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**Session 1**  
**Vulnerable areas for experts**

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**Richard Ansell**  
*Information Commissioner's Office*



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Information Commissioner's Office

**Data Protection Act – the things you need to know**

**Richard Ansell**  
Data Protection Practice Officer

Society of Expert Witnesses  
October 2009



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## What does the Act apply to?

- Personal data – Data processed that relates to a living individual
- Data subjects – The living individuals concerned
- Data controllers – Those who process personal data or have it processed
- Data processors – Those who process on behalf of others

Promoting public access to official information and protecting your personal information



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## The eight principles

1. Fair and lawful processing
2. Processed for limited & specified purposes
3. Adequate, relevant and not excessive
4. Accurate and up to date
5. Not kept for longer than necessary
6. Processed in line with individuals' rights
7. Kept secure
8. Not transferred outside the EEA without adequate protection

Promoting public access to official information and protecting your personal information



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## Fairness is the key to good information handling



- Be open and honest about how you use personal information
- Don't do anything unlawful with it!
- Handle people's information only in ways they would reasonably expect
- Give appropriate privacy notices when collecting personal information

Promoting public access to official information and protecting your personal information



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## Consequences of data protection failures

- Increased public anxiety
- A flurry of critical reports
- Risks to reputation and business
- Risk of enforcement action
  - Increased inspection and audit
  - New civil penalties



Promoting public access to official information  
and protecting your personal information



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## Some tips on good practice

- Data minimisation
- Respond effectively when things go wrong
- ICO advice and guidance
- Remember that client trust is easier to lose than a laptop

Promoting public access to official information  
and protecting your personal information



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## Notification

- Public register of data controllers
- 315,000 entries
- Annual notification - £35 fee
- Non-notification (unless exempt) is a criminal offence
- Compliance with the Principles required even if exempt from notification

Promoting public access to official information  
and protecting your personal information



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## Summary

- The Data Protection Act gives rights to individuals
- It places obligations on organisations with regard to these rights and requires compliance with the Principles of good information handling
- Enlightened self interest

Promoting public access to official information  
and protecting your personal information



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Information Commissioner's Office

[www.ico.gov.uk](http://www.ico.gov.uk)

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**Morning Coffee**

Session 2 starts  
at 11.30 p.m. prompt



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**Session 2:  
Accreditation after CRFP**



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Forensic science quality standards; the past, the present and the future.

Andrew Rennison

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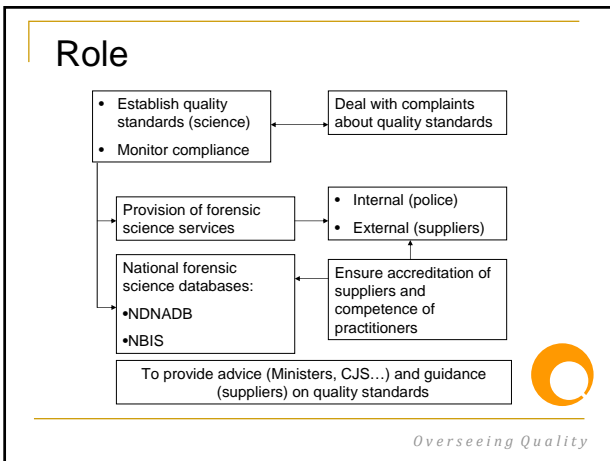
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## Scope

**Forensic science**  
Any scientific or technical knowledge that is applied to the investigation of crime and the evaluation of evidence to assist the courts in resolving questions of fact in criminal cases. Hard sciences.

**Practitioner**  
Includes the work of all those who contribute to the collection, analysis and reporting of the evidence.

UK criminal courts / prosecution process

Equipment, scene, victim, suspect, collection, examination, analysis, reporting, evidence.....



Overseeing Quality

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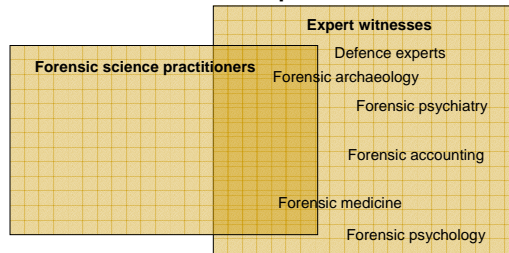
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## Practitioners / Experts



