



What's an Expert Supposed to Do?

Autumn Conference 2009

Mottram Hall,

Mottram St Andrew

Friday 16 October 2009

The Committee of Management of the Society of Expert Witnesses welcomes you to the Society's 23rd conference.

The Society of Expert Witnesses prides itself in being the only independent, representative, non-commercial body run entirely by experts for experts. One of its most important functions is to act as a voice for the expert witness community, ensuring that all those who influence the role of the expert witness hear our views. The overall aim of the Society is to establish and maintain a level of excellence amongst its members – 'each towards excellence striving'.

We hope that you will find the varied programme of this conference interesting, inspirational and enjoyable. The Committee of Management looks forward to meeting you and hopes that you will use this ideal opportunity to forge new contacts and to get to know your Society colleagues.

This Conference Pack contains the following:

- the **programme of events** and other useful information
- a **list of participants, speakers and guests**
- brief **biographies**, and support materials provided by our speakers
- a **Feedback Form** (yellow)
- a **Society Dinner** menu (green)
- a **badge**
- an **attendance certificate**.

WHAT TO DO NOW

- The **Feedback Form** (yellow) is a great opportunity for you to comment on this conference and to mould the structure of future meetings. To date, we have found that the Feedback Forms have helped us develop our conference policy to reflect the needs and desires of our members.

Timetable for the day

Friday 16 October	
09.00	Registration and Coffee
09.30	AGM
09.45	Welcome and Introduction
09.50	Session 1: Vulnerable Areas for Experts
09.50–11.00	Richard Ansell (from the Information Commissioner's Office) and Tom Magner and Richard Cory-Pearce (from the Society) explain how experts can fall foul of the Data Protection Act, the Court Rules (CPR and CrimPR), confidentiality, professional discipline and wasted costs orders.
11.00–11.30	Coffee
11.30	Session 2: Accreditation after CRFP
11.30–12.30	Andrew Rennison, the Forensic Science Regulator, discusses his proposals for the Assessment of Forensic Laboratories and Scientists and addresses the implications of the demise of the CRFP. His presentation is followed by Chris Pamplin, from the <i>UK Register of Expert Witnesses</i> , who gives his views on the feasibility of accreditation of expert witnesses and discusses how it might affect the conduct of cases.
12.30–14.00	Lunch
14.00	Session 3: Experts and Methods on Trial
14.00–15.30	Raymond Emson from the Law Commission presents the proposed legislation for the testing of experts and their methods in criminal courts, including the Daubert Test and its proposed English equivalent. Frazer Imrie then takes centre stage to discuss how experts might be examined before trial and how adversarial that might become. Bunty Batra closes the session.
15.30–16.00	Tea
16.00	Session 4: Payment from Public Funds
16.00–17.00	Experts find the systems of payment by the LSC, the CPS and the courts confusing, and sometimes inconsistent and lacking clarity. Brian Biggins from the National Taxing Team and Sonja Mahoney from the LSC explain. Sonja also introduces the proposed scheme for capping and restricting payments to experts, recently published for consultation.
17.00	Session 5: Society Debate
17.00–17.30	The speakers join forces to draw together the themes of the day. They will offer more detailed advice and debate, in a <i>Question Time</i> format.
17.30	Closing remarks
19.30	Drinks reception – Cocktail Bar
20.00	Society Dinner – Nathaniel's Restaurant

Saturday morning workshops

Because of their popularity, numbers at these workshops are strictly limited. They offer members high-quality hands-on training run in small groups by senior expert witnesses.

