









Session 1
Vulnerable areas for experts



Richard Ansell
Information Commissioner's Office




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





Introduction


- Why data protection matters
- Scope
- Handling personal information fairly
- Information security
- Some tips on good practice
- Notification

ICAO
Promoting public access to official information and protecting your personal information

Data protection matters

• Preventing crime	94%
• <i>Protecting personal information</i>	<i>94%</i>
• NHS	88%
• Equal rights	88%
• National security	87%
• Improving education	87%
• Environmental issues	87%
• Protecting freedom of speech	85%

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Attitudes to information risk

- 80% of us have started checking our bank statements on a more regular basis.
- 85% now refuse to give out personal details wherever possible.
- 53% say they no longer have confidence in the way organisations such as banks, local authorities and government departments handle our personal information.

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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

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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

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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

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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



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and protecting your personal information



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

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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

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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

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and protecting your personal information





Information Commissioner's Office

www.ico.gov.uk





Morning Coffee

Session 2 starts
at 11.30 p.m. prompt







**Session 2:
Accreditation after CRFP**



Andrew Rennison
Forensic Science Regulator

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

Andrew Rennison

Role

• Establish quality standards (science)
• Monitor compliance

Deal with complaints about quality standards

Provision of forensic science services

• Internal (police)
• External (suppliers)

National forensic science databases:
•NDNADB
•NBIS

Ensure accreditation of suppliers and competence of practitioners

To provide advice (Ministers, CJS...) and guidance (suppliers) on quality standards

Overseeing Quality

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.

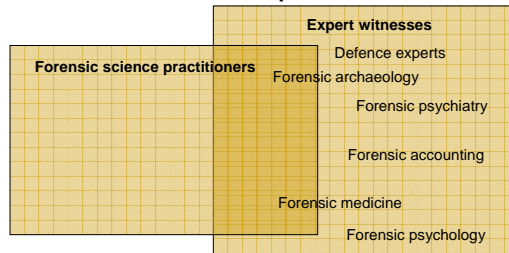
UK criminal courts / prosecution process

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



Overseeing Quality

Practitioners / Experts



Forensic specialist → Expert



Overseeing Quality

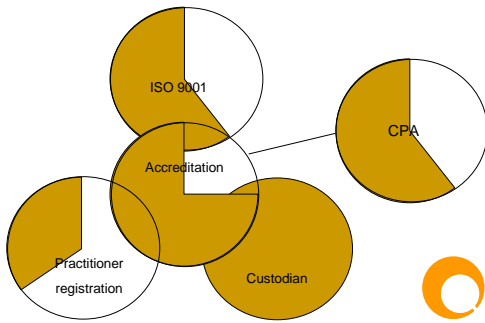
Background

- 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

Standards framework



Overseeing Quality

Concerns

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



Overseeing Quality

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

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

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

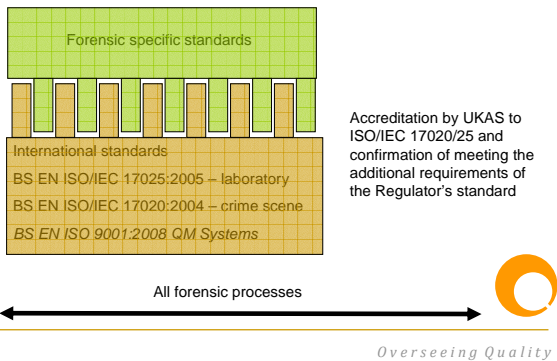
Scope of the standard

- 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

Standards framework



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

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



Chris Pamplin
Editor
UK Register of Expert Witnesses



Accreditation and Expert Witnesses

Chris Pamplin PhD
Editor, UK Register of Expert Witnesses

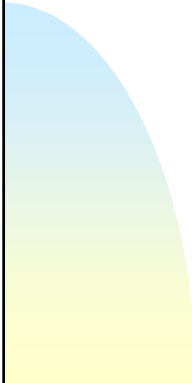
Society of Expert Witnesses
16 October 2009

Better regulation

Better Regulation Executive

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted

UK Register of Expert Witnesses



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

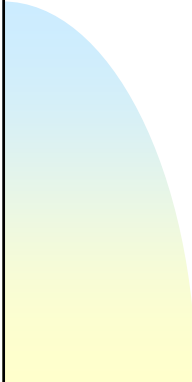


Qualities

An expert witness must:

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

UK Register of Expert Witnesses



Bearing witness

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

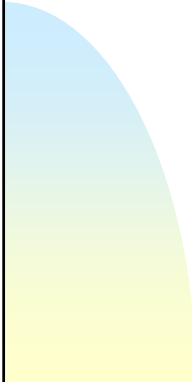
UK Register of Expert Witnesses



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



...don't create a proxy

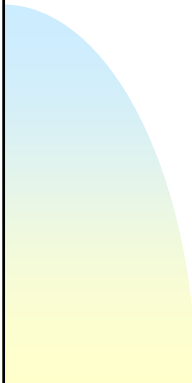
Accreditation must not become a surrogate for proper scrutiny

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



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

Changes to CPR

CPR Part 35

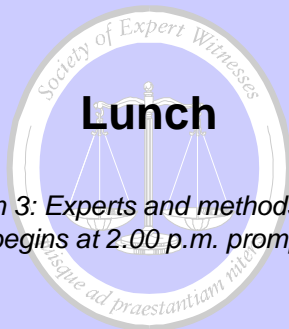
- New definition of 'expert'
- Defines 'Single Joint Expert'
- Provides default limit of 1 expert per issue
- Written questions must be proportionate

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





Lunch

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









Frazer Imrie
Society Vice Chairman





Bunty Batra
Barrister







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





**Session 4:
Payment from public funds**





Brian Biggins
National Taxing Team





Sonja Mahoney
Legal Services Commission



legal aid – fair access to justice



Legal Aid Work
Changes now for the future

Sonja Mahoney

Senior Manager, Strategy

Legal Services Commission



Context

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



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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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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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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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



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



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**



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 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 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 Funding Reforms – response needed

- Ministry of Justice consultation ends on **12th November 2009.**
- **MoJ website**

www.justice.gov.uk/consultations/legal-aid-funding-reforms




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 **1st 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



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



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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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



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Any questions...





Session 5:
The Society Debate
Should Market Forces Apply to Experts' Fees?



Closing Remarks



Goodbye

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