Forensic specialist → Expert



Overseeing Quality

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## Background

- House of Commons Home Affairs Committee 1989
- House of Lords Select Committee on Science and Technology 1993
- Miscarriages of justice cases – ‘forensic science played a prominent part’
- Royal Commission 1991 – 1993
- Caddy report 1996
- Forensic Science Working Group 1997 – practitioner registration
- Parliament - Forensic Science on Trial 2005
- England and Wales – competitive market
- US NAS report 2009



Overseeing Quality

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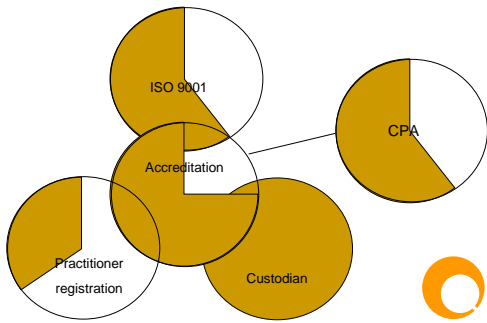
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## Standards framework



Overseeing Quality

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## Concerns

- Ad hoc nature of standard setting
- Gaps in the coverage of the standards
- Voluntary adherence
- Variable auditing for compliance



Overseeing Quality

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## Other factors

- Better regulation
- Quality systems that work
- Competent practitioners
- Reliable and valid methods
- Technical competence – people and equipment
- Compatibility
  - Multiple suppliers, complex enquiries
- Achievable (with time and support)
- Cost.....



Overseeing Quality

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## International baseline standards

- BS EN ISO 9001:2008
  - quality management systems
- BS EN ISO/IEC 17025:2005
  - testing laboratories
- BS EN ISO/IEC 17020:2004
  - bodies carrying out inspections



Overseeing Quality

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## Scope of the standard

- Supplies/consumables
- Initial action at the scene
- Recovery, preservation, transport and storage of exhibits
- Field 'screening' tests
- Sampling
- Laboratory examinations/testing
- Assessment/interpretation of results
- Reporting and provision of expert opinion
- Expert review



Overseeing Quality

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## Scope of the standard

- Law enforcement
- Commercial providers – procurement framework
- Small businesses / specialist providers
- Sole traders
- Occasional experts
- Can the police / CPS / courts rely on the evidence?
  - Examples
- Defence experts
  - Review
  - Analysis / interpretation



Overseeing Quality

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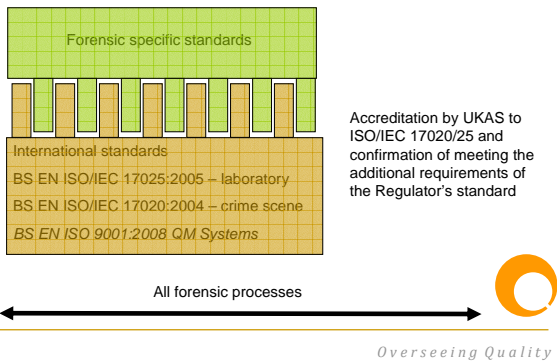
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## Standards framework



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## Appendices

- Scene examination
- Forensic pathology
- Forensic medicine
- Human contact trace evidence
- Physical and biological trace evidence
- Audio/video evidence
- Accident reconstruction
- Digital evidence
- Documents
- Drugs
- Firearms
- Fires and explosions
- Handwriting
- Marks
- Toxicology
- Contamination
- Interpretation
- Defence review
- Occasional experts

Overseeing Quality

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## What next?

- Published and consultation closed
- Digital practitioners conference 31 March
- Consult CPS on access to data for research; staged reporting; defence access; expert review
- Develop appendices
- Operating procedures and guidance
- ACPO letter to chief constables – staged approach
- Review & revise
- Roll out planning - NPIA
- Business benefits / impact
- Legislation???

Overseeing Quality

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**Chris Pamplin**  
Editor  
UK Register of Expert Witnesses



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### Accreditation and Expert Witnesses

Chris Pamplin PhD  
Editor, UK Register of Expert Witnesses

Society of Expert Witnesses  
16 October 2009

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### Better regulation

Better Regulation Executive

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted

UK Register of Expert Witnesses

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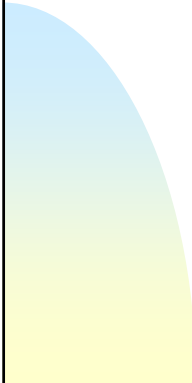
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## Expert + Witness

An **expert** is anyone with knowledge of, or experience in, a particular subject beyond that to be expected of a layman.

