

Safeguarding Expert Witnesses – London September 2008

There is no central register of experts used by the CPS or similar means of checking the history of an expert. However, any experts used by the CPS are expected to have read and understood the contents of the CPS booklet for experts. This includes completing a self-certificate every time they are instructed by the CPS.

The self-certificate includes questions about whether they have a criminal record, if they are subject to any current criminal or civil proceedings, if there are any adverse findings by a court as to their professional standing, if there are any adverse findings by a professional or regulatory body or current investigations underway, and if there is any other relevant information that may adversely affect their professional standing as an expert. The self-certificate relies upon the honesty of the person completing it but they are warned that any false or misleading information, or any deliberate omission, may lead to disciplinary or criminal proceedings.

The issue of discredited evidence from experts has been given a new focus following the conviction of Jim Bates for lying about his qualifications when giving evidence as a prosecution computer expert witness between 1995 and 1997. This particular case has also triggered a more general interest in the use of experts. For example, the Solicitor General responded to a parliamentary question on 8 May 2008 from Mark Pritchard MP as follows:

- i. Mark Pritchard: *What progress has been made by the review of expert witnesses in criminal trials; and if she will make a statement?*
- ii. Solicitor General: *'The OCJR are preparing a summary of expert witness initiatives, which is expected in late Spring. The CPS is about to undertake a revision of their current guidance on expert witnesses; it continues to work closely with the independent Forensic Science Regulator in setting standards; and the CPS is also working with the Legal Services Commission its evaluation of appropriate standards for experts in criminal cases.'* (extract from Hansard).

Background

The Criminal Procedure Rules were amended in 2006 to provide clearer rules governing the use of experts. Thorough awareness and robust implementation of the requirements of the Criminal Procedure Rules should help address the issue of discredited experts. In particular, Part 33 (**Annex A**) of the Rules should minimise much of the risk as it clearly sets out what is expected of experts and the requirements placed on them. However, its effectiveness depends upon both greater practitioner and judicial awareness, especially the latter in enforcing this within the courts.

CPS Policy Directorate, with support from colleagues in other parts of the Service and external partners, will shortly start a revision of the current CPS booklet "Guidance for Expert Witnesses" (**Annex B**). The revision should help address this issue and provides an opportunity to tackle the inadvertent use of "rogue" experts by the CPS. When the current guidance on experts was prepared in 2005/06, the question of the CPS maintaining a list of discredited experts was considered and rejected. Since then the CPS has not held a central 'register' of experts, whether good, bad or according to specialism.

However, some central support on the use of experts has been provided to CPS Areas in terms of disclosure advice, the provision of disclosure packs regarding individual experts who have been discredited in court, and in leading reviews of past cases involving those (now) discredited expert witnesses.

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Safeguarding Expert Witnesses

**Forensic Science
International Procurement**

The Law Society, London

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**Catalogue of Change
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Police, Experts and Professional Witnesses

- Experts
 - OPINION
 - Quality Assurance
 - Accreditation
 - Self Certification
 - Peer Review
 - Professionals
 - FACTS
 - Qualified
 - Codes of Conduct
 - Police
 - BOTH
 - CPJA
 - Accredited
- CPJA
 - Revelation – v – Disclosure
 - Police 'Reveal'
 - Record
 - Reveal
 - Prosecution 'Disclose'
 - Charge
 - Case Management
 - Trial
- Accreditation
 - CRFP
 - UKAS – ISO17020/5

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Improvements for the Future 1

General.....

Communication

- Consistency
- Clarity
- Certainty would be nice ... I think!

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Improvements for the Future 2

Specific.....

Don't re-invent the wheel

- Use existing CJS Reform Tools
- Use existing Best Practice materials and methods
- Use existing accreditation bodies

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Improvements for the Future 3

International Community works together to fight International Crime

- Information sharing – Database – Interpol – Europol
- Understanding and overcoming differences – jurisdiction – policy – best practice
- Providers avoid undermining each others' services to gain market share; be self confident
- Don't rely on 'Commercial in Confidence'

* "refusal to disclose means we cannot use to prosecute"

Sir Ken MacDonald QC, DPP

Police Forces.....

- Strategy
 - Eg; Procurement
- Consistency
 - Eg; Local, National + International
- Continuity
 - Eg; Practice + Procedures
- Partnership
 - Eg; Joint training
- Purpose – whose?
- End user – who?
 - CPS?
 - Court?
 - VICTIMS OF CRIME

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Any Questions.....

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