Saturday 17 October

<p>10.00– 12.30</p>	<p>Workshop 1: Single Joint Experts – The Prestbury <i>Frazer Imrie</i></p> <p>Frazer Imrie worked in the food industry for some 25 years, initially as a research scientist, eventually reaching divisional chief executive rank. After taking early retirement, Frazer became an independent full-time consultant, which he carries out through his own company called Imrie Consulting Ltd.</p> <p>Frazer has been a food consultant for some 20 years. More recently he has become associated with CWA Consultants Ltd, where he manages the Food Technology Department. His main casework is the preparation of cases for litigation. He has appeared frequently in court and in arbitration tribunals.</p> <p>Frazer has carried out project work for various international bodies such as FAO, UNDP and UNESCO. He is on the consultants' list of the Institute of Biology and the Institute of Food Science & Technology.</p>
<p>10.00– 12.30</p>	<p>Workshop 2: Managing your Tax Affairs – The Reynolds <i>Mark Barrett</i></p> <p>Having chosen to study as a Chartered Management Accountant to gain industry-based experience, Mark qualified as a Fellow of the Institute with full Practising Certificate at age 27.</p> <p>His first directorship was achieved at age 26 in an engineering company, and he attained an international company directorship at 27. By the age of 29, Mark had established his own practice, and his first project was to lead a listing on the Stock Exchange's 3rd market – a baptism of fire!</p> <p>His practice became internationally based, with offices in Manhattan and London, and the work was centred on his role as a problem fixer or company doctor. Having had many years in that role and with a client base that included many of the FTSE companies, the original practice was sold. Mark then moved to Wiltshire to work as a more traditional accountant.</p> <p>The current practice is based in North Wiltshire, with 17 staff, most of whom are qualified in their roles. They provide the full range of services to their clients who come from almost every walk of life.</p> <p>Mark's primary role now is multi-faceted. He is still an accounts and tax specialist, handles business purchases and sales and is also an expert witness on quantum valuations.</p>
<p>10.00– 12.30</p>	<p>Workshop 3: Fees and Charges – The Turner <i>Richard Cory-Pearce</i></p> <p>Richard Cory-Pearce is a Practising Surgeon actively engaged in expert witness work. He graduated in 1968 and followed a broad training in surgery, at the same time pursuing his established interest in organ transplantation and transplantation immunology.</p> <p>After working as a Consultant Surgeon and University Lecturer in Cambridge, he entered whole-time private practice in Harley Street where his involvement in expert witness work became an increasingly important interest.</p> <p>He is Immediate Past President of the Harveian Society of London, President-elect of the Hunterian Society and Editor of its annals, the <i>Transactions of the Hunterian Society</i>. He is a Fellow of the Medical Society of London and of the Royal Society of Medicine; he also represents the Royal College of Surgeons of England at the National Heart Forum. He is a Member of the Chartered Institute of Arbitrators.</p>

Useful information for delegates

VENUE AND CONFERENCE FACILITIES

The Society's Autumn Conference is being held at the St Andrew's Suite at Mottram Hall, Wilmslow Road, Mottram St Andrew, Cheshire, SK10 4QT. Tel: 01625 828 135; Fax: 01625 829 284.

Mottram Hall was built in 1721 and is an outstanding example of classic Georgian architecture. The Hall is set in 270 acres of stunning Cheshire parkland, with ornamental gardens and a lake.

It has two restaurants and three bars, and a spa and leisure club with three treatment rooms, a pool and fully equipped gym, and a range of sports facilities. It is also famous for its 7000-yard championship golf course.

TODAY'S ORGANISERS

Our Registration Desk will be staffed today by **Teresa Baron**. If you have any problems, please seek out Teresa and she will be pleased to help.

PARKING

Free on-site parking.

LUNCH

A hot and cold buffet lunch will be served in the restaurant. If you have already informed us of a special dietary requirement or food allergy, your food will be served separately. In such cases, please make yourself known to the catering staff as soon as you arrive at the lunch venue.

ACCOMMODATION

All rooms are beautifully furnished, with the usual facilities, plus many extras, like Egyptian cotton bed-linen and duvets.

MOBILITY

Mottram Hall is wheelchair friendly.

RECEPTION AND DINNER

Friday 16 October 2009

The reception will be held in the Cocktail Bar at 7.30pm. Our *Society* Dinner will be served at 8.00pm in Nathaniel's Restaurant.