An **expert witness** is an expert who makes this knowledge and experience available to a court.

UK Register of Expert Witnesses

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## Qualities

An expert witness must:

- Be thorough
- Have insight
- Have integrity
- Be independent

UK Register of Expert Witnesses

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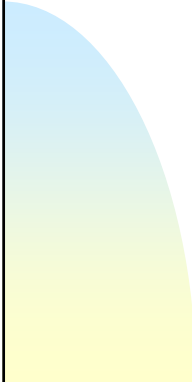
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## Bearing witness

- No precondition
- Bearing witness to an opinion
- Basic skills to bear witness are not onerous

UK Register of Expert Witnesses

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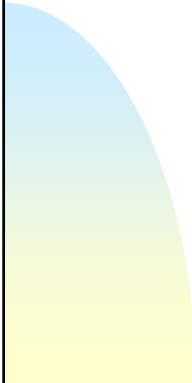
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## Accredit the expert...

What is susceptible to meaningful accreditation in a person's ability to form an opinion and bear witness to it?

UK Register of Expert Witnesses

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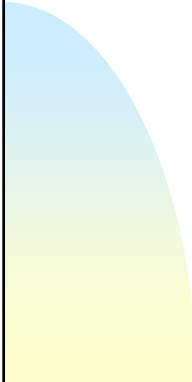
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## ...don't create a proxy

Accreditation must not become a surrogate for proper scrutiny

Accreditation can't assure quality

Quality assurance can only come from looking carefully at each expert, in each case and from many angles...

... and that's precisely the system already in place in the form of the lawyers, the judge and the other expert witnesses in a case

UK Register of Expert Witnesses

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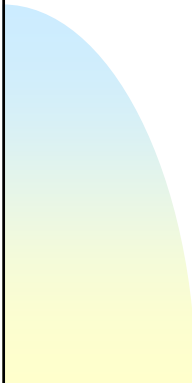
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## Systemic failure

Still have problems – even with the optimal system of quality assurance in place.

Systemic failure of the court properly to handle conflicting expert evidence.

The Law Commission work offers the best hope to deal with this systemic failure.

UK Register of Expert Witnesses

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## Changes to CPR

### CPR Part 35

- New definition of 'expert'
- Defines 'Single Joint Expert'
- Provides default limit of 1 expert per issue
- Written questions must be proportionate

### CPR Part 35 Practice Direction

- State awareness of CPR 35
- New wording for statement of truth
- Guidance on when to use SJE
- Better guidance on expert discussions

UK Register of Expert Witnesses

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Session 3: Experts and methods on trial  
begins at 2.00 p.m. prompt

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**Frazer Imrie**  
Society Vice Chairman



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**Bunty Batra**  
Barrister



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**Afternoon Tea**  
*The Society Debate starts  
at 4.00 p.m. prompt*

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**Session 4:  
Payment from public funds**



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**Brian Biggins**  
National Taxing Team



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**Sonja Mahoney**  
Legal Services Commission



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legal aid – fair access to justice



Legal Aid Work  
Changes now for the future

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Sonja Mahoney

Senior Manager, Strategy

Legal Services Commission



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Context

- No direct relationship between LSC and experts
- Contracting arrangements devolved to legal aid service providers
- No single experts' representative body



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Expenditure on Expert Witness Services

- **2007/08** – LSC spent £192 million on disbursements. Payments to expert witnesses accounts for two thirds
- **2008/09** – Gross spend on disbursements increased to £206 million
- Disbursement spend in public law family cases increased by 46.6% from 2005/06 to 2008/09
- Delivery of best outcome for client and best value for money for taxpayer



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legal aid – fair access to justice legal services  
COMMISSION

**Current Developments**

- Alternative Commissioning of Experts pilot
- MoJ consultation 'Legal Aid: Funding Reforms'
- Work of the Forensic Regulator
- Law Commission consultation
- Civil Procedure Rule changes




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legal aid – fair access to justice legal services  
COMMISSION

**Reforming the Delivery of Health Expert Evidence**

- In October 2006 the Chief Medical Officer published *'Bearing Good Witness: Proposals for reforming the delivery of medical expert evidence in family law cases'*.
- Report highlighted the need for:
  - ✓ Sustainable supply of quality-assured medical expert witnesses;
  - ✓ Medical expertise tailored towards the family court (public law) jurisdiction
  - ✓ Expert Witness services to be delivered through an organisational framework, rather than experts working in a private capacity




