Forensic Science Regulator

Annual Report
25 July 2023 – 24 July 2024

July 2025

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Presented to Parliament pursuant to Section 9(5) of the Forensic Science Regulator Act 2021

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This publication is available at www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at:

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23 Stephenson Street
Birmingham
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ISBN 978-1-5286-5889-8

E03396050 07/25

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of
the Controller of His Majesty’s Stationery Office

This annual report is published under the following provisions of the Forensic Science Regulator Act 2021 [1]**:**

s9(4) As soon as reasonably practicable after the end of each reporting period the Regulator must—

(a) prepare a report about the exercise of the Regulator's functions during that period,

(b) publish the report in such manner as the Regulator considers appropriate, and

(c) provide the report to the Secretary of State.

s9(5) The Secretary of State must lay the report before Parliament.

s9(6) In subsection (4) "reporting period" means—

(a) the period of 12 months beginning with the date on which section 1 comes into force, and

(b) each successive period of 12 months.

On the 21 July 2022 the Minister of State for the Home Office laid a Commencement Order for the Forensic Science Regulator Act 2021 (SI 2022 No. 856 (c. 51) Commencement No. 1 and Transitional Provision) that came into force on 25 July 2022.

This commenced sections 1 to 5 and 9 to 10 of the Forensic Science Regulator Act 2021. Sections 11 and 13 came into force on the day the Act received Royal Assent.

The only provisions that were not commenced on 25 July 2022 cover the issuing of Compliance Notices, Completion Certificates and the Appeals process. These were brought into effect on 2 October 2023.

This annual report is prepared under the provisions of section 9(4) and, in line with these provisions, covers the period 25 July 2023 to 24 July 2024.

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Foreword

In this, my second annual report as the statutory regulator for forensic science, I set out the work and achievements in the reporting year with the focus on preparation for the Code of Practice (the Code) coming into force in October 2023 and implementing the structures and processes that will support the effective statutory regulation of forensic science. My overall assessment is that we are still putting in place the systems and structures to enable the effective statutory regulation of forensic science, and we have not yet reached a steady state or business as usual position.

One of the key provisions of the Forensic Science Regulator Act 2021 (the Act) is to make the Code admissible in criminal proceedings and allow the courts to take into account a lack of compliance with the Code. To support this provision the Code requires a binary declaration of compliance and, where non-compliance is declared, the mitigating steps to be outlined. The preparation of guidance on making declarations prior to the Code coming into force was one of the key tasks in this reporting year. The Code came into force without any major events, but I think it will take a little while for the criminal justice system (CJS) to adjust and utilise the declarations. Backlogs in the CJS will also mean there will be a delay before non-compliant declarations are routinely considered by the courts. As this reporting year ended there had been a few admissibility challenges based on non-compliant declarations, but none had been successful.

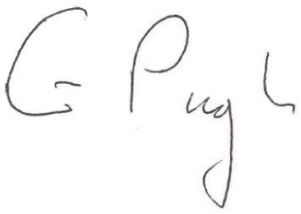
As well as preparing for the Code to come into force, a considerable amount of work was done to prepare and publish the investigation and enforcement policy. This not only set out the processes that will underpin the provisions in the Act but also the approach that I will take to investigation and enforcement. I have set out in many presentations since taking up this role that there is a strong and healthy culture of self-reporting in forensic science that is to be supported and encouraged. I will also take an approach to investigation enforcement that is balanced, proportionate and focused on understanding risk as required by the Act.

I anticipated with the Code coming into force that we would need to consider a version 2 of the Code Preparation of this was undertaken in this reporting year, including consultation as required by the Act in early 2024. I was particularly keen to address concerns raised with me about the impact of regulation in crime scene examination. Just as we were preparing to seek approval to version 2 the general election was called. I decided to extend the consultation to make some further changes to the Code, responding to a major quality failure in drugs driving analysis and the need to clarify the scope of accreditation for friction ridge detail comparison.

In the forward view, I highlight the need to be less reactive and to create space to develop the regulation of forensic science and expand the Code to include all FSAs defined in the Code. Based on my experience of addressing the need for change in the regulation of incident examination and friction ridge detail comparison this does not and should not mean more regulation, but regulation that is proportionate and risk based with compliance mechanisms including accreditation that are primarily based on the requirements in the Code. To enable and

sustain these improvements to the regulatory approach will require an increase in resources, and an effective mechanism for the Regulator to secure resources as set out in Schedule 6 of the Act. This report highlights that the Regulator is supported by a team of eight individuals. A structure or mechanism for securing resources and capability in line with the schedule to the Act has yet to be established. I hope to be able to report more positively on this in my next annual report.

I must once again thank the dedicated and committed team in the Office of the Forensic Science Regulator who have worked with me to deliver the statutory regulation of forensic science and put in place underpinning structures and processes.



Gary Pugh
Forensic Science Regulator

Preparing for the statutory regulation of forensic science

A large part of the Regulator's first annual report was devoted to the preparation, consultation and approval of the Code of Practice, this included detail of the approach taken to the preparation of the Code, the statutory consultation and the changes made to the Code as a result of the comments received. The Code was approved on 1 March 2023, with an effective date to come into force on 2 October 2023. This section of the annual report covering the period July 2023 to July 2024 deals with practicalities of preparing for the Code coming into force, including preparing guidance on declarations of compliance with the Code and the issuing of guidance under section 9.

Publication of declaration guidance

In the Forensic Science Regulator Act 2021, section 4 sets out the status of the Code and includes the provision:

> **Status of the Code**
>
> (1) 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.
>
> (2) The Code is admissible in evidence in criminal and civil proceedings in England and Wales.
>
> (3) A court may in particular take into account a failure by a person to act in accordance with the Code in determining a question in any such proceedings.

This is an important provision, in that it enables a challenge to the admissibility of forensic science evidence produced by a person undertaking a forensic science activity that is subject to the Code. In response to this the Regulator made a requirement in the Code for any person who is undertaking a forensic science activity that is subject to the Code to make a binary declaration of compliance with the Code and, where non-compliance is declared, to set out the mitigating steps (see Box 1). To support practitioners making declarations, the Regulator developed and issued guidance under section 9 of the Act.

The declaration guidance (Guidance: Declarations of Compliance and Non-Compliance with the Code of Practice [2]) outlines various compliance scenarios and suggests standard wording for making declarations. Practitioners are encouraged to use this wording in their statements and reports, to facilitate consistency and ease of understanding for those utilising the reports within the Criminal Justice System (CJS). The guidance document also outlines how practitioners declaring non-compliance to the Code can provide mitigation detail using an annex to their

report or statement. The guidance also proposes that practitioners use a mitigation table to provide structure to detailing non-compliance.

The declaration requirement in the Code complements the Criminal Practice Directions 2023 and Criminal Procedure Rules [3] on the required declaration of truth in an expert report. Ahead of the statutory Code of Practice coming into force on 2 October 2023, Criminal Practice Directions were amended to reflect the requirement of the Code for providing mitigation in instances of declaration of non-compliance (First Amendment to the Criminal Practice Directions 2023 – October 2023 - Courts and Tribunals Judiciary). This amendment ensures that the expert witness's declaration required by the Criminal Procedure Rules is consistent with the declaration required by the Code. Specifically, the amendment in section 7.2.1 paragraph 13 of the Criminal Practice Directions 2023 (Expert evidence), sets out that the declaration that is required:

> 'I confirm that I have complied with the Code of Practice or conduct for experts of my discipline, namely [identify the Code], in all respects save as identified in [schedule][annexe][x] to this report. That [schedule][annexe] gives details of the action taken to mitigate any risk of error that might arise as a result.'

Box 1

37.2.2 All practitioners reporting on FSAs requiring compliance with the Code shall declare/disclose compliance with this Code in reports intended for use as evidence in the following terms, or in terms substantially the same:

a. I confirm that, to the best of my knowledge and belief, I have complied with the Code of Practice published by the statutory Forensic Science Regulator [insert issue]; or

b. I confirm that, to the best of my knowledge and belief, I have complied with the Code of Practice published by the statutory Forensic Science Regulator [insert issue] for infrequently used methods or new methods. As this method is not within the schedule of accreditation, annex [x] details the steps taken to comply with the specific requirements to control risk; or

c. I have not complied with the Code of Practice published by the statutory Forensic Science Regulator [insert issue]. The details of this non-compliance are included to the best of my knowledge and belief in annex [x], with details of the steps taken to mitigate the risks associated with non-compliance.

37.2.3 Details of non-compliance and mitigating steps given in the annex described as annex [x] above shall address the following issues:

a. competence of the practitioners involved in the work

b. validity of the method employed

c. documentation of the method employed

d. suitability of the equipment employed (including the approach to maintenance and calibration)

e. suitability of the environment in which the work is undertaken

Publication of general guidance documents

In this reporting year new guidance documents and guidance documents prepared by the non-statutory Regulator were updated where necessary and reissued under section 9 of the Act. The following table sets out the section 9 guidance documents issued in this reporting year.

Table 1: list of section 9 documents issued [4]

Title	Reference	Publication date	Short description of the purpose and change
Firearms Urgent Classification Process (non-accreditation)	FSR-GUI-0027	15 August 2023	New document produced on the investigation and enforcement action provisions for the Forensic Science Regulator under the Forensic Science Regulator Act 2021.
Guidance: Y-STR Profiling	FSR-GUI-0013	25 August 2023	Previously FSR-G-227 issued and updated guidance for Y-STR analysis to reflect publication under section 9 of the Act and statutory Code.
Guidance: Methods employing rapid DNA devices	FSR-GUI-0015	29 August 2023	Previously FSR-G-229 issued and updated guidance for methods using rapid DNA devices to reflect publication under section 9 of the Act and statutory Code.
Guidance: Declarations of Compliance and Non-compliance with the Code of Practice	FSR-GUI-0001	31 August 2023	New document providing guidance on declaring compliance with the statutory Forensic Science Regulator's Code of Practice.
Guidance: Contamination controls – Scene of crime	FSR-GUI-0016	24 October 2023	Previously FSR-G-206 issued and updated guidance on how to control and avoid contamination involving DNA evidence recovery and analysis at incident scenes to reflect publication under section 9 of the Act and statutory Code.

