



## **Quality Standards Specialist Group (QSSG)**

### **Note of the meeting held on 02 November 2021 at Park Plaza, London and via video conference.**

#### **1. Welcome, and Introduction**

- 1.1 The Forensic Science Regulator (the Regulator) welcomed all to his first meeting as Chair of the Quality Standards Specialist Group (QSSG). A full list of the attendee organisations and apologies is provided at Annex A.
- 1.2 The Regulator noted that the focus of the QSSG would be as a cross-cutting group. The QSSG would be asked to review the detail within the documents being drafted to support the introduction of the statutory Code of Practice required for the statutory operation of the Regulator.

#### **2. Minutes of the last meeting and actions**

- 2.1 The minutes of the last meeting had been published on the Regulator's website ahead of the meeting.
- 2.2 There were no outstanding actions.

#### **3. Forensic Science Regulator Act (FSRA)**

- 3.1 The Regulator provided the members with an introduction to the new Forensic Science Regulator Act (FSRA). The Regulator noted

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that statutory powers had been called for many times and the change was not unexpected, and had broad, cross-party support.

- 3.2 The Regulator explained that the provisions in the Act would be implemented sequentially, reflecting the mechanisms of parliament. The first element to be completed would be the statutory Code of Practice (the Code). The following step would be to define what would be regulated and to do this a set of Forensic Science Activity definitions would need to be defined.
- 3.3 The Forensic Science Activities (FSAs) would compartmentalise forensic science and would need to be carefully defined as these would be legal definitions. The FSAs would define what was not covered under the regulations. The Regulator noted that there was a lot of flexibility in the Act and it would be possible to define exclusions.
- 3.4 The Regulator informed the QSSG that they would be asked to comment on a first draft of the Code.
- 3.5 The Regulator highlighted that the Forensic Science Regulator Act (FSRA) was clear a failure by a person to act in accordance with the Code does not of itself make that person liable to civil or criminal proceedings. It was also noted that the admissibility of evidence could be challenged at the outset if it wasn't gathered in a way that adhered to the statutory Code of Practice.
- 3.6 The Regulator highlighted that overall regulation was about managing risk. Investigations could be started if there was a substantial risk that a criminal investigation could be adversely affected. In legal terms a substantial risk represented a fairly "low bar" and investigations could be carried out into practical risks rather than simply theoretical risks. The Regulator noted that one of his key objectives would be to understand the risks to quality forensic science and have mechanisms in place for the identification of risks.

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- 3.7 The Regulator provided the members with a summary of the powers set out within the FSRA and noted that these powers were reasonably strong but would not be used as a “stick”. Compliance notices on individuals or heads of organisations would normally be a last step and there is an intention to have an escalation process that most compliance issues would follow. Ultimately the Regulator would have the power to prohibit activity if necessary.
- 3.8 It was noted that compliance notices would have an endpoint, and that there was provision in the Act for the use of completion certificate(s). The Regulator was therefore bound to find a route to conclude an issue.
- 3.9 The Regulator also provided members with a summary of the other functions covered under the Act which included the ability to comment on any other matters relating to Forensic Science and the requirement to produce annual reports. The Regulator advised the QSSG that the annual report would be in the style of the annual reports by the Forensic Information Database Strategy Board and would be broad and give a general view of the health of quality in forensic science.
- 3.10 The Regulator was asked by the MPS representative whether the term “substantial risk” would be defined. A representative from the Forensic Science Regulation Unit (FSRU) responded that this would be defined in line with the Regulator’s understanding in a glossary to avoid confusion or variation in interpretation by forensic units.
- 3.11 The Regulator was also asked whether a matrix would be developed in co-ordination with UKAS for the identification of risk. The Regulator would work closely with UKAS but noted there would be wider mechanisms for recording risks. It was also noted that the Code is broader than the accreditation schedules and so accreditation visits would not pick up all risks. It was also noted that the Code could define ways to reduce and manage risk.

