Forensic Science Regulator

Quality Standards Specialist Group (QSSG)

Note of the meeting held on 21 June 2022 via video conference.

1. Welcome, and Introduction

1.1 The Forensic Science Regulator (henceforth 'the Regulator') welcomed all to the meeting. 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 had also been included.

2.2 Two drafts 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 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 will take place in early 2023.

2.4 Further versions of the Code would be required as the scope of the Code and accreditation requirements expand. The Regulator informed members that it was likely new versions of the Code would be issued in three-year cycles for practical reasons.

2.5 The Regulator informed members that there was ambition to influence a paradigm shift in the current ways of working. To encourage organisations to work towards best practice at all times, meaning that when dates for new requirements for forensic science activities (FSAs) currently without requirements are declared, organisations would already be working to achieve the newly outlined standards.

2.6 The regulator informed members that organisations involved in forensic science had been invited to indicate the FSAs they undertake. This would support understanding of the current and future levels of compliance.

2.7 The Regulator commented that they had been working alongside the United Kingdom Accreditation Service (UKAS) to align the FSA

definitions with the UKAS master schedule to ensure clarity on how accreditation scopes would align with each FSA.

2.8 The Regulator commented that with regards to enforcement and compliance, at present, the approach would be to act with a series of escalation stages, ending in prohibition. The approach would need to be proportionate, balanced, and fair.

2.9 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. This had not yet been approved by Ministers, additional time beyond 2 years was considered unlikely to be approved.

2.10 Digital and scenes were anticipated to be the FSAs facing the lowest levels of compliance and accreditation. The Regulator had engaged with relevant parties to mobilise on these.

2.11 The Regulator informed members that ahead of the statutory consultation, a newsletter would be published to provide information about the current high-level approach to enforcement and compliance, transition, admissibility provisions, and the Regulators response to key themes which arose from the informal feedback exercises.

2.12 The Regulator informed QSSG members that all the FSAs and the associated accreditation requirements would be given in a summary table.

2.13 The Regulator noted that the focus in the first iteration of the Code were FSAs with historical non-compliance and therefore, the largest risk. As such, not all FSAs would have requirements in the first draft of the Code but might have requirements in future iterations. Where relevant, this would be made clear and guidance documents would be published.

3. The Code

3.1 A representative from the Forensic Science Regulation Unit (FSRU) circulated a draft version of the Code with members ahead of the meeting. This draft was an updated and refined version of the draft that was published in April 2022.

3.2 Each section of the Code was reviewed during the meeting and representatives were invited to share comments. Suggested amendments to the Code were recorded by a representative from the FSRU.

3.3 Points of discussion are recorded in these minutes.

3.4 Introduction

3.5 No points of discussion.

3.6 Part A – Legal Position

3.7 The Regulator commented that they felt the explanatory detail regarding the role of the Statutory Regulator and the legal position should be included in the first version of the Code to aid with understanding. This was agreed by members.

3.8 The representative from UKAS commented that some sentences discussing territory were unclear and appeared contradictory. The Regulator responded that there were separate discussions relating to territorial restrictions of the FSAs and the Code in the Act, the Code contains the Regulator's interpretation of this. It was agreed to review the discussed sentences to clarify. The Regulator noted to QSSG members that the Act provided basis for the Regulator to provide advice internationally.

3.9 The representative from the Criminal Cases Review Commission (CCRC) questioned if there was a plan to engage with lawyers, should the Code go to judicial review. The Regulator confirmed that as they, the Regulator, are an arm's length body, a contract had been awarded to a law firm external to the Home Office for advice.

3.10 The representative from the Forensic Capability Network (FCN) raised that some organisations may feel there is a conflict between the Accreditation of Forensic Science Providers (Amendment) Regulations 2019 (2019 Regulations) and the Forensic Science Regulator Act 2021. The Regulator responded that the two regulations are distinct, and the 2019 Regulations would have no bearing on the Code or its application.

3.11 The representative from the Metropolitan Police Service (MPS) raised concerns that organisations would be unclear regarding which regulation to follow. The Regulator responded that they would not accept that the presence of an individual confers accreditation. The Regulator confirmed to QSSG members that it had been raised to the Home Office policy team that there was potential conflict in these two pieces of legislation.

3.12 Part B – Summary of Requirements

3.13 No points of discussion.

3.14 Part C – The Code

3.15 The representative from UKAS queried how the normative references were selected, particularly questioning the inclusion of ILAC-P15. A representative from the FSRU commented that the normative references were selected on the basis of being the most frequently utilised, agreeing with the UKAS representative that they could not recall cross-reference to ILAC-P15 within the Code, so it could be removed from the normative references.

3.16 Part D – Standards of Conduct

3.17 No points of discussion.

3.18 Part E – Standards of Practice

3.19 The UKAS representative raised that in the section on the Senior Accountable Individual (SAI) it was instructed that the SAI should be "aware of the role and responsibilities". The UKAS representative

commented this would be difficult to demonstrate to technical assessors and suggested that a signed document could be helpful. The Regulator outlined the potential risk that an individual may not understand their role, if understanding is to be demonstrated solely through a 'tick-box' signature, but it was agreed to consider the text.

