Forensic Science Regulator

Forensic Science Advisory Council (FSAC)

Note of the meeting held on 16 June 2022 at The Home Office, Westminster and via video conference.

1. Welcome, Introduction and Apologies

1.1 The Forensic Science Regulator (henceforth 'The Regulator') welcomed all to the meeting. The purpose of the meeting was set out and detail was provided by the Regulator in agenda item 2, 'Update from the Regulator'.

1.2 A full list of the attendee organisations and apologies is provided at Annex A.

2. Update from the Regulator

2.1 A draft of the Statutory Code of Practice (henceforth 'the Code') had been developed. The draft included a 'core' Code where the existing codes of Practice and Conduct had been incorporated, definitions of 53 Forensic Science Activities (FSAs), and appendices which were

edited versions of the existing appendices. Explanations of the Forensic Science Regulator Act 2021 ('the Act') had also been included.

2.2 The Regulator commented that the Code needed to be comprehensive and allow flexibility from the outset.

2.3 Two drafts of parts of the Code had been made available for informal comment, and a refined draft of the Code would be submitted for the statutory consultation. The statutory consultation would be open for a period of three months.

2.3.1 The Regulator had given presentations to many stakeholders as part of engagement to raise awareness of the Code.

2.3.2 The representative from the Chartered Society of Forensic Sciences questioned if the Association of Forensic Science Providers (AFSP) had been included in the informal feedback exercises. The Regulator confirmed that the Regulator had presented to AFSP and noted apologies from the representative from AFSP for this meeting. AFSP representatives had responded to the informal feedback exercise as individual organisations, not as the collective.

2.4 A list of forensic units was being collated, including information on the FSAs they undertake, to share information about the consultation and statutory powers, and to gain an understanding of the forensic landscape. Approximately 120 organisations had responded to the FSA survey, which is roughly as expected. It was addressed that challenges are anticipated in reaching forensic units which provide specialist

services secondary to their primary function, forensic units involved in digital forensics, and small to medium enterprises (SME).

2.5 Members deliberated the potentially disrupting effect of the Code on industry, particularly on SME where the costs of accreditation are disproportionate.

2.6 The challenge of a suitable provision of UKAS technical assessors was also raised.

2.7 The Regulator highlighted to members that the Code could provide a basis for admissibility challenges on forensic science evidence in criminal proceedings. The Regulator was engaging with the Ministry of Justice on this matter. Enforcement and compliance was raised and it was noted that this would be discussed further in agenda item 4, 'The enforcement and compliance process'.

2.8 The Regulator informed members that a detailed newsletter would be developed, ahead of publishing the statutory consultation, to outline the high-level approach to enforcement and compliance, provide a response from the Regulator to challenges raised during the informal consultation, and provide context for the statutory consultation.

2.9 The Regulator raised to colleagues in Northern Ireland and Scotland that they, the Regulator, were interested to be involved in conversations regarding how the Code and admissibility challenges might apply in their jurisdictions however, these discussions need to be led by the Home Office Policy team, and not the Regulator.

ACTION 1: The Regulator to provide contact details of the Home Office Policy lead to the representative for Forensic Science Northern Ireland (FSNI) and Scottish Police Authority Forensic Services.

2.10 The Regulator advised members that the Code would make clear any exclusions and FSAs which would not be subject to the Code in this first version of the Code. The Regulator noted that he would not be regulating forensic pathology or forensic pathologists as there were robust structures for this already in place. This was agreed by the representative for the British Association in Forensic Medicine who confirmed that forensic pathologists are regulated by the General Medical Council. The Regulator outlined that this had been approved by Ministers, and a commitment had been made to resource governance.

2.11 The Regulator explained that the recovery of evidence from deceased individuals would be regulated by the Regulator. The role of forensic pathologists in the FSA related to the recovery of evidence from deceased individuals would be discussed with the relevant individuals.

2.12 Following the consultation, the Code would be presented to the Secretary of State for the Home Department and both Houses of Parliament for approval. It was expected this would take place in early 2023.

3. Discussion of informal feedback

3.1 A thematic review of the responses to the informal feedback exercises had been carried out and presented in a paper to members. The

themes would be published, with the Regulator's response, in a newsletter ahead of publishing the statutory consultation. Each theme was discussed:

3.2 General Feedback

3.2.1 Comments had been received to state that it was felt the Code was comprehensive, but not written with practitioners in mind. This was discussed by members. It was agreed that this is likely due to the codes historically being focused on laboratory work.