Dress: Lounge suits.

SOCIETY TIES

An official *Society of Expert Witnesses* tie can be purchased by Members from the Registration Desk. The pure silk ties, printed with the *Society* logo, are available in a choice of red or blue and cost £17.50 (including VAT). Please make cheques payable to the *Society of Expert Witnesses*.

FORTHCOMING CONFERENCES

The date and location of the *Society's* Spring Conference 2010 is still to be agreed.

As always, we are open to ideas for locations and venues for our conferences. If you have a suggestion, simply drop us a line with relevant details. And if there's a specific topic you'd like us to consider focusing on, please do get in touch.

List of conference delegates

As of 13 October 2009 the following were registered to attend this conference.

MODERATOR

Mr Tom Magner, SEW Press Officer & Consultant
Forensic Engineer

SPEAKERS AND WORKSHOP PRESENTERS

Mr Richard Ansell, Data Protection Practice
Officer
Mr Mark Barrett, Chartered Management
Accountant
Mr Bunty Batra, Barrister
Mr Brian Biggins, Determining Officer
Mr Richard Cory-Pearce, SEW Secretary &
Consultant Surgeon
Mr Raymond Emson, Barrister
Mr Frazer Imrie, SEW Chairman, Forensic
Biologist
Mr Tom Magner, SEW Press Officer, Forensic
Engineer
Ms Sonja Mahoney, Senior Manager, Legal
Services Commission
Dr Chris Pamplin, Editor, *UK Register of Expert
Witnesses*
Mr Andrew Rennison Forensic Science
Regulator

SOCIETY MEMBERS

Dr Wendy Bellhouse, Practice Manager
Mrs Judith Bennison, Consultant Psychologist
Dr Gerrard Burnett, Dental Surgeon
Mr Edward Compton, Consultant Orthopaedic
Surgeon
Mr David Corke, Geotechnical Consultant
Mrs Jenny Cotton, Mortons Marketing
Professor Robert Douglas, Pulmonary
Physiologist
Mr Robin Farman, Psychologist
Mrs Annette Flanagan, Occupational Health
Advisor
Professor George Hart, Consultant Cardiologist
Mr Clive Haslock, Haslocks Forensic
Accountants

Dr Terry Henman, Cambridge Polymer
Consultants
Professor Malcolm Jayson, Consultant
Rheumatologist
Mr John Jones, Chartered Accountant
Dr Joanna Lindley, Independent Medical
Advisor (Paediatric/Forensic)
Mr Asit Maitra, Emeritus A & E Consultant
Mr R S Maurice-Williams, Consultant
Neurosurgeon
Mr Peter Moore, Consulting Engineer
Mr Michael Natt, Collision Investigation
Consultant
Dr Jo Anne Neal, Consultant Neuropsychologist
Mr Alf Pare, Forensic Accountant
Mr Andrew Petherick, Sport and Leisure
Consultant
Dr Christopher Plowman, Consultant
Neuropsychologist
Mrs Julia Prebble, Psychologist
Mr Keith Prowse, Consultant Physician
(Respiratory)
Dr Bashir Qureshi, Expert Witness in Cultural,
Religious & Ethnic Issues in Litigation
Dr Jeffrey Rosenberg, Rheumatologist
Dr Francis Rugman, Consultant Haematologist
Professor Philip Schofield, Consultant Surgeon
Miss Asha Senapati, Consultant Surgeon
Mr Akbar Soorma, Consultant in A & E
Medicine
Mr John Stewart, Consultant General Surgeon
Mr Graham Tow, Food Scientist
Mr Paul Townley, Collision Investigator

NON-MEMBERS

Ms Stephanie Evans, Associate to Equine Expert
Dr Stephanie Hill, Consultant Psychologist

REGISTRATION DESK

Teresa Baron, SEW Membership Liaison Officer
Mrs Janice Imrie, SEW Registration

Richard Ansell

Data Protection Practice Officer

BIOGRAPHY

Richard Ansell is a Data Protection Practice Officer providing compliance advice principally to the private sector. Based at the Information Commissioner's headquarters in Wilmslow, Cheshire he has worked for the office for over 20 years in a wide range of roles.