Title	Reference	Publication date	Short description of the purpose and change
Guidance: DNA contamination controls – laboratory	FSR-GUI-0018	26 October 2023	Previously FSR-G-208 issued and updated guidance on how to control and avoid contamination involving DNA evidence recovery and analysis for laboratory activities to reflect publication under section 9 of the Act and statutory Code.
Forensic medical examination of sexual offence complainants	FSR-GUI-0020	19 January 2024	Previously FSR-G-212 issued and updated guidance on the recovery of items and samples believed to be relevant to an alleged sexual offence from a complainant in a dedicated facility to reflect publication under section 9 of the Act and statutory Code.
Guidance: DNA contamination controls – forensic medical examinations	FSR-GUI-0017	23 January 2024	Previously FSR-G-207 issued and updated guidance on how to minimise the risk of DNA contamination in settings used routinely for sexual assault examinations, and police custody, to reflect publication under section 9 of the Act and statutory Code.

Transition from the non-statutory to the statutory Code

Following approval of the Code there was a transition period between March and October 2023 to allow accredited organisations to transition from the non-statutory Codes of Practice and Conduct to the Code. The transition was achieved by completing a gap analysis that was assessed by the United Kingdom Accreditation Service (UKAS) so that they could show on their schedules of accreditation the statutory Code from the date it came into force. This involved a considerable amount of work by the organisations and by UKAS. The Regulator is very grateful to UKAS for the expeditious and structured way that this was dealt with. To oversee this process the Regulator established a Code Transition Management Group to monitor the progress of organisations accredited to the non-statutory Codes through the submission of their completed gap analysis and supporting documents to UKAS.

A transition template was issued by UKAS to all 52 organisations who qualified for the transition process on 27 March 2023, for return by 19 June 2023 with evidence to demonstrate

compliance with the Code. 43 organisations submitted their return by the deadline, 52 organisations submitted their returns by 2 October 2023, 45 organisations had findings raised with a requirement to submit further evidence and 5 organisations had no findings raised for further evidence provision. 45 organisations transitioned to the Code on 2 October 2023 when the Code came into force. The schedules of accreditation for the 45 organisations were updated with the statutory Code in a bulk award and the 7 organisations who did not transition by 2 October 2023 had their accreditation to the previous non-statutory Codes removed from their scope and no statutory Code added.

Compliance with the Code

Updating the compliance survey

The Regulator outlined in the first annual report [5] a high-level view of compliance and risks following a FSR compliance survey undertaken in June 2023. The survey was sent to 165 organisations and the response rate was 64%. 105 organisations provided a response to the Regulator. Of the 60 organisations that did not respond, they were predominantly small organisations who we believe were undertaking FSAs that were not subject to the Code when it came into force. There were some organisations in the 'no response' category we believed were undertaking FSAs that were subject to the Code in, and further enquiries were made to these organisations.

The Regulator updated the high-level view of compliance and risks, taking into account:

- data analysis had largely focused on the 34 FSAs that were subject to the Code when it came into force on 2 October
- the data represented a snapshot in time when the survey was completed by participating organisations, and this may well have changed since the survey was completed
- the data analysis was based on the information provided, and the primary purpose of the survey was to provide a starting point for discussion and action in respect of achieving compliance with the Code.
- the data was analysed to give an 'organisational and an FSA view', with the primary focus of providing the high-level indicative compliance of the FSAs that were subject to the Code on 2 October 2023, taking into account the volume of FSAs undertaken by compliant and non-compliant organisations

Overview by organisations and FSAs

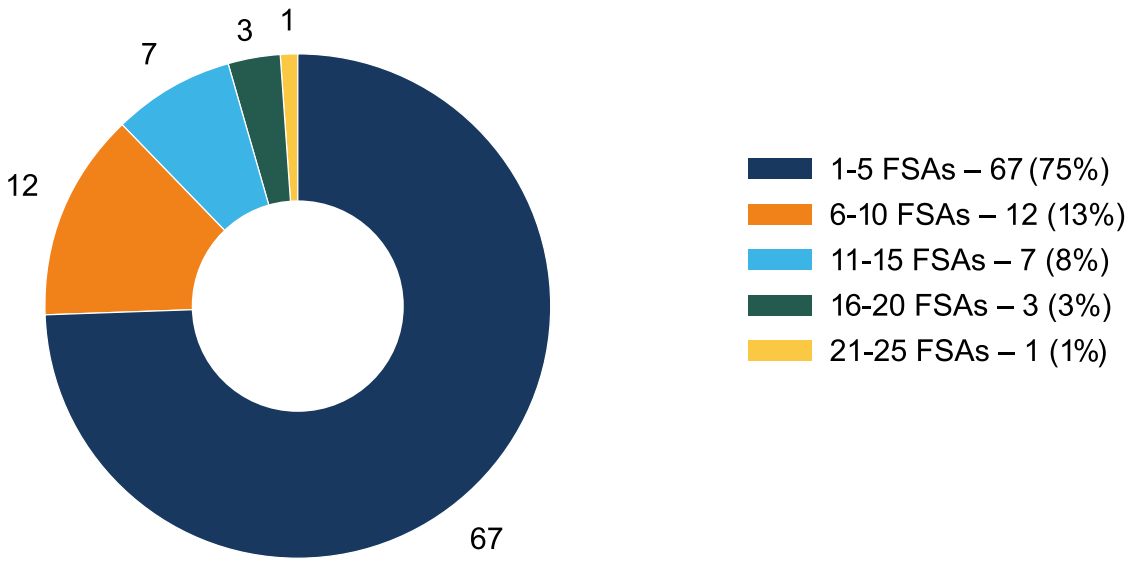
In the first annual report, the Regulator reported that 77 organisations who responded to the survey were undertaking at least one of the 34 FSAs that were subject to the Code when it came into force on 2 October 2023. The updated information showed that 90 organisations were undertaking at least one of the 34 FSAs that were subject to the Code when it came into force.

67 (74%) of these forensic science providers undertook 1-5 FSAs, and 4 (4%) undertook more than 15 FSAs, as shown in the table 2 and chart 1 below.

Table 2: Number of organisations undertaking number of FSAs

Number of FSAs	Number of organisations undertaking FSAs
1-5 FSAs	67
6-10 FSAs	12
11-15 FSAs	7
16-20 FSAs	3
21-25 FSAs	1
Total	**90**

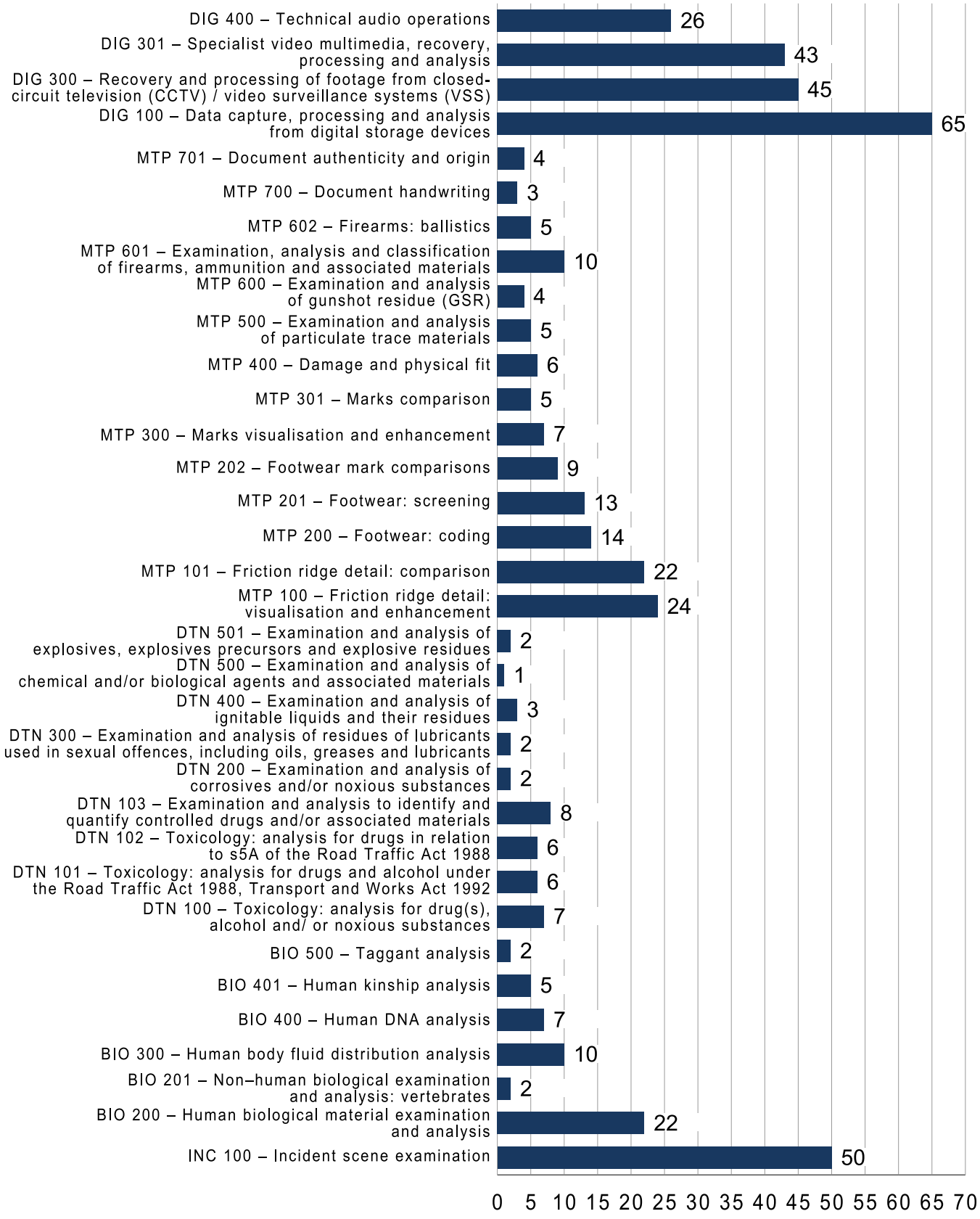
Chart 1: Number of organisations undertaking volume of FSAs



‘FSA view’ of the full compliance survey findings

The overall picture of the number of organisations which carry out each of the 34 FSAs subject to the Code is shown in chart 2.

Chart 2: Number of organisations that carry out each FSA



Analysis and indicative compliance for FSAs subject to the Code

To provide an indicative compliance level, the data for the FSAs that are subject to the Code was analysed, taking into account the volumes of cases undertaken, to calculate a weighted indicative compliance level for each FSA. Based on the analysis of the updated information, the Regulator has made a general assessment of the indicative compliance per FSA.

