

Forensic Science Advisory Council (FSAC)

Note of the meeting held on 21 September 2021 at The Clermont, Charing Cross and via video conference.

1. Welcome, Introduction and Apologies

- 1.1 The Forensic Science Regulator welcomed all to his first meeting as Chair of the Forensic Science Advisory Council. 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 last meeting were agreed and would be published on the FSR's website.
- 2.2 There were no outstanding actions.
- 2.3 The Regulator was asked whether there was any intention to change the format or focus of the FSAC and it was confirmed that the remit and aims would remain the same.

3. Introduction to the Act

- 3.1 The Regulator provided the members with an introduction to the new Forensic Science Regulator Act. The Regulator noted that this was the most important change in governance since the creation of the Regulator role in 2007 and would see a move from an advisory role to a regulatory role.
- 3.2 The Regulator noted that statutory powers had been called for many times over the last ten years and the change was not unexpected, and had broad, cross-party support.

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- 3.3 The Regulator noted that although the Bill received Royal Assent in April 2021 further steps were necessary in order for the Regulator to become a Statutory Regulator.
- 3.4 It was noted that there was no fixed timescale for the process of enacting the Act, however 18 months would be considered a reasonable amount of time for implementation. The Regulator informed the Council that enactment was a Ministerial responsibility and the Regulation Unit would need to work with Policy colleagues to progress the work.
- 3.5 The Regulator stated that in order to delineate what would be regulated a set of Forensic Science Activity definitions would need to be defined. This would be challenging, and the Regulator would be seeking assistance from the Council on this work.
- 3.6 The Regulator was asked whether there were activities where a decision had not yet been made as to whether they would be in scope. This was the case and there were subtleties in terms of inclusion of some sub-areas of activities such as digital forensics.
- 3.7 In response to a query about a formal plan the Regulator informed the Council that there was no formal plan of activities that needed to be laid before Parliament.
- 3.8 The UKAS representative asked whether it could be assumed that if something was not defined in the Forensic Science Activities it would be out of scope. The FSRU representative responded that this was a matter of debate and the Regulation Unit was considering whether areas outside of scope could be covered by a guidance document. The process could be that an area outside of scope had a guidance document issued and may subsequently be brought under the Code of Practice.
- 3.9 The representative from the Chartered Society of Forensic Sciences (CSoFS) asked how negative findings, such as not finding blood, would be represented as an activity. The representative from the Regulation Unit replied that the activities would be searching for biological material and determining a strategy.

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There would be challenges in defining what items should be chosen for examination.

- 3.10 The representative from the Association of Forensic Service Providers (AFSP) asked where the line between appropriate budget management and compromising a case would be set. The Regulator responded that where the line was drawn on the commissioning process was something that needed to be considered but investigative strategies set by police officers would not be in scope.
- 3.11 The representative from the CSoFS also asked whether there was any place in the code for a national agreement about what kinds of examinations should go ahead and whether standards could be set for individual methods/activities without defining a method or sequence.
- 3.12 The representative from the AFSP agreed with this as how work was commissioned had a fundamental effect on the output.
- 3.13 It was noted that while the forensic activity approach did not allow for processes to be defined, the activities were one part of the Code of Practice and the Code itself could be used to define processes. The Regulation Unit would need to look at the requirements in the Codes and assess whether these would need to change.
- 3.14 Prior to enactment, the Codes of Practice would undergo a consultation exercise, be considered by the Secretary of State and be approved by the House of Commons and House of Lords. Therefore, once in place this document would likely only be amended, at most, once a year.
- 3.15 The Regulator stated the intention was to link the Code of Practice to the Criminal Justice System such that if work was not carried out following the Code its admissibility could be challenged in Court. The representative from the Regulation Unit noted that the CJS currently required a declaration of adherence to the Code of Conduct not the Code of Practice and this would need to be reviewed.

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- 3.16 The Regulator drew attention to the fact that regulation would not be linked to accreditation but to risk, if there was a risk to deliver of justice then an investigation could be triggered.
- 3.17 The Regulator was asked whether an investigation could be into an individual or an organisation. The representative from the Regulation Unit responded that investigation could be into any person or body of persons, any organisation, whether commissioned by the prosecution or defence.
- 3.18 The Council was informed that if an investigation was triggered then the Regulator would have the power to require information to be provided and could bring proceedings for an injunction. Processes will have to be established for which the FSR would need independent legal advice as the Home Office legal advisors could not act for the Regulator.
- 3.19 The Regulator highlighted that overall regulation was about managing risk. It was noted that compliance notices would have an endpoint, and this would be achieved through a completion certificate(s). The Regulator was therefore bound to find a route to conclude an issue.
- 3.20 The Regulator also outlined some of the other broad functions of the statutory role including providing reports on any forensic matter and assisting any person relating to forensic activities. The Regulator would also be required to produce an annual report. The style of this would be more like the National DNA Database Strategy Board Annual report with data on quality in forensic science.
- 3.21 The representative from UKAS asked if there was a mechanism to protect the Regulator from any perceived bias that could result from these broad functions and proposed this as a role for the FSAC.
- 3.22 Concluding on the forensic science activities the representative from the Scottish Police Authority Forensic Services suggested that a published plan may reassure people that areas not initially covered under the Code would be added in the future. The representative also noted the challenge in managing the breadth and number of people who could approach the Regulator with issues and the interest from the media.