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3.12 The BCH representative queried the type of information the Regulator would like to receive, for example after an assessment visit. It was noted that initially the Regulator would like to receive as much information as possible and this would be refined over time. Increased staffing in the FSRU would be required to manage this.

#### **4. The draft Code of Practice**

- 4.1 A representative from the FSRU provided the QSSG with an introduction to the draft Code of Practice.
- 4.2 The members were advised that the Code and the requirements for accreditation would not be changed greatly. The main change would be the addition of the forensic science activities (FSAs).
- 4.3 The views of the members were welcomed on the live draft of the Codes.
- 4.4 The existing Code of Practice which is part of the Codes would become the statutory Code of Practice and the existing Code of Conduct would become a section entitled Standards of Conduct in the new Code.
- 4.5 The draft statutory Code included new sections covering the legal background and the FSAs. The old table of scope would be replaced by new section that would cross-reference the appendix of FSAs, providing more detail on the activities covered by the statutory Code.
- 4.6 Following the Code itself there would be sections on Standards of Conduct and Standards of Practice.
- 4.7 A representative from the FSRU advised the Group that as much as possible the new Code would maintain the format of the old codes in its core.
- 4.8 The members of the QSSG were asked for their comments on the draft Code.

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- 4.9 The representative from BCH asked if the structure of the Code could be aligned with ISO/IEC 17025. There was discussion that the Code could be aligned with ILAC G19. The FSRU representative responded that the ILAC G19 document was being revised and that ISO 17025 did not have the same structure, therefore the G19 structure could not be used.
- 4.10 The representative from the MPS asked how changes to the Code would be managed. The FSRU representative replied that changes would require consultation and parliamentary approval so an intention to change would be issued first. There would then be some flexibility in acting on elements of the Code where changes were expected.
- 4.11 The QSSG discussed infrequently used methods, how infrequently should be defined and how the risks arising from infrequently used methods should be managed. The following points were highlighted:
- A means of defining “infrequent” was required that may sit between the definitions used by ENSFI and UKAS.
  - A minimum set number of the use of infrequency used techniques should be decided, as this could reduce risk, and ensures consistency across the board.
  - Defining infrequent as by the number of times a method was used would not account for the differences between case numbers at large and small organisations.
  - While a definition of “infrequently used” was required, forensic organisations and individuals would need to state how the risks arising from infrequent activities were managed.
  - Accredited organisations performing infrequently used methods would present a lower risk than unaccredited organisations as a result of existing processes and quality management systems.

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- There was a risk that unaccredited organisations would use the infrequently used method option to avoid accreditation. However, this could be viewed as a substantial risk by the Regulator and investigated.
- 4.12 The FCN representative asked about referrals relating to concerns around the definition of infrequently used methods, the FSRU was unaware of any such referrals.
- 4.13 The representative from the SPA suggested that the management system and processes should be the same for frequently and infrequently used methods, so rather than define “infrequently” the Code should set out what must be in place for a result to be acceptable.
- 4.14 The Regulator also drew the Group’s attention to the fact that the existing Codes were recognised in Northern Ireland and Scotland, however the statutory Code would only apply in England and Wales.
- 4.15 The Regulator highlighted that infrequently used experts may have little or no awareness of the FSR Code or relevant legislation. Infrequently used experts would include experts from outside the forensic community, such as glass manufacturers, rather than academics in forensic science.
- 4.16 The Regulator noted he would recommend that a senior accountable individual be identified at each organisation who would be responsible for identifying and documenting risks.
- 4.17 The representative from BCH asked whether independent experts would be required to have accreditation or demonstrate adherence of the Code as the fact that accredited work could be checked by unaccredited independent experts was an anomaly with the existing system. The Regulator referred to the initial pilots carried out by Gill Tully together with the Chartered Society of Forensic Sciences (CSoFS) and defence experts. The Regulator stated his

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intention to develop an activity under section two of the Act to cover Forensic Case Review and bring this activity under the statutory Code, this could include defence review and cold case review.