The Regulator's view remains that risks:

- are well understood and managed for the FSAs with high to very high (> 75%) indicative level of compliance
- are contained for the FSAs with medium (50% to 74%) indicative level of compliance, but action needs to be taken to achieve full compliance with the Code and the Regulator acknowledges that in general these FSAs are undertaken in low volumes
- need to be understood and mitigated for the FSAs with low to very low (less than 49%) indicative compliance levels with action to achieve compliance with the Code.

In the Regulator's first annual report, the Regulator reported that focusing on the FSAs with low to very low (<49%) indicative compliance levels would be priority for the reporting year 2023 to 2024.

As previously reported, undertaking compliance surveys is inefficient and resource intensive and an IT solution will significantly reduce the cost, timeliness and complexity of administering the one-off surveys. Calculation of the indicative compliance levels involves the tabulation, importation and formulation of large amounts of data in multiple Excel spreadsheets and, coupled with estimates of data provided by organisations, confidence in the accuracy of the resultant data is not high and can only be treated as indicative. In this reporting year, the Regulator has continued discussions with the Home Office and a potential solution has yet to be identified.

Compliance data and information

This section of the report sets out compliance data and information for FSAs with low compliance (<49%). The Regulator also reports in this section on compliance with the provisions in the Code to accommodate urgent firearms classification and footwear coding.

INC 100 – Incident scene examination, indicative compliance 43%

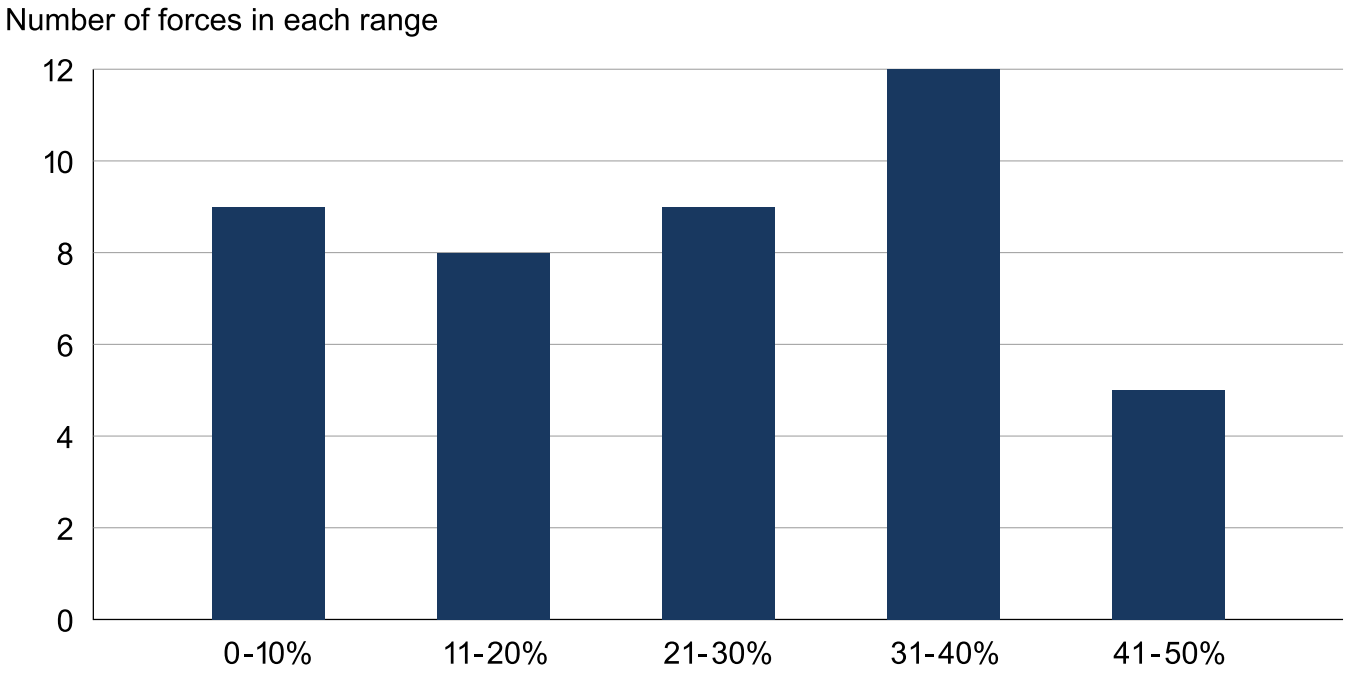
Following concerns raised with the Regulator about the effectiveness of the regulation of this FSA the regulatory approach was reviewed and changes made. The background and detail of the changes are set out in the section of this report that deals with the development of version two of the Code.

DIG 300 – Recovery and processing of footage from closed-circuit television (CCTV)/video surveillance systems (VSS) and DIG 400 – Technical Audio Operations, indictive compliance 21% and 7%

These two FSAs involve the recovery and preservation of still and moving images from digital closed-circuit television (CCTV), video surveillance systems (VSS) and related digital media/systems and the acquisition and conversion for subsequent processing and analysis of audio material. The Code allows for compliance to be demonstrated by acting in accordance with the NPCC's Framework for Video Based Evidence [6] and the FSA specific requirements for video processing and analysis, using approved methods and tools that have been approved by or on behalf of the SAI. The responses to the 2023 compliance survey indicated that there was a lack of general understanding of the application of the NPCC framework for Video Based Evidence. Work was initiated by the NPCC lead to improve understanding and to collect data on compliance with training requirements.

As of July 2024, the level 1 training course had been available for approximately a year, and over 71,000 police personnel had completed the level 1 course. Understanding the levels of compliance in individual forces is challenging, as the number of front-line personnel who should have this training was not known. The NPCC capability manager for CCTV used the number of College of Police Learn accounts as the denominator to give relative percentages, as this closely related to force strengths. The following chart shows that, as of July 2024, 17 forces had embraced the learning requirement with figures more than 31% of staff with college learn accounts completing the training, however 9 had figures which prompted the NPCC and the Regulator to remind forces that adherence to the framework is a regulatory requirement.

Chart 3: Percentage range of forces staff trained to level 1 in CCTV recovery as of July 2024



The Regulator will work with the NPCC CCTV lead to improve forces' understanding of the framework requirements and encourage the take up of training.

DIG 301 – Specialist video multimedia, recovery, processing and analysis

A survey was performed to cover the period of 25 July 2023 to 24 July 2024 for two of the digital FSAs which had low compliance in the previous survey, DIG 100 and DIG 301.

For DIG 301, the method of demonstration of compliance is accreditation and, unlike DIG 300, no alternative compliance method such as a framework is available. Table 3 shows the percentage of organisations that say they do the sub-activity and report 'Sub-activity undertaken in compliance with the Code'.

Table 3: Compliance reported in key sub-categories of DIG 301

Recovering, processing or analysing	Survey 1	Survey 2
Recovery of CCTV/VSS footage from a DVR removed from the CCTV/VSS system, that is, when no longer 'in situ'	8%	18%
Recovery of CCTV/VSS footage from a DVR using a third-party tool, i.e. using methods other than the manufacturer's intended methods	6%	20%
Data recovery through reverse engineering	5%	0%
Legacy analogue format conversion, enhancement or demultiplexing	6%	11%
Enhancement/processing of digital images/video, including optimisation for viewing purposes and the application of filters or techniques	5%	17%
Production of digital stills for any subsequent FSA, including but not limited to comparison	8%	11%
Activity to also be included as part of the end-to-end process; if conducted, include the following: production of video compilations, i.e. not simply editing for length	5%	15%
Redaction or masking of subjects or objects in footage using third-party tools or methods outside of DEMS/DAMS software	8%	13%
Repair of damaged/corrupt media files or physical media	0%	4%

The table shows improvements across most sub-activities. The question also asked about analysis and comparison activities, but there are no forensic units with accreditation covering these sub-activities for this reporting period.

Organisations were asked about progress towards achieving accreditation if they did not already hold it. Table 4 shows the responses in the survey for this period.

Table 4: Preparatory work towards gaining accreditation in forensic units without the required accreditation

	%	Number
Performed a gap analysis	57%	32
Applied to UKAS as new application	4%	2
Applied to UKAS for extension of scope	4%	2
Pre-assessment is scheduled with UKAS	2%	1
Undertaken UKAS pre-assessment	7%	4
Initial assessment is scheduled with UKAS	2%	1
Undertaken UKAS initial assessment	2%	1
None of the above	41%	23

The response about conducting a gap analysis is reassuringly high; what is not clear is if this was inflated by the Regulator requesting a gap analysis for the speed estimation aspect of DIG 301 (see section on **Significant Referrals** for more details). The figures do not represent organisations sitting at different stages of preparation, over the reporting period of a year, for example the same organisation could have applied, had a pre-assessment and progressed through to initial assessment. Although there is progress, it is concerning that 23 organisations reported not actively working towards compliance.

Prior to application for accreditation, the organisation would need to develop their quality management systems, both as stages towards compliance and to reduce risk. The survey asked about topics which are addressed by the quality management system but, except for peer review, they are also in the mitigation annex for when accreditation has not been achieved.

Table 5: Risk mitigation and preparatory work towards compliance with the Code

	Survey 1	Survey 2
Validation of the methods employed	9.9%	21.4%
Competent practitioners involved in the work	19.8%	48.2%
Documentation of the method employed	20.8%	57.1%
Equipment fit for purpose	24.8%	64.3%
Environment fit for purpose	24.8%	67.9%
Peer review	Not asked	58.9%

This appears to show increases in all aspects that were surveyed. These are self-declarations; the Regulator saw when focusing on speed estimation that there was variation in understanding

what was expected to declare a method validated or that staff were competent. However, even if for example the documentation is not yet to the level that accreditation would expect, its reported existence provides a path for continual improvement, and it is notable this is the largest increase.

DIG 100 – Data capture, processing and analysis from digital storage devices

The previous annual report used the sub-activity of 'Recovery of data from a device under examination using an off-the-shelf tool for factual reporting' as an indicative sub-category, giving a compliance level of 19%. The second survey gives a much higher figure of 37% for the same sub-category. The breakdown of the key sub-categories is listed below in table 6.