3.20 The representative from UKAS questioned why it was chosen for business continuity testing to be carried out every four years opposed to annually. The representative from the FCN commented that every four years was deemed appropriate to test the whole business. The UKAS representative raised the concern that organisations might do all the testing in one year and then not consider it for another three. The Regulator noted that as there would be a named SAI, it was hoped that organisations would manage their own risk proportionately and test more frequently if required. It was agreed that the text required consideration.

3.21 It was addressed by the Regulator that the section 'Environment where the FSA is Undertaken' had been amended to facilitate home working. The representative from MPS raised concerns that the text made it seem as though permission to work from home is determined by UKAS. It was agreed that the wording was to be reviewed to clarify that UKAS do not dictate the home working policies of organisations, but UKAS must be informed to assess any impacts of home working on an organisations accreditation.

3.22 It was also raised that under the section 'Environment where the FSA is Undertaken' certain non-dedicated work areas had not been included such as incident scenes (raised by the UKAS representative) and recovery garages (raised by the FCN representative). It was agreed that text should be added to address this.

3.23 The representative from UKAS raised that the statement of validation is often poorly completed. The representative from Orchid Cellmark Ltd noted that they were unclear on the purpose of the document. The Regulator commented they felt the statement of validation remained important to include however, the Regulator agreed to review the requirement.

3.24 The representative from UKAS raised that the term 'national databases' was poorly defined requesting a dedicated list, with agreement from members. The representative from the MPS expanded, noting that certain national databases are also likely to have locally held versions. The Regulator agreed that it should be reviewed and clarified what is considered to be a 'national database'.

3.25 Part F – General Information

3.26 No points of discussion.

3.27 Part G – Appendices

3.28 A representative from the FSRU commented that a section had been added to the Code for the Regulator to provide an overview of their

interpretation of the ISO/IEC standards. This text was being reviewed by a UKAS representative.

3.29 A representative from the FSRU noted that the structure of the Code had been amended to separate the FSAs with requirements and the FSAs without requirements. A FSRU representative reminded QSSG members that not all FSAs which have been defined will have requirements in the first version of the Code, but these FSAs may have requirements in future iterations of the Code.

3.30 Demonstration of compliance with the Code would be through accreditation to an appropriate ISO standard to include the Code in the schedule of accreditation. For those FSAs without requirements, the Regulator informed members that the Act allows the Regulator to issue guidance and advice, but not investigate or enforce standards. The Regulator informed members that any guidance given under section 9 of the Act would carry significance.

3.31 Regarding the section 'Commissioning – Detection and/or Investigation of Crime' the UKAS representative questioned whether the Post Office meets the requirements to act as a prosecuting authority. The representative from the CCRC confirmed that the Post Office did have powers to act as a prosecuting authority however, these powers had not been used for an extended period of years.

3.32 The representative from the CCRC questioned whether there were any other prosecuting authorities, such as the Department for Works and

Pensions (DWP), that should be included in the list. A representative from the FSRU confirmed this would be considered.

3.33 The QSSG members discussed the purpose and need for the section on 'Contingency Capacity/Facility'. The UKAS representative highlighted that the section felt specific and applied only to certain FSAs. It was discussed that contingency planning would not fall into this section. It was agreed that the Regulator and a representative from the FSRU would review this section and consider adding the text to relevant FSAs.

3.34 The representative from DSTL queried whether the exclusion of "something" (such as a technique) from the Code/an FSA meant it was not to be considered part of forensic science. The Regulator clarified that exclusions from an FSA only meant it did not form part of the FSA and would not be under the Regulator's remit and was not a comment on whether "something" is forensic science.

3.35 A representative from the FSRU informed QSSG members that where there was an Appendix that was related to an FSA it would be cross referenced in that FSA.

3.36 A representative from the FSRU informed QSSG members that the existing appendices to the non-statutory codes had been incorporated into the Code. Any guidance in the existing appendices had been removed leaving only the requirements in the appendices to the statutory Code. The guidance that had been removed from the appendices would be re-issued as separate guidance documents.

4. The next meeting

4.1 The Regulator informed members that the next meeting was likely to take place following the publication of the statutory consultation.

5. AOB

5.1 No AOB was raised.

Annex A

Representatives present:

Forensic Science Regulator (Chair)

NPCC Forensic Quality Portfolio Lead

College of Policing

Orchid Cellmark Ltd

The Chartered Society of Forensic Sciences (CSoFS)

Criminal Cases Review Commission (CCRC)

Defence Science and Technology Laboratory (DSTL)

Forensic Science Regulation Unit (FSRU)

Eurofins Forensic Services

United Kingdom Accreditation Service (UKAS)

Metropolitan Police Service (MPS)

Forensic Science Northern Ireland (FSNI)

Forensic Capability Network (FCN)

Expert Witness Institute

Home Office Science Secretariat

Apologies received from:

BSI Group

Crown Prosecution Service

Scottish Police Authority Forensic Services

National Crime Agency