OUTLINE

The Data Protection Act 1998 requires organisations collecting and using personal information to follow rules of good practice when handling information. It also gives rights to individuals whose information is collected and used. This short presentation will provide practical advice on the law.

Tom Magner

*BSc(Hons) Eurlng CEng MIMechE MIET
MCIOJ*

Forensic Engineer

BIOGRAPHY

The Society's Press Officer, Tom Magner, is a practising independent forensic scientist, established writer and broadcaster.

He is a Chartered Engineer with 28 years national and international experience and expertise in the independent forensic investigation of mechanical and electrical accidents and incidents for the assistance of HM Coroners, criminal, civil and commercial courts.

As a journalist and broadcaster, Tom works across the BBC and independent radio and television on topics ranging from science and technology to the investigation and reporting of consumer and social affairs issues.

His production credits include the BBC's *Watchdog* and *Rogue Traders*. He is also an independent film maker for output both in the UK and abroad.

In addition to handling media enquiries, Tom writes and edits the newsroom section of the *Society's* current website.

OUTLINE

SEW Press Officer Tom Magner reviews the cases of expert witnesses whose professional work has been called into question and found

themselves on trial before their peers and in the media spotlight. Examples, illustrating the principles of professional misconduct, include:

Did he fall or was he pushed?

His instructions were to find out if the pensioner died from a fall or had been assaulted. But, according to the professional disciplinary panel he eventually faced, the expert's investigation was riddled with errors and his reports were '... misleading, unhelpful and written without proper thought.'

The price of perjury

He was the founding father of new forensic techniques and an acknowledged expert in his field. But he overstepped the mark and ended up on the wrong side of the law. What happened then when he helped out in an investigation run by a former professional colleague with a previously unblemished record?

Professional pride and prejudice

Accused of being dogmatic, charged with ignoring the opinions of colleagues and guilty of lapses in professional judgement and procedure, this expert witness faced a jury of his peers, admitted the accusations and was acquitted.

Richard Cory-Pearce

FRCS(Eng) FACC MCI Arb

Consultant Surgeon & Secretary of the Society of Expert Witnesses

BIOGRAPHY

Richard Cory-Pearce is a Practising Surgeon actively engaged in expert witness work. He graduated in 1968 and followed a broad training in surgery, at the same time pursuing his established interest in organ transplantation and transplantation immunology.

After working as a Consultant Surgeon and University Lecturer in Cambridge, he entered whole-time private practice in Harley Street, where his involvement in expert witness work became an increasingly important interest.

He is Immediate Past President of the Harveian Society of London, President-elect of the Hunterian Society and Editor of its annals, the *Transactions of the Hunterian Society*. He is a Fellow of the Medical Society of London and of the Royal Society of Medicine; he also

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represents the Royal College of Surgeons of England at the National Heart Forum. He is also a Member of the Chartered Institute of Arbitrators.

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Andrew Rennison

Forensic Science Regulator

BIOGRAPHY

Andrew Rennison is the first Forensic Science Regulator. His principal role is to set and monitor quality standards for forensic science used in the criminal justice system. He does not regulate expert witnesses, but does have a role to set competency standards for those involved in delivering forensic sciences.

Prior to this, Andrew was a director with the Gambling Commission. For 2 years he helped to establish the Commission as the regulator of the British gambling industry. This involved the development of policies, procedures and relationships with stakeholders, to pave the way for licensing, regulation, investigation and the prosecution of offences under the Gambling Act.

Prior to joining the Gambling Commission, Andrew completed 30 years with the police in London and West Yorkshire.