Table 6: Compliance reported in key sub-categories of DIG 100

	Survey 1	Survey 2
Recovery of data from a device under examination using an off-the-shelf tool for factual reporting; all deployments in scope	19%	37%
Recovery of data from a device under examination using an off-the-shelf tool for factual reporting; utilising the specific implementation criteria as detailed in the implementation section of the digital forensic FSA specific requirement in Code section 108.3.12 to 108.3.15 (i.e. accredit once, deploy many)	36%	23%
Examination of a device, media or component to locate or capture and preserve (create a copy of the digital data in whole or in part and store the copy in a manner that allows subsequent processing and analysis to take place) any information stored on or accessible via the device in digital/electronic format (i.e. cloud storage)	21%	44%
Processing – conversion of digital data to produce meaningful information, either by a manual or automated process, to allow for subsequent analysis and/or reporting to take place reverse-engineering undocumented data structures	42%	36%
Processing – conversion of digital data to produce meaningful information, either by a manual or automated process, to allow for subsequent analysis and/or reporting to take place manual parsing of data from an embedded database file (e.g. SQLite, LevelDB) into a human-readable format	32%	37%
Analysis of information related to communications (e.g. calls, e-mails, texts) (unless addressed in Code section 97 or subject to an exclusion) to supply data for further review as part of an investigation (e.g. a Cellebrite reader file (.UFDR) to the investigating officer, i.e. the commissioning body)	28%	29%

	Survey 1	Survey 2
Analysis of records related to the location of a device (e.g. Global Positioning System (GPS) or similar data, unless addressed in Code section 83)	35%	22%
Analysis of file data e.g. review of exchangeable image file (.EXIF) data, identification of files by known hash comparison	23%	30%
Analysis of data to provide information related to activities carried out on or by the computer system or digital device (e.g. operating system logs, file system metadata, file metadata)	29%	29%
Analysis of application data to identify how an application has been configured, e.g. peer-to-peer file sharing	29%	30%
Analysis of data from an embedded data structure (including SQLite searches, Plist tool searches)	26%	29%

It became clear in the first survey that the responses from policing typically only covered the main digital forensic unit. The second survey placed an emphasis that it needed to cover all forensic units in the organisation, for example, digital media investigators. This meant there was an increased number of responses in second survey, 77 compared to 58 in survey 1. The drops in compliance percentages in some sub-activities in table 6 appears to reflect this increased coverage in this second survey.

Table 7: The percentage of forensic units performing this FSA reporting that they had the listed elements within a quality management system

	Survey 1	Survey 2
Validation of the methods employed	83%	62%
Competent practitioners involved in the work	94%	74%
Documentation of the method employed	98%	71%
Equipment fit for purpose	96%	79%
Environment fit for purpose	100%	83%
Peer review	Not asked	74%

Table 7 would at first glance appear to show a decrease in the quality measures compared to the last survey, but again the increased number of policing units from outside the main digital forensic unit was the root cause. When only the main digital forensic unit was considered, the figures jumped up and practitioners involved in the work rose to just above ninety percent of respondents, which is much closer to the first survey.

The survey asked about forensic units commissioning others to conduct the FSA, specifically whether they had a formal procedure for assessing the suitability of external organisations, and 62% of those that responded to that question stated they had a formal process. However, a related question asked if those that they utilised passed their assessment, and 23% stated that they did not. It is unclear if this simply represented some specialised services being procured, or if this was a more concerning issue of continuing to commission work when, for DIG 100, there are many commercial providers with an extensive scope of accreditation.

Firearms urgent classification process

The Regulator made provision in the Code under FSA - MTP 601 - Examination, analysis and classification of firearms, ammunition and associated materials) for the urgent legal classification firearms such as to support a remand in custody application, to be made without requiring the need for accreditation. The Code requires organisations who wish to make use of this provision to enter into a general agreement with the Regulator, and to put in place a process to deliver urgent classifications, provided that, in each instance it is carried out, the classification is subsequently carried out by a forensic unit that holds relevant accreditation. The process is based on:

a. the SAI making an application to the Regulator to put the process in place

b. all firearms that are dealt with according to this process shall, without exception, examined by a forensic unit that holds accreditation for this FSA as soon as practicable and in any event within 72 hours of the remand decision being made

c. there is an operating framework in place that has been agreed with the Regulator, which covers the procedures, competency of personnel involved and internal audit

d. the Regulator can conduct an audit of this process, and the agreement with the forensic unit carrying it out at any time

e. the organisation will make an annual return to the Regulator setting out the number and types of firearms examined, and other information specified by the Regulator

f. the organisation will make a declaration defined by the Regulator

g. the Regulator can terminate the arrangement at any time, defaulting to a requirement for accreditation to ISO 17025

The previous reporting period saw the introduction of a process whereby forensic units could apply to the Regulator to carry out urgent classification of firearms in the absence of accreditation, where the classification was necessary to inform a decision whether or not to remand an individual in custody. Nine police forces made successful applications.

The Regulator sought returns from participating forces, detailing their use of the process in the preceding reporting period. Eight forces made returns and the ninth gave a nil return, having not

had cause to put their process into practice. Given the newness of this allowance, and while there is no apparent cause for concern, the Regulator has sought clarification on the wording of one of the returns and has requested dip samples of reports from two others.

Footwear coding use of the NPCC Framework

The FSA - MTP 200 - Footwear: coding is limited to scene-to-scene linking by coding of marks recovered from scenes. The Regulator allowed such activity to be undertaken in the absence of accreditation, provided the forensic unit adheres to the NPCC's Framework for Footwear Coding [7] and demonstrates such adherence. The NPCC Framework includes the following requirements:

a. the forensic unit shall have methods approved by the NPCC

b. the forensic unit shall record and maintain the competence of personnel it authorises to conduct this FSA

c. practitioners adhere to the practices set out in the NPCC's Framework for Footwear Coding

d. the Regulator can conduct an audit of the process and the forensic unit carrying it out at any time

e. the organisation will make an appropriate declaration

f. the Regulator can withdraw this dispensation at any time, defaulting to a requirement for accreditation to ISO 17025

In order to monitor compliance with the Framework, regional representatives from the National Footwear Operations Group periodically contact the forces in their region to confirm what footwear activities they are undertaking and whether they are accredited and/or adhering to the Framework. In total, 30 forces are undertaking some form of footwear examination or recovery either in their own force, as part of a collaboration, or via another force.

Nine forces/collaborations covering a total of 22 forces hold ISO 17025 accreditation for some form of footwear examination, nine forces are either coding under the framework or working towards compliance with the framework and 11 forces/collaborations covering a total of 17 forces hold ISO 17020 accreditation for footwear recovery at crime scenes.

Investigation and enforcement

The Act contains provisions for the Regulator to conduct investigations and take enforcement action through a compliance notice and provides for an appeals process where the Regulator issues a compliance notice. The relevant provisions of the Act are shown in the section 'Forensic Science Regulator Act investigation enforcement and appeals provisions' at the end of this report.

The powers to conduct an investigation apply where the Regulator has reason **to believe that a person may** be carrying on a forensic science activity to which the Code applies in a way that creates a substantial risk of adversely affecting any investigation or impeding or prejudicing the course of justice in any proceedings. The Regulator may require the person to provide copies of documents and other information in the person's possession or control and may include a requirement for information to be provided orally.

The power to take enforcement through a compliance notice is based on the same assessment of risk, but the enforcement powers apply where the Regulator **believes that a person is** carrying on a forensic science activity to which the Code applies in a way that creates a substantial risk of adversely affecting any investigation or impeding or prejudicing the course of justice in any proceedings. A compliance notice requires the person on whom it is served to take one or more steps specified in the compliance notice within the period or by the date specified in the compliance notice. A compliance notice may prohibit the person from carrying on any forensic science activity in England and Wales until the Regulator is satisfied that a step or steps have been taken or do not need to be taken. In deciding whether to serve a compliance notice on a person, and in determining the content of a notice, the Regulator may take into account any failure by a person to act in accordance with the Code.

The Act also makes provision for the Regulator to issue a completion certificate. A completion certificate is issued where the Regulator is satisfied that any step specified in a compliance notice has been taken or does not need to be taken.

Appeal against the issuing of a compliance notice by the Regulator is to the First-tier Tribunal and can be made if the decision was based on an error of fact, wrong in law, unreasonable or any step or prohibition specified in a compliance notice is unreasonable.

Publication of the FSR investigation and enforcement policy

The Regulator has developed and published an investigation and enforcement policy to provide transparency and set out the process for the application of the Regulator's investigation and enforcement powers. In line with the provisions of the Act, the effective use of the investigation and enforcement powers relies on the Regulator having an understanding of risk in the undertaking of forensic science activities and there being mechanisms that will bring these risks

to the attention of the Regulator. In the Regulator's first annual report the Regulator outlined the reactive and proactive approaches that are taken to identify potential risks. The Regulator outlined work that had been undertaken to understand how to take a proactive approach through a compliance survey and used this to make an initial assessment of risk across all of the forensic science activities that were subject to the Code when it came into force.

The investigation and enforcement policy builds on this work by providing a framework and clarity on the approach the Regulator will take to act on identified risks. In formulating this policy, the Regulator identified the high-level principles that would inform the basis for taking enforcement action. Enforcement action taken will be:

- **proactive and reactive** – through information provided by a Senior Accountable Individual or others, the Regulator may proactively identify risk (other risks will be identified through referrals brought to the attention of the Regulator)
- **proportionate** – the use of the enforcement powers must be proportionate to the risk posed and based on escalation, where appropriate, with the full enforcement powers under the Act being used in general as a last resort
- **fair, transparent, and consistent** – the enforcement and compliance process must be fair and transparent, with consistency across forensic units and FSAs
- **supportive** – the enforcement and compliance process must assist forensic units in producing reliable evidence, maintaining and encouraging the culture of self-referrals that exists in forensic science

The investigation and enforcement policy describes circumstances that might cause the Regulator to invoke the powers provided by the Act and commence an investigation that may lead to enforcement action being taken. It sets out:

- ways in which the Regulator might become aware of risk and non-compliance with the Code
- criteria that may cause the Regulator to undertake an investigation and take enforcement action
- the degrees of action available to the Regulator and criteria for each, including:
    - formal requests for information to aid an investigation
    - the issuing of injunctions
    - compliance notices
- guidance on forming declarations when subject to an investigation and enforcement action
- meeting the requirements of enforcement action
- redemption of enforcement action
- routes to appeal enforcement action

The FSR investigation and enforcement policy can be found at: Policy on enforcement action taken by the Forensic Science Regulator – GOV.UK

Investigation and enforcement action

In this reporting year, acknowledging that the statutory powers came fully into effect in October 2023, the Regulator can report that the investigation powers under section 5 were not used and the Regulator has not issued any compliance notices under section 6. In responding to referrals and making requests for information where potential risks are alerted to the Regulator, the Regulator will draw to the attention of relevant individuals to the investigative powers available to the Regulator.

