealt with a large number of referrals and criminal proceedings as an outcome of non-compliance with procedures were extremely rare.

6.3 The members of the Council were not aware of any issues or concerns within the forensic community resulting from the charges. The Regulator noted that this issue may need to be considered again when the case came to court.

7. Statutory Powers

7.1 The bill to establish statutory powers for the Regulator had been proposed as a private member's bill and had been making its way through the Parliamentary process. However, the Council was informed that Parliamentary time for consideration of private members bills had been removed which would impact on the hearing of the bill.

7.2 The Council was informed that Darren Jones MP, who proposed the private members bill, and Home Office policy officials were working on whether statutory powers could be added to a forthcoming Government bill but there was as yet no firm position on this.

7.3 The Regulator would be raising the issue of uncertainty over statutory powers in her valedictory letter to Ministers.

8. Recruitment of new Regulator

8.1 The Regulator informed the Council that no official announcement had been made regarding appointment of a new Forensic Science Regulator.

8.2 The Regulator's term would end on the 16th of February and the Home Office was seeking Ministerial approval for an interim Regulator.

9. Closing remarks from outgoing Regulator

9.1 The Regulator will be sending a valedictory letter to Ministers on completion of her term. The following issues that would be included in the letter were highlighted by the Regulator.

- The risks to forensic science quality resulting from uncertainty regarding statutory powers for the Regulator.
- The risks to learning and improvement opportunities if the Regulator's Office became subject to the freedom of information act without specific safeguards.
- The failure to appoint a new Regulator in time for a full handover risked sending a poor message to the forensic community about the Government's view of the importance of quality in forensic science.
- The risks to the Criminal Justice System (CJS) from the presentation of poor evidence in court by experts without sufficient credentials. In the absence of statutory powers, the Regulator would be unable to stop such experts from practicing.
- The lack of an effective, national decision-making structure, which had affected the ability of the Forensic Science sub-group of the Criminal Justice Board to achieve the reform programme and was affecting the ability to respond to challenges in delivering quality.
- The pace of progress in the research and development strand of the forensic science reform programme had been too slow. It was critical that this research agenda was shaped by the needs of the CJS as a whole

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and not just the police, for example the provision of ground truth data sources for interpretation of evidence.

- The risk to the quality of evidence and risks to justice from digital methods that were being widely deployed to police officers, such as radio frequency surveys, with little or no validation to ensure the methods were fit for purpose and a lack of understanding of the boundary between factual and opinion evidence.
- The issues with the biometric databases. The Regulator would be urging an end-to-end, systematic review of management and governance of national databases is commissioned that covers both the Home Office and policing elements.
- The lack of capacity for toxicology and digital forensics cases. Incidents of section 5A toxicology cases being lost as a result of missed statutory time limits had begun to occur, and there was a large backlog of digital devices awaiting analysis despite the fact that there were accredited suppliers that were not being fully used. Issues with capacity also made it difficult to implement quality systems, respond well to challenges to delivery of quality, and increased the likelihood of quality issues occurring.
- The poor commissioning of forensic medical examination with a push towards low cost commissioning with less experienced and less competent practitioners.
- Urging the Home Office National Biometrics Strategy Board to implement the three laws of biometrics that were published by the Biometrics Institute; policy first, then process, then technology.
- The issue of the value of legal aid payments to experts and the lack of support for small business.

9.2 The Regulator had not finalised the letter and sought views from the Council on what should be included.

9.3 The AFSP representative commented that the capacity issues linked to the issue of the FCN not representing all police forces. From a supplier point of

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view there was a lack of a collaborative approach in terms of service provision and noted that the Regulator was right to highlight this issue.

- 9.4 The representative from the NPCC gave the view from policing that there was a lack of confidence in the national delivery and governance structures. However, the only way to address the issues highlighted by the Regulator was with a national approach and that national decision-making was the key.
- 9.5 The representative from The Scottish Police Authority observed that there was a lack of national leadership in forensic science in England and Wales with no one person taking responsibility and ownership of forensic science issues. This was highlighted by the lack of appointment of a new Forensic Science Regulator.
- 9.6 The Regulator observed that the responsibility for forensic science also did not sit with one minister but was across a number of minister's portfolios which presented issues in decision-making.
- 9.7 There was also support for the legal aid issue from the representative for the Chartered Society of Forensic Sciences.
- 9.8 The members of the Council asked what they could do to support the issues raised by the Regulator. It was proposed that the Regulator's letter to Ministers be copied to the Council and members could co-sign this letter or send a follow up letter in support.

Action 3

- 9.9 The Regulator to circulate the valedictory letter to ministers to the FSAC

10. AOB

- 10.1 The members of the Council, the Association of Forensic Service Providers, and Police Scotland wished to formally thank the Regulator for her strength and support and for taking quality standards in forensic science to a higher level.
- 10.2 The Regulator responded with thanks and also thanked the members of the Council for their strategic advice over her term as Regulator.

Annex A

Representatives present:

Forensic Science Regulator

Forensic Science Regulation Unit (FSRU) (2)

The Chartered Society of Forensic Sciences (2)

Criminal Bar Association

NPCC Forensic Science Portfolio

UK Accreditation Service

Forensic Science Northern Ireland

Association of Forensic Science Providers

Scottish Police Authority

British Association in Forensic Medicine

HO Science Secretariat

Apologies received from:

Coroners' Society of England and Wales

Crown Prosecution Service

NPCC National Quality Managers Lead

Chief Coroner

Judiciary