He has worked at all ranks as a detective, including a period in charge of the scientific support functions in West Yorkshire, and finishing as Detective Chief Superintendent in charge of teams dealing with intelligence, organised crime, counter-terrorism, child protection and covert policing.

Andrew has a Master of Science degree in investigative psychology.

OUTLINE

Andrew's talk will cover the background leading up to the creation of his role, a full explanation of the task given to him by the Home Secretary, and the standards framework that he has proposed. It will include some discussion on expert witnesses within the forensic science arena.

Chris Pamplin BSc PhD FGS

Editor, UK Register of Expert Witnesses

BIOGRAPHY

Dr Chris Pamplin is the Editor of the *UK Register of Expert Witnesses* and has been so since its foundation in 1988. Prior to that, Chris attended Liverpool University where he obtained his BSc in Geology. He then moved on to the University of Southampton to study the structural geology of North Cornwall, which

involved lots of cliff-top walking, sliding down scree slopes and eating Cornish ice creams.

He is now involved with expert witnesses on a daily basis offering advice on expert witness practice and procedure. He is the current Editor of *Your Witness*, a quarterly newsletter for expert witnesses, and has written books on expert witness fees, expert witness practice and starting out as an expert witness. He was also instrumental in bringing together interested expert witnesses to form the Society of Expert Witnesses.

Now, his expert opinion is called upon by journalists and lawyers to inform discussions, and by government bodies such as the Forensic Science Regulator, the Legal Services Commission and the Law Commission to help develop and contribute to consultations.

OUTLINE

ACCREDITATION OF EXPERTS AS EXPERT WITNESSES – A CAUTIONARY NOTE

Better regulation

The five principles of better regulation issued by the Better Regulation Executive (BRE) teach us that good regulation is transparent, accountable, proportionate and consistent, and it is targeted according to need.

In all discussions on the accreditation of experts, we start with the observation that no one has provided evidence for there being a general problem with the quality of forensic science evidence in the Criminal Justice System (CJS) in England and Wales, or indeed in any other part of the justice system.

So, in considering the changes to the regulatory framework brought forward by the Regulator, we should bear in mind the need for such changes to be targeted and proportionate.

So, what is an 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.

The job of an expert witness is to consider the 'facts' he is given, possibly deduce other 'facts' through the application of his expertise, and form an opinion.

The qualities of an expert witness

An expert witness must have:

- a thorough understanding of his area of expertise
- sufficient insight to be able to apply that knowledge to the ‘facts’ he is given or has deduced
- the integrity to meet his overriding duty to the court, any professional duties that might apply and the usual duty of care to those who instruct him
- the independence necessary to remain uninfluenced by the fact of who pays him, instructs him or annoys him,

Bearing witness to one’s opinion

There is no precondition imposed by English law on the qualities required of an expert witness. It is for the courts, case by case, to make a judgment of the individual’s qualities and to weigh the expert’s evidence in accordance with this judgment.

It is clear, therefore, that the only real distinction between an expert and an expert witness is that the latter undertakes to bear witness to his opinions.

The basic skills and knowledge specific to giving evidence (bearing witness) are really not that onerous, and are readily acquired through training.

Accredit the expert...

What is susceptible to accreditation in a person’s ability to form an opinion and bear witness to it? By all means accredit the expert, preferable through an existing professional regulatory body. By all means empower the Forensic Science Society to take on the role of regulatory body for forensic practitioners who have none at present. But avoid creating an easy proxy for due diligence

The Regulator must take care that accreditation does not become a surrogate for scrutiny. It is far better, for example, for the court to determine if the Regulator’s Quality Standards have been followed on a case-by-case basis than for accreditation of a provider and its employees to become an easy proxy for the scrutiny that should be applied properly in each case.

In search of quality assurance

Accreditation may seem to offer users of forensic science services an enhanced level of confidence that all evidence, regardless of the supplier, is quality assured and directly comparable. However, the truth is that

accreditation can never assure quality because quality comes from every individual’s ongoing rigorous and error-free implementation of proper procedures; a priori accreditation can only give us some measure of past performance.