While the Regulator did not issue any compliance notices, there was an appeal under section 6 of the Act to the First-tier Tribunal in November 2023. The Tribunal noted that: 'it can only do what the law permits it to do. Nothing in the Act gives it supervisory jurisdiction over the Regulator or its processes. Until a compliance notice is issued the Tribunal has no jurisdiction to do anything, and even then, its function is limited to the one described in section 8. Rule 8(2) of the Tribunal's procedure rules provides that the Tribunal must strike out the proceedings if it does not have jurisdiction to consider them, before it does so, the appellant must first be given an opportunity to make representations in relation to the proposed striking out.'

The general regulatory information section of this report summarises the data and information on the number of referrals made to the Regulator, those that have been dealt with and those that are still active.

Significant referrals

Early in this reporting year the Regulator received a significant referral in the estimation of vehicle speed from video footage that is within the FSA – DIG 301 – Specialist video multimedia, recovery, processing and analysis. This includes analysis of footage from traffic monitoring cameras and privately owned dash-mounted cameras; it does not include the use of Home Office approved speed detection devices, which are subject to type approval. This activity is generally conducted as part of collision investigation and requires compliance with the Code, including the requirement to achieve accreditation to ISO/IEC 17025. For speed estimation there are currently no organisations who comply with the requirements in the Code, including achieving accreditation. The Regulator has received several referrals on this matter following unsatisfactory results in a Proficiency Test (PT). PTs are a routine measure of quality set to test forensic unit processes, often to test the limits of the unit's capability. Although based on typical real-life casework, the tests may be engineered to have features that specifically test quality checks which means they do not automatically translate into routine performance. The Code of Practice requires forensic units to report unsatisfactory performance in such tests, identify the root cause and set out steps to reduce the risk of reoccurrence.

In response to the referral the Regulator took following actions. The Regulator:

i. sought to identify all forensic units undertaking speed estimation, the volume of work, and the current capability and competence of organisations to undertake speed estimation

ii. ensured all forensic units identified are aware of the requirements set out in the Code, including:

   (a) the requirements to set out in statements how any non-compliance is mitigated, so users of the speed estimation results can properly evaluate the strength of evidence presented

   (b) the expected actions for all non-conforming work, including unsatisfactory performance in a PT

iii. requested forensic science units who continue to carry out the activity to complete a self-assessment questionnaire on their compliance level against set requirements

In response to the actions taken by the Regulator, some organisations suspended the undertaking of speed estimation and others continued to carry out this FSA and provide evidence into the CJS. In April 2024, when the Regulator made a presentation to the NPCC CCTV Conference, the Regulator reported that there were 37 police organisations undertaking speed estimation from video footage; 15 had suspended this activity, 11 commercial organisations were undertaking speed estimation from video footage and all continued to provide evidence to the CJS. This has now become a complex and large-scale referral as the regulator was assessing the risks within each organisation who continued to undertake speed estimation from video footage.

For those organisations that continue to undertake or, following a suspension, have restarted undertaking this FSA, the Regulator worked closely with them to understand the risks that inaccurate or unreliable estimation speed will be reported to the CJS. The Regulator noted improvements in the way some organisations are addressing their non-compliance – for example, an increase in uptake in training, an appropriate software purchase, the review of previous work, the documentation of methods, etc. The Regulator has not taken enforcement action against any organisations in relation to speed estimation from video footage in this reporting year. However, with demonstrable poor performance in PT by some organisations, the Regulator is seeking to determine whether there are substantial risks in casework for organisations that continue to undertake or, following a suspension, have restarted undertaking the estimation of speed from video footage, and the Regulator is working with the relevant organisations.

Lessons learned review: quality failure in section 5A drugs driving analysis

In May 2024 the Regulator published a lesson-learned review into a quality failure in section 5A Road Traffic Act 1988 (Drug Driving) analysis. [8] This was a significant quality failure which resulted in 1,778 rescinded prosecutions. The review considered the events, decisions and organisational responses in this quality failure and outlined lessons learnt where actions should be taken to reduce the risk of a similar failure in the future. The Regulator has undertaken to follow up on the learning points identified in the review report through:

- making amendments to the Code of Practice
- engagement with stakeholders
- reporting on progress and outcomes through the FSR Annual Report.

The section 5A offence, which sets specified limits for drugs in samples taken from drivers, was introduced through an amendment to the Road Traffic Act 1988 in March 2015. At this time there was a small number of providers with experience of this type of analysis; a few additional suppliers entered the market over the coming years. In the review the Regulator acknowledged that, by 2017, the section 5A analysis market was under significant pressure. In 2017, a severe quality failure had been detected at one provider of section 5A analysis resulting in their accreditation being withdrawn, and they ultimately withdrew from the section 5A analysis market for the provision of this analysis. In 2018, a provider went into administration, exacerbating backlogs and resulting in submission caps being implemented at national level, which in turn caused backlogs within police forces. In June 2019, there was a cyber-attack at a third provider, causing section 5A analysis to be suspended for several weeks. The Regulator has no role in market or commercial regulation of forensic science; however, the report acknowledges that the operating context for the section 5A analysis market at the time was under significant pressure and notes that this may have contributed to a greater appetite for risk in commercial decision making.

There are four areas covered by the lessons learnt review:

- root cause
- wider organisational risk management
- accreditation and regulatory processes
- effectiveness of the regulatory requirements of the analysis of blood specimens under section 5A

Underlying science and root cause: this was subject to review by an independent adviser, who establish that the root cause of the quality failure was the lack of the correct application of a robust scientific method and ineffective quality control processes, such that the results reported

to the CJS could not reliably determine that the level of drug or drugs found in a person's blood exceed the specified limit.

Wider organisational risk management: this focuses on the recognition of risks to the CJS by those involved in the procurement of drugs driving analysis. The Regulator highlights the need for a more in-depth consideration of risks in procurement and commercial processes used by police organisations. The Regulator identified the following learning points.

> **Learning Point 1:** all parties involved did undertake some diligence prior to section 5A analysis for the CJS commencing: commercial teams followed process to carry out pre-contract checks. The provider employed Key, a consultant, to establish its methods; Key conducted a non-technical audit and commissioned a technical audit. This was sufficient to assure all parties that the provider was fit for purpose to commence section 5A analysis. However, these steps did not adequately and robustly identify and mitigate the risks to the CJS in this challenging and complex scientific analysis. To address and mitigate these risks, commercial and procurement processes should ensure and record steps that are taken to identify and mitigate risks to the CJS when establishing contractual agreements with section 5A providers (including subcontracting agreements), and there should be a clear record of decision-making, risk assessment and mitigation action.
>
> **Learning Point 2:** for new entrants who are seeking to undertake forensic science activities that are subject to the statutory Code the contracting authority and the Senior Accountable Individual, as defined in the statutory Code, should consider and implement measures to manage and mitigate risk in section 5A analysis; this should consider context, such as experience in the provision of forensic science services to the CJS. Measures could include:
>
> - a probationary period where limited volumes of live case work material are examined or analysed, with clear review points following an audit
> - assessment of performance and risks
> - a requirement for audits after a period of time
> - a defined volume of samples analysed

Accreditation and regulatory processes: accreditation and subsequent review work did not sufficiently expose the risks, and it took a defence examination and the work of the independent adviser to reveal the root cause, which ultimately led to the rescinded prosecutions. The Regulator highlights the need for more effective escalation of risks. At the time of this quality failure the Regulator had no statutory powers, but now there is a statutory basis for regulation and the Regulator has powers to investigate and issue a compliance notice.

> **Learning Point 3:** the accreditation and regulatory processes did not provide an effective risk escalation mechanism to minimise the impact of the quality failure in the analysis of blood specimens for the purpose of section 5A Road Traffic Act 1988. The initial period of suspension in 2019 should have warranted additional scrutiny even when accreditation

was reinstated, given the lack of experience of the provider both in section 5A analysis and providing forensic science evidence to the CJS. UKAS has conducted its own lessons learnt review and implemented a three-month review requirement for such circumstances.

Learning Point 4: the Regulator should establish formal arrangements with UKAS such that, if there is a suspension (voluntary or otherwise) of accreditation, this is notified to the Regulator so an assessment of the impact of this suspension can be made. This would allow effective application of the new statutory powers under provisions of the Forensic Science Regulator Act 2021. The Regulator should assess the level of risk and consider whether to use the powers under section 6 of the Act and issue a compliance notice to manage and mitigate any risks to the CJS.

Effectiveness of the non-statutory Codes and regulatory requirements: the analysis of blood specimens to establish whether a person has a level of drug above the specified limit is an extremely complex scientific analysis, not least in the levels of quality control and statistical analysis required to be confident that the level reported exceeds the specified limit. When the drugs driving legislation that set specified limits was introduced the then non-statutory Regulator set out the requirements that provided the basis for reporting consistent and reliable results through an appendix to Codes. While there is a relatively small number of providers of drugs driving analysis, to construct a regulatory approach that would allow this complex scientific analysis to be undertaken consistently was a major challenge. The approach adopted allowed for organisations to develop their own methods and policies for this analysis. The Regulator would not normally prescribe the method of analysis but drugs driving analysis is the exception that proves the rule, and it is the Regulator's intention to adopt a more prescriptive approach to reduce the risk to the CJS of quality failure. A working group was established to produce revised regulatory requirements to be incorporated into the statutory Code; additional guidance will be developed to supplement this. As part of developing of the requirements, the working group commissioned a proficiency testing scheme that was undertaken by the section 5A providers and informed the development of the requirements. The Regulator identified the following learning points.

Learning point 5: section 5A analysis is complex and requires stringent quality control and a robust analytical method to detect low levels of drugs to give confidence that the measured result is above the specified legal limit. Although regulatory requirements have been produced to address these challenges and ensure a harmonised approach, the Regulator will review and update the current statutory Code FSA specific requirements, taking a more prescriptive approach to setting these requirements.

Learning point 6: the Regulator will set up a proficiency testing scheme for providers of section 5A analysis.

Development of version two of the Code

General

Statutory regulation of forensic science is a significant and far-reaching change. With the first version of the Code coming into force in October 2023 it was recognised that, while the Code was based on the non-statutory Codes of Practice and Conduct that had been developed over the preceding fifteen years, it would be prudent to review the effectiveness of the Code and anticipate a second version a year on from the first version coming into force. The Regulator also wished to address concerns about the effectiveness of regulation in the undertaking of incident scene examination, which are described in more detail below. Version 2 of the Code was developed and, subject to statutory consultation required by section 3 of the Act between 12 February and 10 March 2024, it was anticipated that the Code would be put forward to the Secretary of State and Parliament for approval later in 2024. However, in May 2024 a general election was called, and the Regulator decided to delay putting forward version 2 of the Code for approval. The Regulator conducted further targeted consultation on two forensic science activities: friction ridge detail comparison and section 5A drugs driving analysis.

