

GUIDANCE FOR FORENSIC PRACTITIONERS ATTENDING COURT

THE FORENSIC SCIENCE REGULATOR'S (FSR) STATUTORY CODE

The Forensic Science Regulator has issued a Statutory Code of Practice that comes into force on the 2nd October 2023. The Code requires a declaration of compliance or non-compliance in reports and statements.

Declaring non-compliance can be complicated and to support Forensic Units, the Forensic Science Regulator has published a specific guidance – FSR-GUI-0001 Declarations Guidance. The FCN has also designed the Streamlined Forensic Reporting templates to assist compliance with the Code and the FSR Declaration Guidance.

The FSR is also clear in the Code that when a declaration of non-compliance is made, it shall be accompanied by an annex containing details of the non-compliance and any steps taken to mitigate the non-compliance.



THE CODE EXPLICITLY STATES FIVE KEY AREAS THAT OFFER MITIGATION:

1.

Competence of the practitioners involved in the work.

2.

Validity of the method employed.

3.

Documentation of the method employed.

4.

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

5.

Suitability of the environment in which the work is undertaken.



The risk of being challenged in court increases where declarations of non-compliance are made. Therefore, if you have made a declaration of non-compliance in a report or statement, it is important that you can confidently articulate the steps taken to mitigate the risks associated with the non-compliance if questioned in court.

WHERE TO START?



Determine whether the report or statement you provided contains a declaration of compliance or non-compliance with the Code. Ask yourself if any information has changed.



If the report/statement contains a declaration of non-compliance try to discover how critical your evidence is to the case. The more critical the evidence is, the greater the risk of challenge. OICs, Investigators or the CPS may be able to help with this.



Where does your evidence sit within the Risk Categorisation Model developed by the Ministry of Justice (MoJ)? This will help you identify the risk of the evidence being challenged.



Review the mitigation information you provided in your report to support the declaration of non-compliance. Is this information correct?



Where you have stated mitigation is in place e.g. validation, gather details to support.



Where you have stated certain mitigations were not in place, these are likely to be the areas challenged by the defence.

HOW MIGHT I BE CHALLENGED?

If validation hasn't been undertaken on the method used to obtain the results you are presenting, how can the court be satisfied these results are accurate and reliable?

WHAT MIGHT YOU CONSIDER WHEN RESPONDING?



Participation in any Proficiency Testing or Inter-Laboratory Comparisons where the results achieved with this method were deemed satisfactory.



There may be 'quality control' checks in place, referring to these and confirming these checks were passed will support your evidence. You could also state if there are any 'dip check' processes in place by your organisation.



Make yourself aware of any scientific papers or research. Often the techniques you use are industry standard techniques and possibly even validated by other organisations. Refer to any common publications e.g. Fingerprint visualisation manual or Fingerprint Source Book.

YOU MAY ALSO BE CHALLENGED AROUND THE OTHER AREAS KEY AREAS THAT OFFER MITIGATION...

If you haven't been deemed competent by your organisation, how can the court rely on the results you have provided?

If your method isn't documented, how do you achieve accurate and reliable results?

How can the court rely on your evidence if you are stating you haven't used suitable equipment?

Could the results you have provided be as a result of contamination, especially if you have declared your environment wasn't suitable?

CONSIDER THE FOLLOWING TO HELP YOU PROVIDE FURTHER MITIGATION TO THE COURT...

- Confirming your organisation has a documented Quality Management System in place and that you have followed documented procedures to undertake the forensic analysis.
- Referring to your training and experience or any CPD you have undertaken. Draw on any competence or authorisation you have achieved that supports your capability to undertake this work including any specific training to use any equipment.
- It's likely the results have been checked or peer reviewed, you could mention this and confirm that another member of the team agrees with your findings, you should have evidence of this within your casefile. You may have been supervised by a competent practitioner, so again this is valuable mitigation.
- If you have been audited undertaking the technical method in question, you could reference this and the outcome. Even if you haven't been personally audited but you are aware the technical procedure you have undertaken has, it could be useful to understand the outputs from that audit and provide this information to the court.
- Equipment may have been calibrated or you may undertake environmental monitoring. Your consumables may be purchased as Forensic DNA Grade or comply with PAS 377.

TIPS:

1. In addition to the above, understanding the role of UKAS and accreditation will allow you to confidently discuss this if questioned. As always, try to provide this information in layman's terms for the jury.
2. Forensic Units should review their court training packages to ensure they contain information on compliance with the Code and FSAs including accreditation requirements and the role of UKAS.

ABOUT US: FORENSIC CAPABILITY NETWORK

The Forensic Capability Network (FCN) is a membership organisation for the forensic science community. Following investment by the Home Office, FCN is operated by the policing community on behalf of police forces and law enforcement organisations in England and Wales. Amongst other things, the FCN provides a knowledge base, development programmes and support to forensics practitioners.

www.fcn.police.uk | www.gov.uk/government/organisations/forensic-science-regulator | To find out more, just visit the FCN and FSR websites.