True 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.

Not to speak ill of the dead, even the CRFP did not suggest that such accreditation is possible. According to the CRFP literature, what it was doing was checking that experts:

“Take all reasonable steps to maintain and develop [their] professional competence, taking account of material research and developments within the relevant field and practising techniques of quality assurance.”

This is about competence as an expert, not as an expert witness. So, the question became whether the CRFP was more competent than existing professional bodies to check an expert’s qualifications and understanding of current practice and new developments in the field. We venture to assert that it was not, and neither can be any scheme the Regulator can devise.

The vital role we see for the Regulator is in helping the existing professional bodies to devise appropriate systems of accreditation of their members as experts.

Systemic failure of the court

Turning back to the BRE principles, the very best regulation of the quality of forensic science evidence would offer transparency, accountability, proportionality and consistency, and would be targeted according to need. We already have such a system in place – it is the scrutiny (detailed as the case merits) that can be brought to bear by the lawyers, the judge and the other expert witnesses in open court upon the evidence adduced in a case within the context of that case.

Of course, even with this optimal system in place problems with forensic science in the criminal justice system have arisen in the past. But these have usually stemmed from a systemic failure of the court properly to handle conflicting or novel scientific evidence, due in part to inadequate court procedures. We believe that the ongoing work at the Law

Commission offers the best hope to tackle this systemic weakness.

CHANGES TO CPR

On 1 October 2009 the 50th update to the Civil Procedure Rules took effect. This update contains significant changes to the text of Part 35 and its Practice Direction.

CPR Part 35

For Part 35 itself, the changes:

- provide a new definition of 'expert'
- define a 'single joint expert' for the first time
- provide, in small claims track or fast track cases, that permission will normally only be given to call expert evidence on a particular issue from one expert
- make provision for written questions to experts to be proportionate (which will be a relief to many experts!), and
- make consequential amendments and attempt to remove the use of third person singular pronouns (not entirely successfully).

Part 35 Practice Direction

For the Practice Direction, these changes are more extensive, and result in renumbering of the various sections and the removal of a number of simple reiterations of the rules.

The first important change is that the declarations experts must make in their reports are being 'beefed up'. So, the old requirement that the report should:

"... contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty"

is replaced with [PD3.2(9)]:

"... contain a statement that the expert-
(a) understands their duty to the court, and has complied with that duty; and
(b) is aware of the requirements of Part 35, this practice direction and the Protocol for the Instruction of Experts to give Evidence in Civil Claims."

It is actually helpful for the rules to now explicitly require experts to declare that they are aware of the requirements contained in CPR – there are still plenty of experts who have not taken the trouble to even read the guidance therein.

New form of the Statement of Truth

Vitality, the wording of the mandatory statement of truth has also changed, from:

"I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion."

to

"I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer."

So, all reports prepared under the auspices of CPR should now contain this new form of the Statement of Truth if they are to be CPR-compliant.

Single Joint Experts

The Practice Direction has much more to say about SJE's. Although the accompanying notes say this is to help ensure consistency in the use of SJE's, we wonder if it is also an attempt to revive the use of SJE's which has declined in recent times.

Where we used to have some brief guidance on how an SJE should deal with cases involving multiple disciplines, we are now treated to an eight-part discourse on how the court should determine whether or not to direct that an SJE be appointed in the first place.

Expert discussions

Finally, the Rules Committee has added an entirely new section on Discussions between experts – and this contains some very helpful new material. For example, at last we have an explicit veto in the hand of the expert against lawyers attending a meeting.

9.4 Unless ordered by the court, or agreed by all parties, and the experts, neither the parties nor their legal representatives may attend experts discussions.

Also, if the lawyers are present, the CPR limits their role, so:

9.5(i) they should not normally intervene in the discussion, except to answer questions put to them by the experts or to advise on the law

Although why the experts need advice on the law is, except in rare circumstances, a bit of a mystery!