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3.23 The representative from the Forensic Science Northern Ireland noted that consultation would be key and would like to be involved as Northern Ireland were voluntarily following the existing Code. The Regulator suggested that consideration of how Northern Ireland and Scotland would approach the Code once it was statutory would be needed. The provisions of the Regulator's Code would only apply to England and Wales and investigation of a case in Northern Ireland or Scotland could result in a legal challenge, the devolved authorities may have a view on this.

4. Structure of the Statutory Codes

4.1 The representative from the Regulation Unit introduced this item. It was noted that there were some areas of the existing Codes that were quite vague, and this would not be acceptable when the Code would need to be interpreted by the courts.

4.2 The Council was informed that, on the whole, the text of the existing Codes would be transferred to the statutory Code, separating out areas which were about demonstrating compliance from the standards.

4.3 The appendices to the Codes would require a major programme of review. These would be broken down into subject areas. All the existing standards on each area would need to be condensed and included in the statutory codes. A decision would need to be made regarding whether compliance was required against the statutory code or an appendix.

4.4 The representative from UKAS asked about the process for amendments. The FSRU representative replied that this had been written into the draft statutory Code: If the Regulator decided that a section needed to change a statement of intent would be published. This would require Parliamentary approval. There would be an announcement six months before any change.

4.5 The Regulator commented that the intention behind the announcement was to make people aware of the change and ensure they would be working towards it before the change was enacted.

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- 4.6 The FSRU representative commented that following an announcement guidance would be provided to explain the change was not a legal requirement but expected to become a legal requirement in the near future. Forensic experts should not be unduly criticised in court for not adhering to something that was not yet a legal requirement.
- 4.7 The Regulator informed the Council that there would be a rebranding of the Regulator's published materials to ensure a clear delineation between the previous documentation and the statutory documentation.
- 4.8 The existing Codes will need to be kept going for some time and there would need to be a transition period for bodies accredited to the existing Codes to move to the statutory Code.

5. Forensic Science Activities

- 5.1 The Regulator presented the Council with a proposed approach on defining forensic science activities (FSA). The Forensic Science Regulator Act 2021 makes provisions for the publication of a Code of Practice that must specify the forensic science activities to which it applies. The proposed approach would create a structure based on sectors, sub-sectors and associated activities.
- 5.2 The Regulator had sought advice and guidance from the forensic science community and the FSR Specialist Groups on what should be included in the table of FSAs.
- 5.3 The members of the Council provided views on the draft FSAs.
- 5.4 The member representing the Association of Forensic Service Providers (AFSP) queried how niche forensic activities would be covered. The Regulator replied that some niche activities would be defined under the code and others would be excluded.
- 5.5 The NPCC National Quality Board representative asked whether record keeping, note taking and photography, would be defined as an activity. The Regulator commented this would be considered a general activity and would be

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included within the definition in the Code. The NPCC representative suggested that photography could be considered as a distinct activity.

- 5.6 The Regulator commented that an over-arching glossary of terms was being developed to accompany the Code and “recording” could be defined in the glossary.
- 5.7 The representative from the Chartered Society of Forensic Sciences (CSoFS) suggested that general principles should be outlined at the start of the FSA document so that these don’t need to be repeated under specific activities. The representative also cautioned against defining activities too tightly and restricting processes.
- 5.8 The Regulator highlighted identifying digital forensic activities was a challenge and existing definitions were very broad. The Regulator also informed the Council that inclusion of activities relating to forensic databases would be required. The AFSP representative added that forensic databases were using software and algorithms in the same way as Forensic Service Providers (FSP) and should be subject to the same validation requirements as the FSPs. This was agreed by the Regulator and this would be discussed with the National DNA Database lead.
- 5.9 Review activities had been added to cover defence reviews of forensic casework and cold case review. The Regulator acknowledged the work by Keith Borer and UKAS on accreditation of defence work and was grateful to the CSoFS for implementing a quality management system for small, independent organisations forensic casework. The Regulator noted the need to re-invigorate the work in this area. The representative from the Scottish Police Authority Forensic Services was in support of this and noted that bringing defence experts and case review into the codes would have real benefits.
- 5.10 The Regulator, mindful of costs to small organisations, had been in discussion with Ministry of Justice Policy about increased legal aid payments to reflect the costs of accreditation.
- 5.11 The representative from the Regulation Unit spoke through some example FSAs and definitions and excluded activities. The Regulator highlighted some

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excluded activities would be already covered under a different forensic science activity or standard.