At the end of this reporting year the Regulator was preparing for the targeted consultations, drawing on work undertaken by the FSR Specialist Groups that advise the Regulator on the regulatory approach and requirements for forensic science activities defined in the Code.

Regulation of incident examination

Incident (crime) scene examination was first introduced into the non-statutory Codes of Practice and Conduct in August 2014, with a requirement to achieve accreditation to ISO/IEC 17020 by October 2020. As set out it in last year's annual report, the indicative compliance in 2023 for the undertaking of the forensic science activity of incident examination was 43%. The introduction of the statutory regulation of forensic science provided impetus to increase compliance with the Code. However, this came with concerns being raised with the Regulator about the productivity impact and effectiveness of the regulation of incident examination. In 2022 the Regulator had established a FSR Specialist Group for incident examination, to develop specific requirements to be incorporated into version 2 of the Code and to advise the Regulator on the regulatory approach to the undertaking of incident examination. The Regulator also engaged with forensic practitioners, forensic leaders and Chief Officers to understand their concerns and conducted a survey of Senior Accountable Individuals of organisations who undertook incident examination. This showed:

- most organisations (87.5%) stated they had prepared effectively for regulation of incident scene examination

- organisations mainly agreed (46%) or strongly agreed (21%) that achievement of accreditation demonstrates that their organisation is competent to deliver incident examination
- most organisations disagreed (75%) or strongly disagreed (17%) with the statement that the volume of work and impact of the accreditation process is proportionate to the risk of error or quality failure
- over half of organisations (58%) supported the statement that 'the accreditation process enables my organisation to continually improve incident scene examination services to our end users'
- there was largely support (63%) for the statement that 'meeting the requirements to comply with the Code (excluding the requirement for accreditation) enables my organisation to continually improve incident scene examination services to our end users'
- there was overall support (63%) for the statement that 'the accreditation process provides confidence to the CJS, complainants and commissioning parties, in the quality of the incident examination process'
- there was overwhelming agreement (92%) with the statement that 'achievement of accreditation introduces unnecessary bureaucracy'
- most organisations agreed (79%) with the statement that 'meeting the requirements to comply with the Code (excluding the requirement for accreditation) introduces unnecessary bureaucracy'
- over half of organisations agreed (58%) with the statement that 'the accreditation process enables my organisation to identify quality failures that would have had an impact on CJS cases'
- there was complete agreement (100%) that, as a result of the requirement to achieve accreditation, practitioners take longer to examine incident scenes

Taking the findings of the survey, including the examples where requested, the Regulator concluded that police organisations who undertake incident examination are committed to the effective regulation of incident examination and the benefits of this to the CJS. However, there are significant and real concerns about the impact of regulation, and in particular some of the requirements in the Code and the accreditation process. To address these concerns, in July 2024 the Regulator identified six key elements for change:

- The primary focus for meeting requirements set out in the Code for incident examination, including accreditation, will be for the organisation to design and implement a corporate competency framework based on the achievement of practitioner competence, including the application of professional judgement. Compliance with the Code will be achieved by the demonstration of organisational competence in the design, delivery and effectiveness of the competency framework rather than the assessment of individual practitioner competence.

- Managing the potential risk of contamination will recognise the difference between a controlled laboratory environment and the uncontrolled environment of the scene of an incident. The approach to managing the risk of contamination will be based on the organisation having a thorough and comprehensive understanding of the risks and actively mitigating the risk.
- Validation requirements will only apply to those elements of incident examination that involve testing. The overarching methodology of incident scene examination will be demonstrated as fit purpose, taking into account the primary focus on competence and professional judgement. Guidance will be issued by the OFSR on the FSA specific requirements.
- The examination notes made by crime scene examiners are a critically important source of information for investigators and others in the CJS. The requirements of the draft version 2 of the Code regarding the approach to note-taking reflects this and should be flexible and proportionate to the nature of the incident and the examination that has taken place.
- There is no distinction between volume and major crime in the regulation of incident examination. The same examination processes and techniques can be applied to all incident scenes; there is a continuum in the extent and complexity of forensic scene management rather than any separation in the approach to incident examinations based on the criminal offence. The draft version 2 of the Code includes the incident scene examination FSA Specific Requirements, including requirements for forensic scene management.
- Organisations who undertake incident examination will be expected to design and implement a corporate quality management system and meet the requirements set out in version 2 of the Code. There will be no requirement to demonstrate compliance with the Code for individual sites/bases.

This formulation of specific requirements that were incorporated into version 2 of the Code aim to deliver:

- effective interpretation and recovery of forensic science evidence to identify or exclude potential suspects
- a consistent and timely level of service delivery to victims of crime
- continuous improvement through effective management review of the quality system and organisational performance

Communications

The Regulator has an established public website and uses this as the primary means of communicating all information about the regulation of forensic science. The website allows individuals to register for alerts when new information is added to the website. As part of moving to a statuary basis for the regulation of forensic science a new logo and branding was introduced and, as described above, various documents including guidance were reissued under section 9 of the Act.

The Regulator has published newsletters and introduced FSR Notifications under section 9 of the Act. FSR Notifications set out key decisions, policy changes and risks to the CJS. FSR Notifications will be published on the website, and a network has been established of key stakeholders who will receive FSR Notifications including:

- Bar Council
- Criminal Bar Association
- Law Society
- Criminal Law Solicitors' Association
- London Criminal Courts Solicitors' Association
- Magistrates' Association

FSR Notifications

In this reporting year the Regulator published the following FSR Notifications.

FSR Notification 01/2023, issued September 2023

Issue: accreditation requirements for activity level interpretation and opinion and making a declaration of compliance with the Code of Practice.

Notification: to allow for the development of requirements and guidance for activity level interpretation and opinion for all FSAs, all requirements for accreditation for activity level interpretation and opinion are suspended as of the date of this notice in accordance with the provisions as set out at paragraph 14.1.1 of the Code of Practice. Therefore, where a forensic unit reports on activity level interpretation and opinion, there is no requirement to declare non-compliance with the Code of Practice.

FSR Notification 02/2023, issued December 2023

Issue: the status of the Council for the Registration of Forensic Science Practitioners (CRFP) register.

Notification: the Regulator wishes to make clear that a register of forensic practitioners is not part of the statutory regulation of forensic science or the Code of Practice. Any claims to be included on a list of forensic practitioners held by the Regulator would be misleading and inaccurate. The Regulator would consider this a significant breach of the Code and would take appropriate action under the provisions of the Forensic Science Regulator Act 2021 against any individual who made this claim.

FSR Newsletters

In this annual reporting period, the Regulator has issued two newsletters.

Newsletter 04/2023, August 2023 [9]

This newsletter covered a summary of the presentations given at the Forensic Science Regulator Conference 2023 and the responses to questions posed during the conference. It outlined work undertook to prepare for the Code coming into force, including the re-issue of guidance documents, and updates on the work of the FSR Specialist Groups and the compliance survey.

Newsletter 05/2023, December 2023 [10]

This newsletter announced that the Regulator would be preparing a version 2 of the Code and consultation would take place early in 2024. It introduced the FSR Notification, set out that the Regulator would be working with the Chartered Society of Forensic Sciences to develop regulatory requirements for Case Review, drew attention to the application process for urgent classification of firearms and the publication of the lessons learnt review on section 5A drugs driving analysis, and announced the new chair of the Fingerprint Quality Standard Specialist Group. Update.

Conference report

Following the Regulator's conference in June 2023 the Regulator published in August a response Forensic Science Regulator 2023 conference: questions and answers - GOV.UK to over ninety questions raised with the Regulator and other stakeholders at conference regarding the Code coming into force and the statutory regulation of forensic science. [11]

FSR Specialist Groups

The FSR Specialist Groups have important role in regulation of forensic science. They support the Regulator by making recommendations on the regulatory approach to the undertaking of FSAs defined in the Code, including advising the Regulator on:

- the definitions of FSAs set out in the Code, to ensure they provide the basis for effective regulation
- the most effective mechanism for ensuring compliance with the requirements set out in the Code, which will include where appropriate:
    - advising on the application of ISO standards
    - the interpretation of ISO standards in respect of the undertaking of forensic science activities that are subject to the Code
- the applicability of any guidance that is used in achieving accreditation where this is a requirement of the Code
- the general levels of risk to criminal investigations and proceedings in any of the FSAs under the remit of the Specialist Group
- recommended actions to address the levels of risk to criminal investigations and proceedings in any of the FSAs under the remit of the Specialist Group
- issues and opportunities in the regulation of FSAs and associated activities

The following provides of a summary of the work undertaken by each FSR Specialist Group in this reporting year.

Incident Examination Specialist Group

The Incident Examination Specialist Group (IESG) met three times between July 2023 and July 2024. The minutes for all IESG meetings are published on the GOV.UK website. The IESG has sub-groups that advise it on issues relating to fire investigation, collision investigation, covert incidents and counter-terrorism incidents.

At the November 2023 meeting the Regulator sought the views of the group on his proposal to suspend the requirement for accreditation for FSA – INC 100, to allow organisations time to implement the new FSA specific requirements and comply with version 2 of the Code. The implications and considerations of the suspension were discussed, including;

- **self-declaration:** organisations would self-declare compliance with the Code, including requirements for competence and validation
- **competency requirements:** most forces would meet the competency requirements for major/complex crime, except for the specific requirements around forensic scene management in the FSA SR

- **focus on** Code**:** suspending accreditation requirements would encourage organisations to look to the Code for necessary requirements
- **potential delays:** suspension could delay forces' accreditation plans, which might impact their long-term compliance strategies
- **importance of FSA specific requirement (SR):** the suspension would increase the importance of the FSA SR and the need to stress test its requirements

To address the last of these points the members proposed a workshop to stress test the FSR specific requirements. This was held in February 2024 in conjunction with the Crime Scene Investigator (CSI) expert network. The workshop drew together practitioners from twelve police forces and representatives from UKAS, the Forensic Capability Network (FCN) and the Regulator's office, who provided constructive and valuable feedback on the FSA specific requirements identifying three main areas where further clarification and guidance was needed:

- professional judgement, including when and how it could be applied and how its use could be assessed
- environment and facilities, including how to manage contamination and undertaking activities away from an incident scene
- forensic scene management, including undertaking this remotely, and management activities by practitioners at all levels

The workshop was crucial in shaping the Regulator's guidance document on the FSA specific requirements which continued to be developed by the IESG over 2023 and 2024.