We also have it spelt out that the purpose of these meetings is not for experts to negotiate.

9.2 The purpose of discussions between experts is not for experts to settle cases but to agree and narrow issues...

This is advice we sought to have the Civil Justice Council include in the Experts' Protocol when it was first published, but to no avail.

Finally, the practice of some lawyers of seeking to vet the joint statement before it is signed can be more easily resisted by experts.

9.7 Experts must give their own opinions to assist the court and do not require the authority of the parties to sign a joint statement.

The Experts' Protocol

The Civil Justice Council's Experts' Protocol has long been inculcated into the CPR through the inclusion of it in the Practice Direction.

These changes just required section 13.5 of that document to be changed to refer to the new form of the mandatory declarations and statement of truth.

Changes to CrimPR

On 5 October 2009 changes to Part 33 of the Criminal Procedure Rules (CrimPR) came into force. These rationalise the CrimPR by consolidating Parts 24 and 33. Part 24 deals with the disclosure of expert evidence and Part 33 contains the main rules about expert evidence. The changes will see:

- the original Rule 33.6 subsumed into Rule 33.5
- a new Rule 33.4 – Service of expert evidence
- Rules 33.4 and 33.5 renumbered as 33.5 and 33.6 respectively, and
- a new Rule 33.9 – Court's power to vary requirements under this Part.

It should be noted that none of these changes alters the substance of the rules in Parts 24 and 33, it is just a helpful rationalisation.

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Raymond Emson *LLM*
Barrister

BIOGRAPHY

Raymond Emson, LLM, Barrister, is a lawyer in the Government Legal Service, based in the Law Commission's Criminal Law Team. Most of his work in the Commission has involved making recommendations for reforming the substantive criminal law, but he is also leading the Commission's current project on the admissibility of expert evidence in criminal proceedings. He expects to be in a position to publish a final report and draft legislation on this area next year. He also teaches the law of evidence at King's College London and is the author of a textbook on the subject.

Frazer Imrie *BSc CBiol FIBiol FIFST*
Forensic Biologist and Vice-Chairman of the Society of Expert Witnesses

BIOGRAPHY

Frazer Imrie worked in the food industry for some 25 years, initially as a research scientist, eventually reaching divisional chief executive rank. After taking early retirement, Frazer became an independent full-time consultant, which he carries out through his own company called Imrie Consulting Ltd.

Frazer has been a food consultant for some 20 years. More recently he has become

associated with CWA Consultants Ltd, where he manages the Food Technology Department. His main casework is the preparation of cases for litigation. He has appeared frequently in court and in arbitration tribunals.

Frazer has carried out project work for various international bodies such as FAO, UNDP and UNESCO. He is on the consultants' list of The Institute of Biology and the Institute of Food Science & Technology.

OUTLINE

Frazer will deal with the Daubert Rules and deposition as an expert who has experienced these processes in the USA.

Bunty Batra
Barrister

Mr Batra is a criminal practitioner. He defends and prosecutes in all areas of crime. He has defended in many serious cases, including murder, attempted murder, rape (including historical rape cases), the importation of large-scale drugs cases, the importation of firearms and frauds. He has defended in many high-profile cases, both alone and with Queen's Counsel.

He is a Member of the Honourable Society of Grays Inn and a Member of the Northern Circuit.

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Brian Biggins

National Taxing Team

BIOGRAPHY

I have been in the HMCS for some 38 years and during that time I have undertaken various roles. They include being a Deputy Court Manager within various county courts. In addition, I have worked in various crown courts within the North West and, yes, once again, in varying roles from Court Clerk and Determining Officer to that of Listing Officer.

Latterly within my career, some 11 years ago, I joined the National Taxing Team and therefore have concentrated more on a Determining Officer's role. This has led to dealing with high-profile cases and significant monetary claims, e.g. £100 million frauds (carousal frauds) from both solicitors and counsel.