## **5. Forensic Science Activities (FSAs)**

- 5.1 A representative from the FSRU presented this item.
- 5.2 The Forensic Science Regulator Act 2021 makes provisions for the publication of a Code of Practice that must specify the Forensic Science Activities (FSAs) to which it applies.
- 5.3 A high-level list of the FSAs identified to date had been produced which adopted the proposed structure of sectors and sub sectors. Activities that were not considered FSAs would be outside the scope of the FSR Statutory Code.
- 5.4 The FCN representative asked if general provisions would be included for each FSA or within the Code. The Regulator confirmed that to avoid considerable repetition in the definitions of FSAs, an appendix would be created to address conditions and provisions that apply generally. The Regulator also added that the information within the statement of requirements documents that set out the areas covered by the Code and relevant accreditation timescales, would also be included in the FSA definitions.
- 5.5 The CPS representative asked how the Courts would know which FSAs an individual or organisation was accredited to perform. The Regulator acknowledged this was a challenge, and a list of organisations could be considered stating the FSAs they performed. It was proposed that during the consultation process organisations should be encouraged to declare which FSAs they performed.
- 5.6 A template had been created to seek input from forensic professionals/specialists' groups and others on the detailed definition of the high-level forensic science activities. The QSSG

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was to nominate technical experts or individuals to assist the FSRU in the development of the FSAs. A list of the expertise required would be circulated to the Group.

- 5.7 **Action 1:** QSSG members to email the FSRU within the next two weeks to volunteer or provide technical nominations from their organisations to assist with development of the FSAs.
- 5.8 The QSSG's views were sought on whether or not to conduct a targeted public consultation on the FSAs to identify gaps, gather wider stakeholder views, and refine the definitions for inclusion in the Statutory Code prior to the commencement of the statutory consultation. The Regulator supported one public statutory consultation provided there was wide engagement with community on the draft Code before the consultation. This was agreed.
- 5.9 The QSSG was asked to consider how the Regulator should inform organisations that may not recognise they were performing FSAs about the consultation on the Code. The Regulator noted that the CSoFS could assist with engaging with the smaller providers. The CSoFS representative confirmed they would be happy to assist.
- 5.10 The Dstl representative offered to provide comments and views on breath alcohol, corrosive substances, drug precursors, and precursors to chemical/biological agents as to whether they should be included as FSAs.

**6. AOB**

- 6.1 The BCH representative highlighted that within some police force structures there were specific areas that did not acknowledge the importance of the current FSR Codes, for example Information Communication Technology (ICT) departments. The Regulator responded that the FSRU was aware of this and was proposing incorporating into the Statutory Code, the requirement for a senior accountable individual at Chief Officer or Director level within each



organisation who would have the responsibility for the implementation of the FSR Act as well as oversight of risk. It would be expected that such issues could be raised with this individual.

## **7. Date of next meeting**

- 7.1 Meetings of the QSSG would no longer be held quarterly but timetabled to fit with progress towards the commencement of the Forensic Science Regulator Act 2021.
- 7.2 It was noted that a new representative from the CSoFS would be required for the next QSSG meeting.

## **Annex A**

### **Representatives present:**

Forensic Science Regulator (Chair)

Forensic Science Regulation Unit (FSRU)

Association of Forensic Science Providers (AFSP)

Bedfordshire, Cambridgeshire and Hertfordshire Police (BCH)

British Association in Forensic Medicine

The Chartered Society of Forensic Sciences (CSoFS)

The Criminal Cases Review Commission (CCRC)

The Defence Science and Technology Laboratory (DSTL)

Forensic Science Northern Ireland (FSNI)

The Metropolitan Police Service (MPS)

The National Crime Agency (NCA)

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

BSI Group

Criminal Bar Association

Judiciary