3.3 Who the code applies to

3.3.1 The Regulator expressed to members that the Act is clear that any individual carrying out an FSA subject to the Code is in scope.

3.3.2 The representative for the NPCC National Quality Board raised that with advancements in and expansion of the use of assistive technology there could be a resultant decline in technical understanding and understanding of requirements, which often correlates to a decline in engagement. Members discussed the need to emphasise the importance of practitioner competence.

3.3.3 It was discussed that professional development and skill building could be incorporated into a competence framework.

3.4 What the code applies to

3.4.1 Many comments were received regarding the definitions of FSAs including many contradictory views. Members thought that this was to be expected as the FSAs are new. The Regulator commented that engagement had been carried out direct with practitioners who are

involved in carrying out FSAs, and that comments had been reviewed and revisions had been made.

3.5 Interpretation activities

3.5.1 The Regulator acknowledged the previous Regulator's work in producing and publishing the Evaluative Opinion Appendix. The Regulator expressed concern regarding the timescales within the Appendix for achieving this approach across the whole of forensic science. The Regulator explained to members his decision to not incorporate the Evaluative Opinion Appendix into the Code. Instead, the Appendix would be re-issued as a guidance document under section 9 of the Code. Issuing the document as guidance would allow flexibility for future changes. The Regulator would establish a Specialist Group to oversee the development of Evaluative Opinion requirements for specific FSAs where appropriate, with the intention that these requirements would be added to future versions of the Code.

3.5.2 The Regulator was unable to give a timescale for when specific evaluative opinion requirements would be established, notice of this approach would be given in the newsletter. The Regulator wanted to make it clear that work should continue ahead of future iterations of the Code being published, particularly for activity level and inconclusive outcomes in fingerprints.

3.5.3 Members discussed the importance of using the newsletter to help make individuals aware that any compliance notices will be made

public, and that declarations will have to be made to outline how forensic units have mitigated risk if they do not comply with the Code.

3.6 Accreditation

3.6.1 The draft Code introduces accreditation requirements in some areas, such as footwear screening where it was not required currently.

3.6.2 The representative from the United Kingdom Accreditation Service (UKAS) commented that challenges are expected in applying the standards in the Code.

3.6.3 The members discussed some responses where alternative standards had been suggested. The UKAS representative commented that ISO 21043 is a procedural standard rather than one based on competence criteria, and so could not be used as a requirement for accreditation.

3.6.4 A representative from the Forensic Science Regulation Unit (FSRU) commented that the definitions used in ISO standards were increasingly being utilised to avoid conflicting interpretation.

3.7 Impact of accreditation on SMEs

3.7.1 The Regulator commented on the intention to eventually include smaller microbusinesses and sole traders in the Code, but acknowledged the comments that achieving accreditation and the costs associated could be disproportionate for these organisations/individuals.

3.7.2 The Regulator explained that the Home Office policy team and the Ministry of Justice have been approached by small providers who act for the defence regarding legal aid and while nothing is yet in place,

the teams were amenable to the notion that should additional costs of accreditation be demonstrable, they could be reflected within the fees.

3.7.3 The UKAS representative commented that being unsuccessful in the first instance in assessment for accreditation would incur fees for SMEs. UKAS was considering methods to support SME in obtaining first time success.

3.7.4 The UKAS representative warned that SME would have to be prepared to incur costs and should build them into their business model, as is done in other industries (noting asbestos as an example). The representative for the Chartered Society of Forensic Sciences (CSoFS) agreed, commenting ideally government funding or grants would be made available, as while CSoFS is keen to support SME it would be unfair to levy CSoFS members to fully bear the costs for certain businesses.

3.7.5 Members discussed the possibility of grants being awarded to businesses to support them through the transition years. Grants could be applied for and have specific milestones to be met.

3.7.6 The group discussed introducing a requirement for all defence reports to be peer reviewed. This was well supported by members who noted a step forward.

4. The enforcement and compliance process

4.1 Compliance with the codes is demonstrated through achieving accreditation to a suitable ISO standard with the schedule including

the codes. The Regulator would continue with this approach for demonstrating compliance with the Code. A transition period was likely to be implemented to allow organisations to include the Code on their schedule of accreditation; this was expected to be 18-24 months. The enforcement powers would come in when the Code becomes effective, meaning the Regulator could still investigate and issue compliance notices during the transition period.