The meeting of the IESG in February 2024 focussed on version 2 of the Code and encouraging feedback on the consultation and development of the guidance on the FSA specific requirements. Work by the group on the guidance document helped to identify aspects of the incident scene examination FSA specific requirements in the draft version 2 of the Code that needed to be amended or clarified.

The Regulator presented his proposal for regulatory change in incident examination at the July 2024 meeting, covering six main points:

- corporate competency framework: focus on competency and professional judgement
- contamination risk management: assurance of understanding and managing contamination risks
- validation: methodology of incident examination to be deemed fit for purpose
- note-taking: proportionate notes required for incident circumstances
- volume and major crime: no distinction between types of incidents, competence in crime scene management critical
- site-based to organisation-based accreditation: shift to corporate approach for complying with FSA – INC 100

The IESG reviewed the incident examination FSA specific requirements and its associated guidance to ensure these were in line with the proposed changes to regulation.

While the IESG was working on FSA specific requirements for incident scene, the fire investigation and collision investigation sub-groups were also reviewing these requirements and considering whether the requirements would be applicable for fire and collision investigation, with the understanding that there were many areas of similar activity between incident investigation, fire and collision investigation. The sub-groups also considered what additional requirements would be needed for these FSAs when compliance with the Code became a requirement.

In early 2024 the fire and collision investigation sub-groups also began to consider manageable and effective approaches for achieving compliance with the Code in fire and collision investigation. A staged, milestone approach to compliance with the Code was proposed by the Office of the Forensic Science Regulator and considered by the sub-groups. This approach was supported by the sub-groups and work on developing a milestone approach to compliance was commenced.

The fire investigation sub-group also identified an overlap between FSA – INC 102 and FSA – INC 103, in that fire investigators would on occasion examine scenes of an explosion. The group assisted the Regulator in refining the definitions of FSA – INC 102 and FSA – INC 103, resulting in FSA 102 including examinations of vapour-phase explosion scenes in version 2 of the Code.

The collision investigation sub-group also provided advice and direction to review and refine the definition of FSA – INC 101 for version 2 of the Code.

Medical Forensics Specialist Group

The Medical Forensics Specialist Group covers the biology FSA - BIO 100 – forensic medical examination of complainants. This group is supporting the Regulator with matters relating to good practice in forensic medical examination facilities known as sexual assault referral centres (SARCs). This is an important area of work, as examination of sexual offence complainants requires compliance with the Code from October 2025. The group reviewed specific guidance documents, updating them in line with the requirements of the Act, and they were published January 2024. These are listed in table 1.

The Medical Forensics Specialist Group held their meeting on 6 June 2024. The minutes are published at https://www.gov.uk//government/publications/medical-forensics-specialist-group-meeting-minutes

Interpretation Specialist Group

The Interpretation Specialist Group has been set up to develop guidance for the interpretation of forensic science activities. The group has representation from across the forensic community, as well as academia and the legal profession, because the topic of interpretation concerns

everyone. An overarching guidance document is in an advanced draft stage, and discipline-specific working groups are being formed to produce tailored documents to provide the means to make that overarching document more accessible and relevant to the various communities that it will affect.

Drugs and Toxicology Specialist Group

This Specialist Group has been established to advise the Regulator on the undertaking of the relevant FSAs described in the statutory Code and the quality standards and accreditation that should apply to these activities. The Specialist Group facilitated the establishment of two working groups: the s5A Working Group and the Drug Testing Kits Working Group.

The s5A Working Group was established in September 2023, with the remit to review and update the FSA specific requirements for DTN-102 for inclusion within version 2 of the Code. This working group comprises a small group of representatives from industry, academia and independent practice, to consider how these requirements could be improved for clarity and practicality, while ensuring high quality standards are maintained.

The Drug Testing Kits Working Group was established in January 2024, and it is developing an appropriate regulatory model for the use of handheld/portable drug testing kits/devices for the testing of drugs under the Misuse of Drugs Act 1971 (as amended). The use of such kits is currently facilitated by a Home Office circular that is exempted from the Code. The working group comprises diverse stakeholder representation, including law enforcement, commercial providers, academia and government organisations.

Digital Forensics Specialist Group

The Regulator has continued to engage with practitioners within the digital forensic community and continued to review the potential role for a group against the backdrop of various other external groups that the Regulator was represented on. For example, the Regulator or representatives sit on various National Police Chiefs' Council groups, as well as engaging with the Association of Digital Forensic Service Providers. The Regulator is mindful that the group should not duplicate the good work that is already progressing, but he has determined that there is still a need for specialist group that reports to him. However, due to other more pressing priorities, the group is now expected to be formed in the July 2024 to July 2025 reporting period.

Biology Specialist Group

The DNA Specialist Group has been supporting the Regulator by providing advice on matters related to the analysis, interpretation and reporting of a range of biological evidence such as blood pattern analysis and DNA analysis. The group supported the Regulator's office to review and publish the guidance on Y-STR profiling, methods employing rapid DNA devices and DNA laboratory contamination controls. These are listed in the Table 1. To reflect that the DNA Specialist Group had taken on a wider remit it was renamed Biology Specialist Group.

The Biology Specialist Group held its initial meeting on 20 February 2024 to discuss membership and its terms of reference as the main biology group to advise on matters relating to biological evidence. The minutes are available at https://assets.publishing.service.gov.uk/media/67be5ed9750837d7604dbb38/BIO_Minutes_20240220_final.pdf. The final membership and terms of reference were to be finalised at the next meeting.

To ensure the Regulator has advice and guidance on all the biology FSAs, a number of sub-specialist groups were to be created: the biology distribution subgroup looking at blood pattern analysis, the DNA sub-specialist group and a non-human biology subgroup. These groups had elected chairs and would meet to agree terms and work plans that would feed into the Biology Specialist Group governance.

The reformed DNA sub-specialist group has been assisting the Regulator's office with reviewing DNA guidance documents, to update them in line with the requirements of the Forensic Science Regulator Act.

Fingerprint Quality Standards Specialist Group

The focus of the Fingerprint Quality Standards Specialist Group (FQSSG) over 2023 to 2024 has been to address issues around friction ridge detail source considerations, through the setting up of a working group to revisit the FSA and FSA specific requirements. The group made good progress, proposing a change of emphasis to acknowledge that the comparison process is independent of where on the body the friction ridge detail originates.

A consultation targeted on the friction ridge detail community is set to launch early in the 2024 to 2025 reporting period.

Firearms Specialist Group

The main achievement of the Firearms Specialist Group (FSG) group this year has been finalising the guidance document FSR-GUI-0027.

This guidance document has been produced to support the operation of FSA- MTP 601- Examination, analysis and classification of firearms, ammunition and associated materials. It sets out criteria that a forensic unit making an application to carry out urgent classifications in the absence of accreditation should demonstrate have been met, to provide the Regulator with assurance that the risks involved are suitably managed. The effectiveness of this document is demonstrated through there being no unsuccessful applications to the Regulator from those who had used it.

General regulatory information

This section of the annual report deals with the business-as-usual activities undertaken by the OFSR.

Referrals and general enquiries to the Regulator

The Code requires forensic units carrying on an FSA to which the Code applies to inform the Regulator about non-conforming work if it has potential to:

a. adversely affect any investigation;

b. impede or prejudice the course of justice in any proceedings;

c. create adverse public comment; or

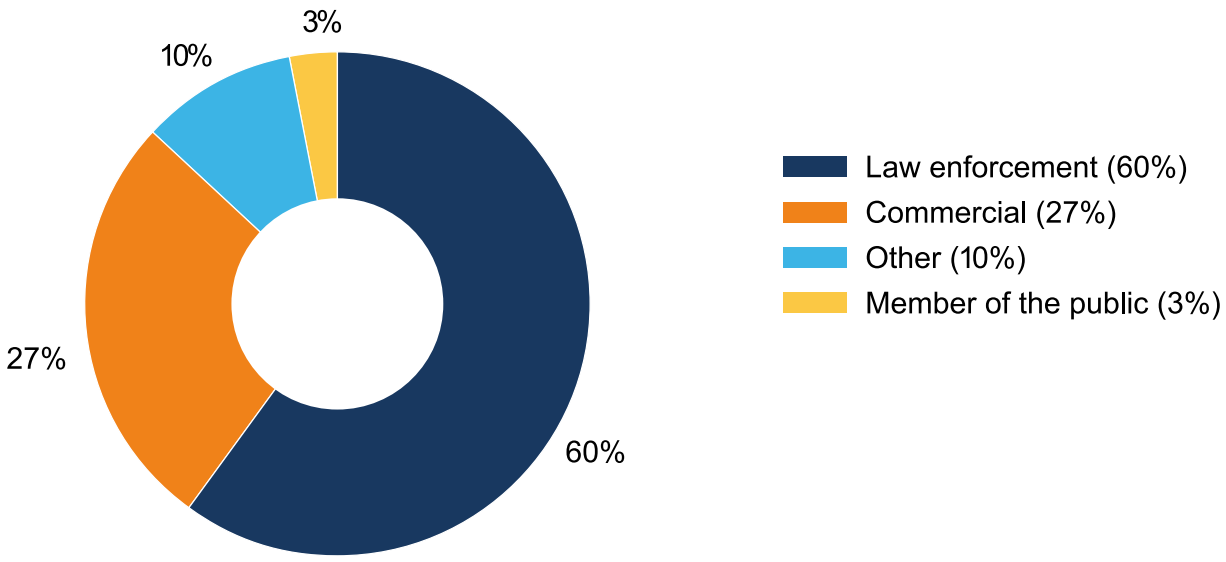
d. be against the public interest.

Enquiries received by the OFSR on behalf of the Regulator via the FSR Enquiries mailbox, which are not reporting non-conformances, are classified as general enquiries. Examples of general enquiries include questions about the Code or guidance documents, and general enquiries from the public about forensic science.

The Regulator received 138 referrals and 170 general enquiries in the reporting period of 25 July 2023 to 24 July 2024. The Regulator and members of the OFSR deal with a wide range of enquiries received via the FSR Enquiries mailbox and via direct emails to members of the OFSR and Regulator. The number of enquiries received on a frequent basis directly by members of the OFSR and the Regulator has not been included in the general enquiries figure.

Of those 138 referrals, 82% were self-referred and the remaining 18% were referred from third parties. Most of the referrals received by the Regulator were from law enforcement as shown in chart 4.