- 5.12 The template for the FSAs was proposed to include; a description of the activity, a list of applicable forensic quality standards, the relevant guidance documents, and mechanisms for demonstration of compliance.
- 5.13 The representative from UKAS asked how the requirements in the FSA would be kept distinct from the ISO standards as there was overlap. It was noted that all the steps necessary to achieve compliance would need to be listed, however repetition of the ISO standards would be avoided.
- 5.14 The representative from Scottish Police Authority queried the mechanism for deciding on activities to exclude. The FSRU representative that some activities were excluded as they were defined elsewhere. The AFSP representative suggested that where activities were excluded because they were covered under a different standard or FSA this should be mentioned in the FSA. The representative from the FSRU would look to include an explanation of exclusions in the text explaining how the FSA were applied.
- 5.15 The representative from the British Association in Forensic Medicine asked if forensic pathology would be outside the remit of the FSR. The FSRU representative commented this was yet to be decided, but forensic science and forensic medicine were viewed as two separate disciplines. It was likely forensic pathology, and some areas within forensic medicine would be outside the remit of the FSR. The British Association in Forensic Medicine representative also highlighted there were some useful processes within forensic medicine that had been used in casework, which should not be excluded. The FSR acknowledged this and noted that there may be some activities that were defined as FSAs but would not covered by the code.

6. Path to Commencement

- 6.1 A representative from the Regulation Unit provided the Council with an overview of the process for commencement of the Forensic Science Regulator Act 2021.

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- 6.2 The three main points for enacting the Forensic Science Regulator Act 2021 were:
- The Forensic Science Regulator Statutory role must be created.
 - The Forensic Science Regulator must prepare and publish a code of practice for forensic science activities in England and Wales.
 - Before publishing the Code there must be a public consultation.
- 6.3 Work had commenced on creating the Code of Practice and defining forensic science activities.
- 6.4 There were additional activities that would need to be completed before the consultation process could commence, these were:
- Creating a new Freedom of Information Act (FOIA) process,
 - Creating an investigation process,
 - Creating the enforcement process.
- 6.5 The NPCC representative asked when the public consultation would be held. A representative from the FSR responded that a number of essential steps would need to be completed before the consultation could be held, including granting of statutory powers.
- 6.6 The representative from the AFSP noted the amount of work to do on developing the statutory Code, and queried if there would be a delay in updating current best practice guidance and quality standards documents. The FSR acknowledged updates to other documents would be on hold for six months, however a process would be in place to review quality issues during consultation on the statutory code.
- 6.7 The UKAS representative asked if there was funding to resource the enactment of the FSR Act. The Regulator responded that capability requirements has been defined and shared with the Home Office which is responsible for the budget. Putting resources in place would be dependent on allocation of additional funding in the new financial year.

7. Managing Risk

- 7.1 The Regulator introduced this item. Managing, identifying, and preventing risks in forensic science was a key priority for the Regulator. Mechanisms would be required to ensure emerging risks were identified and brought to the Regulator's attention.
- 7.2 To minimise risks for new entrants to forensic science, it was suggested during the procurement process agreeing a probation period, having a limited number of cases, and more checks to ensure understanding of quality management.
- 7.3 The Regulator had spoken to UKAS and had asked to be informed on any emerging risks in forensic science.
- 7.4 The Regulator proposed incorporating into the Code a requirement for a senior accountable individual at Chief Officer or Director level, who would responsibility for the oversight of risk and engaging with the Regulator on any risks identified. The Regulator would draft a paper outlining the details and this would be shared with the Council for comment at a future meeting.

8. Closing remarks

- 8.1 The Regulator thanked the members for their comments and views. The Regulator would continue to seek advice from the Council during the different stages of the commencement of the Forensic Science Regulator Act 2021.

9. AOB

- 9.1 The Scottish Police Authority representative announced their retirement and noted this would be their last FSAC meeting. A new Scottish Police Authority representative had been appointed to the Council and was also in attendance at the meeting. The Regulator expressed his thanks to the retiring Scottish Police Authority representative for their contributions, and support to the Council.

Annex A

Representatives present:

Forensic Science Regulator (Chair)

Forensic Science Regulation Unit (FSRU)

Association of Forensic Science Providers (AFSP)

British Association in Forensic Medicine

The Chartered Society of Forensic Sciences (CSoFS)

Forensic Science Northern Ireland (FSNI)

NPCC Forensic Quality Portfolio Lead

Scottish Police Authority Forensic Services (retiring and new member)

UK Accreditation Service (UKAS)

Home Office Science Secretariat

Apologies received from:

Coroners' Society of England and Wales

Criminal Bar Association

Judiciary