In addition, I have participated (on behalf of the Ministry of Justice) in various projects and presentations on many topics not always relating to my 'normal role' of determining. This has led me to travel the length and breadth of the UK to meet many interesting people whom I may not have otherwise met.

OUTLINE

In the criminal courts an expert must help the court by giving an objective unbiased opinion on matters within their expertise. Experts exist in diverse fields. The expert's overriding duty is to the court and it's an important one. Therefore my role today is to assist you. Hopefully this will

be achieved by my presentation, supplemented by a 'takeaway' handout which will both explain and include the following giving the necessary clarity that you require:

- (i) The determining process
- (ii) The various fee schemes/monetary procedures operated by the LSC and HMCS (Crown Court and the National Taxing Team)
- (iii) Costs in Criminal Cases (General) Regulations 1986
- (iv) A Guide to Allowances, under Costs in Criminal Cases (General) Regulations 1986.

Sonja Mahoney

Senior Manager – Whole System Initiatives, Strategic Development, Legal Services Commission

BIOGRAPHY

Sonja holds a postgraduate law degree and has gained a good understanding of the justice system through various roles within the Legal Services Commission. Sonja worked in family policy development, including mediation, for many years, and since 2008 has worked within the strategy team focusing on wider justice system initiatives, including the use of expert witnesses. In this role, she has been responsible for taking forward the Bearing Good Witness proposals with the Department of Health and working with the Ministry of Justice on Legal Aid Reforms.

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Session 5: Society Debate
Should market forces apply to expert fees?

17.00

Not so long ago, the idea of capping litigation costs was seen, in the legal world at least, as reckless. It could jeopardise the interests of fair and unrestricted access to justice, and unreasonably threaten the liberty of a defendant in a criminal case, or the livelihood of a claimant in a civil case.

Rose-tinted vision of the past or not, talk of money has now become linked inextricably with litigation. But when it comes to expert witness fees, how should economic and financial pressures be seen in the light of the overriding legal, professional and moral duty of the expert? Experts have to provide independent, comprehensive and detailed assistance to the court, possibly to an extent well beyond the costs permitted by the system.

The courts, legal professionals and even some expert witnesses view the amount that the system will allow as what the expert will get paid, even if it's short of what would be expected in their specialist work away from the legal system. Is this right?

Should expert witness fees be treated just as professional costs would be treated in the commercial world? After all, a grant towards the cost of building an energy-efficient house extension, for example, is never seen as how much the builder will get paid, only as a contribution to the home owner's bill.

What is reasonable payment for the forensic work involved in a case and for handling the pressure borne out of the conflict at the heart of the adversarial system?

All expert witnesses, whatever their professional field, face the same demands and responsibilities, and the same overriding duty to the court. But with widely varying hourly rates, is the knowledge of one field of expertise worth more than that of another? Do some disciplines charge too much? Do others charge too little? Should there be a professionally realistic 'one size fits all' rate for expert witnesses, no matter what their specialist field?

In controlling what the system is prepared to allow, is the government threatening to drive away more knowledgeable, better qualified experts, leaving behind those viewed in some quarters as of lower professional standing to carry the responsibility?

Or, is the cost of experts, whatever their level, simply out of all proportion to the value they add to the system, criminal or civil?

Arguably, the credibility of justice itself is at stake. Instead, should the discussions be about the expert's suitability to broaden the court's knowledge in each case, based on the expert's proven track record of independently assisting the courts, rather than how much money is available to pay the expert?

Chaired by the Society's Press Officer, Tom Magner, a panel of speakers, drawn from the day's sessions, leads delegates in weighing up the conflicting demands of money and standards of service – all this in the wake of unprecedented moves to control and ultimately drive down the cost to the legal system of expert witness fees.

NOTES

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Thank you for supporting the Society of Expert Witnesses
and for attending our Autumn Conference.

See you in Spring 2010...
... date and venue to be confirmed!

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