Chart 4: Source of referrals



Most of the referrals were in digital forensics as shown in table 4.

Table 4: Breakdown of referrals per forensic categories

Forensic categories	Number of referrals
Digital forensics	52
Toxicology/drugs	34
Incident scene	29
Biology	13
Marks, traces and patterns	8
Forensic science services	2
Total	**138**

Of the referrals received during the reporting period, 63% were closed during that same period.

At the time as the Regulator was put on a statutory footing there were referrals open from the non-statutory regulation. Of those legacy referrals, 49 were addressed in the reporting period.

Table 5 shows the numbers of referrals received, the numbers closed and the reporting year they were closed in.

Table 5: Summary of referrals

	Referrals received	Remaining open	Total closed	Closed during reporting year 2022 - 2023	Closed during reporting year 2023 - 2024
Prior to statutory regulation reporting period – before 24 July 2022	148*	40	99	59	49
25 July 2022 to 24 July 2023	115	28	87	54	33
25 July 2023 to 24 July 2024	138	97	41	n/a	41

* These are referrals still open prior to statutory regulation and not referrals received

Anonymous reporting

An anonymous reporting line operated by Crimestoppers has been live since July 2019. This line is available to report concerns about forensic science quality. For those within the profession, it is intended that this line is used as a last resort, since the Regulator generally expects any quality issue identified within a forensic unit to be addressed through that organisation's internal quality management processes in the first instance. There may, however, be instances where a person believes either that their organisation has not addressed their concerns or that they would be disadvantaged in some way by reporting concerns internally. It is for such instances that the anonymous reporting line has been established.

In this reporting period there have been five reports through this route. The number is, as anticipated, relatively small. The culture of forensic science in England and Wales means that most people, and organisations, generally feel confident about reporting issues. These anonymous reports were reviewed by the Regulator and necessary actions were taken. The Regulator did not identify any significant concerns via the anonymous reporting line.

Data protection

There have been no issues affecting the Regulator's use of personal data in this reporting period.

Freedom of Information (FOI)

On commencement of section 1 of the Act on 25 July 2022, the Regulator was established as an authority subject to the Freedom of Information Act 2000 [12] (FOIA). For the reporting year 25 July 2023 to 24 July 2024 the Regulator received 12 information requests, all of which were dealt with within the required time limit.

Resources and finance

Under paragraph 6 of the Schedule to the Act, the Secretary of State may, after consultation with the Regulator, provide the Regulator with staff, accommodation, equipment and other facilities as the Secretary of State considers necessary for the carrying out of the Regulator's functions. This section of the annual report sets out the resources made available to the Regulator.

The Regulator is supported by a team of staff known as the Office of the Forensic Science Regulator who work under the direction of the Regulator and are employed by Home Office.

As this annual report spans two financial years and it is not straightforward to extract data accurately for this annual report reporting year, the financial year 2023 to 2024 has been used to report on the resources made available to the Regulator. This is shown in tables 6 and 7.

Table 6: Staff resources allocated to the Regulator in 2023 to 2024

	FTE (Full Time Equivalent)
Regulator	0.8
Office of the Forensic Science Regulator	7.6

Table 7: Budget allocated to the Regulator in 2023-24

	Financial year 2023-24
Staff pay	£706,140
Non-staff pay	£81,996
Total budget	**£788,137**

The Regulator and FSR are seeking more resources/budget to fulfil its functions under the Act effectively.

Forward view

With the Code coming into force, guidance on making declarations and the investigation and enforcement policy issued, most of the necessary building blocks are in place for the effective statutory regulation of forensic science. The focus for the next reporting year must be to consider in the light of experience whether there are any adjustments necessary to the regulatory approach and changes required to the Code. The areas for development, such as promoting more proficiency testing and the continued professional development of forensic staff, highlighted in the first annual report, need to be followed through. But, as we have seen in this reporting year, the resources available to the Regulator have been largely reactive, particularly in dealing with referrals and responding to issues that have arisen as statutory regulation beds in. Likewise, with the resources available there has been limited work on developing the regulatory requirements for the FSAs that are defined in the Code but not yet subject to the Code. The structures and processes set out in the schedule to the Act that determine the resources and supporting technology available to the Regulator and the policy framework within which the Regulator operates need to be formalised.

Forensic Science Regulator Act Investigation, Enforcement and Appeals provisions

Forensic Science Regulator Act Section 5 - Investigations by the Regulator

(1) This section applies if the Regulator has reason to believe that a person may be carrying on a forensic science activity to which the Code applies in a way that creates a substantial risk of—

(a) adversely affecting any investigation, or

(b) impeding or prejudicing the course of justice in any proceedings.

(2) The Regulator may investigate the carrying on by that person of any forensic science activity to which the Code applies.

(3) For the purposes of any such investigation, the Regulator may require the person mentioned in subsection (1) to provide to the Regulator—

(a) copies of documents in the person's possession or control;

(b) other information in the person's possession or control.

(4) A requirement under subsection (3) may include a requirement for information to be provided orally.

(5) A requirement under subsection (3) is imposed by giving a written notice to the person specifying—

(a) a description of the information that is required;

(b) when, or the time by which, the information is to be provided;

(c) the form and manner in which the information is to be provided.

(6) A person may not be required under subsection (3) to do anything that the person could not be compelled to do in proceedings before the High Court.

(7) A disclosure of information pursuant to a requirement under subsection (3) does not breach—

(a) any obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(8) A person may not be required under subsection (3) to disclose information if to do so—

(a) would contravene the data protection legislation (but in determining whether the disclosure would do so, the duty imposed by virtue of that subsection is to be taken into account), or

(b) would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

(9) In subsection (8)(a) "the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).

(10) The Regulator may bring proceedings for an injunction (including an interim injunction) for the purpose of securing compliance with a requirement imposed under this section.

(11) In this Act "proceedings" means proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales, within the meaning of section 4 of the Rehabilitation of Offenders Act 1974.

Forensic Science Regulator Act Section 6 - Compliance notices

(1) This section applies if the Regulator believes that a person is carrying on a forensic science activity to which the Code applies in a way that creates a substantial risk of—

(a) adversely affecting any investigation, or

(b) impeding or prejudicing the course of justice in any proceedings.

(2) The Regulator may serve a compliance notice on the person.

(3) A compliance notice is a notice requiring the person on whom the notice is served to take one or more steps specified in the notice within the period or by the date specified in the notice.

(4) A compliance notice may prohibit the person on whom the notice is served from carrying on any forensic science activity in England and Wales specified in the notice until the Regulator is satisfied that a step specified in the notice has been taken or does not need to be taken (see section 7).

(5) In deciding whether to serve a compliance notice on a person and in determining the content of a notice the Regulator may take into account any failure by a person to act in accordance with the Code.

(6) A compliance notice must be in writing and include information as to—

(a) the Regulator's reasons for serving the notice,

(b) rights of appeal (see section 8), and

(c) the consequences of not complying with the notice.

(7) The Regulator may bring proceedings for an injunction (including an interim injunction) for the purpose of securing compliance with any step or prohibition specified in the notice.

(8) The Regulator may at any time vary or cancel a compliance notice after it has been served by giving notice in writing to the person on whom it was served.

Forensic Science Regulator Act Section 7 Completion certificates

(1) This section applies if the Regulator has served a compliance notice on a person under section 6.

(2) If the Regulator is satisfied that any step specified in the notice has been taken or does not need to be taken the Regulator must issue a certificate to that effect (a "completion certificate").

(3) A person on whom a compliance notice is served may at any time apply for a completion certificate.

(4) Within the period of 14 days beginning with the day after the day on which the Regulator receives such an application the Regulator must send to the person—

(a) a completion certificate relating to the compliance notice, or

(b) written notice of the Regulator's decision not to issue such a certificate together with the Regulator's reasons for that decision.

(5) A compliance notice ceases to have effect to the extent specified in a completion certificate relating to that notice on the date the certificate is issued.

Forensic Science Regulator Act Section 8 Appeals

(1) A person served with a compliance notice under section 6 may appeal to the First-tier Tribunal against the decision to serve the notice.

(2) The grounds for an appeal under subsection (1) are that—

(a) the decision was based on an error of fact;

(b) the decision was wrong in law;

(c) the decision was unreasonable;

(d) any step or prohibition specified in the notice is unreasonable.

(3) On an appeal under subsection (1) the First-tier Tribunal may—

(a) confirm the notice;

(b) cancel the notice;

(c) vary the notice;

(d) remit to the Regulator the decision whether to confirm, cancel or vary the notice.

(4) A person given notice under section 6(8) of the variation of a compliance notice may appeal to the First-tier Tribunal against the decision to vary the compliance notice.

(5) The grounds for an appeal under subsection (4) are that—

(a) the decision was based on an error of fact;

(b) the decision was wrong in law;

(c) the decision was unreasonable;

(d) any step or prohibition specified in the compliance notice as a result of the variation is unreasonable.

(6) On an appeal under subsection (4) the First-tier Tribunal may—

(a) confirm the decision to vary the compliance notice, in whole or in part;

(b) quash that decision, in whole or in part;

(c) vary the compliance notice in a different way;

(d) remit to the Regulator the decision whether to vary the compliance notice.

(7) A person served with a compliance notice under section 6 may appeal to the First-tier Tribunal against a decision not to issue a completion certificate under section 7 relating to that notice.

(8) The grounds for an appeal under subsection (7) are the grounds mentioned in subsection (2)(a) to (c).

(9) On an appeal under subsection (7) the First-tier Tribunal may—

(a) confirm the decision not to issue a completion certificate;

(b) require the Regulator to issue a certificate;

(c) remit to the Regulator the decision whether to issue a certificate.

(10) Where a person has brought an appeal under subsection (1), (4) or (7), the First-tier Tribunal may suspend any requirement or prohibition specified in the compliance notice until the appeal is determined, withdrawn or abandoned.

(11) Where an appeal is or may be made to the Upper Tribunal in relation to a decision of the First-tier Tribunal under this section, the Upper Tribunal may suspend any requirement or prohibition specified in the compliance notice until the appeal is determined, withdrawn or abandoned.

Abbreviations

Closed-circuit television	CCTV
Criminal Justice System	CJS
Crime Scene Investigator	CSI
Forensic Capability Network	FCN
Forensic Science Activities	FSA
Incident Examination Specialist Group	IESG
National Police Chiefs' Council	NPCC
Office of the Forensic Science Regulator	OFSR
Proficiency Test	PT
Quality Management System	QMS
United Kingdom Accreditation Service	UKAS

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978-1-5286-5889-8

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