4.2 UKAS was considering how to manage resourcing including training additional technical assessors and effective usage of existing resources. There was a need to be realistic, as a bottleneck was expected at the accreditation process.

4.3 The focus in the first iteration of the Code were FSAs with historical non-compliance and therefore, the largest risk.

4.4 The Regulator would indicate for some FSAs that requirements/accreditation will be required in future versions of the Code, if they are not in the first version of the Code due to their maturity (Fire scene examination was provided as an example). A representative from the FSRU commented that guidance documents will be produced for these FSAs as a starting point prior to their addition to the Code, and that a clear statement of intention could be added to the Code where relevant.

4.5 The current high-level outline of the enforcement process was described, with 4 levels of enforcement described indicatively. Level 0 was described as not being in the enforcement process, but instead

engaging with an organisation to gain a baseline understanding of compliance. Levels 1-4 escalated up the process, with the highest level involving the prohibition of activity.

4.6 The UKAS representative commented that the process at UKAS to manage quality incidents is currently under review. It would be made necessary for organisations to report significant non-conformity. The UKAS representative suggested that consideration should be given to the UKAS sanctions process.

4.7 The Regulator noted that the Memorandum of Understanding (MOU) with UKAS was under review to strengthen information flow between the Forensic Science Regulator and UKAS.

4.8 The representative for NPCC questioned whether the enforcement process would be governed by a panel at level 4. The Regulator responded that based on the way the legislation was written, the ultimate decision would be made by the Regulator. The Regulator also informed colleagues that there was a process for appeals to be made, which would be clearly outlined in the detailed policy and processes required to underpin the enforcement powers.

4.9 A representative from the FSRU raised concern that some organisations might be compliant in some FSAs they conduct but not in others. There was discussion about whether making a compliance notice public could have far-reaching negative impacts on the reputation on an organisation and its effectiveness, even in FSA areas that are unrelated to that which the compliance notice related to.

However, members discussed that problems in one area of an organisation could indicate unseen problems elsewhere.

4.10 It was also discussed that if one FSA area received compliance notices, this could have impacts on trust in that FSA across the sector and other organisations.

4.11 The Regulator also commented that, while it was not a current priority, in the future a regulation strategy could be written outlining the Regulators objectives and how to measure success.

5. Section 4 and the admissibility of evidence

5.1 The Regulator noted that through conversations with relevant stakeholders, such as members of the judiciary and barristers it seemed likely admissibility challenges would be made as there is now a reference point to which forensic science evidence could be challenged.

5.2 There is a level of unpredictability around these challenges and how they would present themselves in court. Members discussed that to mitigate risk it would be important to be clear on what a lack of compliance with the Code will look like.

5.3 The representative for the Coroners' Society of England and Wales noted that while a potential lack of understanding by frontline practitioners is of concern, there is an expectation on prosecutors and those responsible for building a case to understand the Code and to ensure that concerns are raised prior to going to trial.

6. The length and usability of the Code

6.1 The structure of the Code was still being considered. It was agreed that the draft Code is long however, it is intended to be comprehensive including explanations and interpretations of the Forensic Science Regulator Act 2021. These could be removed in later iterations of the Code however, at this stage it was felt by the Regulator and members that these were important to aid understanding by leaders, quality staff and practitioners.

6.2 Members discussed that the Code needs to be easy to use and accessible. Members discussed the possibility of producing complimentary resources such as short videos or 'how to use' guidance documents to aid use of the Code. The UKAS representative suggested UKAS could host a module on using the Code to support practitioners.

7. AOB

7.1 The Regulator commented an annual report is due to be produced as required by the Forensic Science Regulator Act 2021. This would focus on the period from when the last annual report ended to the point at which the Regulator became a statutory Regulator.

7.2 The next meeting was to be scheduled to take place towards the end of the statutory consultation.

Annex A

Representatives present:

Forensic Science Regulator (Chair)

Chair of NPCC National Quality Board

Forensic Science Regulation Unit (FSRU)

United Kingdom Accreditation Service (UKAS)

British Association in Forensic Medicine

The Chartered Society of Forensic Sciences (CSoFS)

Coroners' Society of England and Wales

Forensic Science Northern Ireland (FSNI)

Scottish Police Authority Forensic Services

Home Office Science Secretariat

Apologies received from:

Criminal Bar Association

Judiciary

Association of Forensic Science Providers (AFSP)