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legal aid – fair access to justice legal services  
COMMISSION

**Alternative Commissioning of Experts Pilot (ACE)**

- In October 2007 LSC agreed to pilot the BGW proposals
- Piloting multi-disciplinary teams of health professionals to provide jointly instructed health expert witness services to family courts in Public Law childcare proceedings.
- Aims and Objectives;
  - ✓ Test benefits of multi-disciplinary approach;
  - ✓ Approach that meets needs of client and the justice system;
  - ✓ Appropriate quality standards;
  - ✓ Improved supply and access




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### Benefits

- The pilot will seek to establish whether the following benefits can be realised:
  - ✓ The right expert is used
  - ✓ Team consensus provides reassurance to court
  - ✓ Differing views that may not be considered by an individual expert can be debated
  - ✓ Knowledge and experience of similar cases can be pooled
  - ✓ Internal quality assurance processes
  - ✓ Ready availability of training and supervision
  - ✓ Succession planning



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### The Pilot Teams

There are five operational pilot teams:

- **Great Ormond Street Hospital**
- **Carter Brown Associates**
- **North East Family Court Assessment Service**
- **Oxfordshire and Buckinghamshire Family Assessment and Safeguarding Service**
- **Cambridgeshire and Peterborough Child and Family Court Assessment Service**



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### How the Pilot Works

- No change in solicitor/expert relationship
- Direct payment from LSC
- Current level of choice retained
- Encourage use of video conferencing
- Ongoing evaluation will seek feedback from pilot teams, solicitors, judiciary and local authorities



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legal aid – fair access to justice legal services  
COMMISSION

**Legal Aid Funding Reforms – Experts Fees**

- MoJ consultation '*Legal Aid: Funding Reforms*' published 20 August 2009
- 12-week consultation
- Proposals for efficiency savings over next two years





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legal aid – fair access to justice legal services  
COMMISSION

**Legal Aid Funding Reforms – Experts Fees**

**Principals on experts fees in legal aid work**

- Harmonise experts payments across civil and crime work
- Pay band rates to be set by regulations
- Remainder relates to rates of pay for solicitors and barristers





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legal aid – fair access to justice legal services  
COMMISSION

**Legal Aid Funding Reforms – response needed**

- Ministry of Justice consultation ends on **12<sup>th</sup> November 2009.**
- **MoJ website**

[www.justice.gov.uk/consultations/legal-aid-funding-reforms](http://www.justice.gov.uk/consultations/legal-aid-funding-reforms)





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### Amendments to S 35 Civil Procedure Rules

- Amendments to Part 35 of the Civil Procedure Rules, the Practice Direction, and the protocol came into effect on **1<sup>st</sup> October 2009**
- The Rules, Practice Direction, and Protocol relate to the instruction of experts to give evidence in civil claims.
- Applies to all experts whatever the field of expertise




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### How do the changes affect you

- Clarifying the definition of an 'expert' and 'single joint expert';
- Guidance to ensure questions put to experts are **proportionate** and **appropriate**;
- Improved guidance to courts and promotion of greater consistency between courts in appointing experts




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### How do the changes affect you

- Requirement that experts can evidence that they are aware of court procedures;
- **Mandatory** "statement of truth" required from experts that they understand their duties to court and have complied with those duties

**"The Truth, The Whole Truth, and Nothing But The Truth"**




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legal aid – fair access to justice legal services  
COMMISSION

**Need more information?**

•The amendments in full can be found on the Ministry of Justice website:

•[www.justice.gov.uk/civil/procrules\\_fin/contents/parts/part35](http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part35)




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legal aid – fair access to justice legal services  
COMMISSION

**Contact**

- Sonja Mahoney
- [sonja.mahoney@legalservices.gov.uk](mailto:sonja.mahoney@legalservices.gov.uk)
- 020 7783 7431
  
- Glyn Hardy
- [glyn.hardy@legalservices.gov.uk](mailto:glyn.hardy@legalservices.gov.uk)
- 020 7783 7539
  
- [www.legalservices.gov.uk/aboutus/7210.asp](http://www.legalservices.gov.uk/aboutus/7210.asp)

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legal aid – fair access to justice legal services  
COMMISSION

Any questions...

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**Session 5:**  
**The Society Debate**

Should Market Forces Apply to Experts' Fees?

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# Closing Remarks



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# Goodbye

Have a safe journey home and we  
look forward to seeing you at  
the Spring 2010 Conference



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