



**Forensic Science & DNA,  
Case Management,  
Inquisitorial & Adversarial**

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**PLEASE HELP FIND MADDY**



# Fundamentals



## DNA in the Criminal Justice System.....

- **Provides Probability not Certainty**
  - Needs to form part of the factual matrix of the case
- **Requires appropriate supporting evidence, eg;**
  - SGM+ match requires lower level of supporting evidence
  - Low template, LCN mixtures require higher level of supporting evidence
- **Capable of Proving Guilt and Innocence**
  - Vital to minimise risk of miscarriages of justice
- **It is fallible**
  - Quality assurance essential

# Quality Assurance; Evidence & Unused material



- **Regulation**
- **Validation**
- **Accreditation**
- **Contamination**
- **Consistency (pan-European)**
- **Disclosure of unused material**
  - **Unused material as important (in UK) as evidence!**
- **Continuity Critical**



# The Prosecutors Fallacy



- **R v Doheny and Adams 1997 CAR 369**
- **DNA was found**
- **1 in a million will match that DNA**
- **Defendant has DNA profile**
- **NOT: it's a million to 1 that D is innocent**
- **Although full facts may amount to just that**

# Procedures



- **Adduce evidence and calculations**
- **Serve details as to how calculations done**
- **If requested, make available the databases upon which calculations based**
- **Resolve issues pre trial.....**

**- Criminal Procedure Rules 2011**

**In court**



- **Scientist should not give views on whether D left stain or committed crime**
- **Prosecutor: Do not over sell**
- **Judge summing up**
  - **Explain relevance**
  - **Give evidence its context**
  - **Evidence against prosecution**

**BUT.....**

**The Criminal Justice System is constantly changing.....**

# Catalogue of Change Volume 1



- **Criminal Law**
- **CJS Policy**
- **Lord Chief Justice Practice Directions**
- **Individual Accreditation**
- **Organisational Regulation**
- **Government and the Free Market**
- **Technology**
- **Public Interest**
- **Media Relations**
- **Procurement**
- **Globalisation**



# Catalogue of Change Volume 2



- **Commercialising Forensic Science**
- **Civil – v – Criminal**
- **Innovation – v – Reliable**
- **Validation – v – Verification**
- **Regulation – v – Accreditation**
- **Intelligence – v – Evidence**

# Improvements for the Future



## General.....

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

## Specific.....

**Don't re-invent the wheel...**

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

# The Forensic Science Regulator...



## INDEPENDENCE

- Lead the way in demonstrating the needs of the criminal justice system v the desires of commercial ambitions
- Lead the way in focussing on the 'end-user' of forensic science – the Court and Victims of Crime
  - Bridge between
    - Police Purpose
    - Crown Prosecution Service Purpose
- Robust application of clear quality standards domestically and with overseas suppliers
- Effective and swift breach enforcement
- Maintain credibility in the value of forensic science as a vital tool in convicting the guilty and exonerating the innocent

# The Crown Prosecution Service .....



- **Joined up working**
  - **Court and Victim ‘End User’ Perspective**
  - **Prosecutor Perspective**
  - **Support for technological advances**
- **Shared Resources + Skills**
  - **Joint Training Opportunities**
  - **Targeted Distribution of information**
  - **Assisting with Compliance Mechanisms**
  - **Support for Breach Enforcement Mechanisms**

# THE CRIMINAL PROCEDURE RULES - CASE MANAGEMENT



Where there is a difference of opinion between experts for the Prosecution and the Defence, it is vital that all expert statements are disclosed well before a trial commences.

- Pre-trial Case Management:
- Strict adherence to, and implementation of, the regime provided by the Criminal Procedure Rules 2011 will facilitate clear steps being taken in the service, consideration and agreement (or otherwise) of expert opinions.
- The primary purpose of robust pre-trial management is to narrow down the real issues, particularly those of a scientific nature, which the jury must decide upon.

# Criminal Procedure Rules (CrPR) 2011, Rules 3 and 33



- **Rule 3:** Must assist with the ‘Overriding Objective’;
  - Fair administration of Justice
- Parties’ duty is early identification of issues + agreement
- Trial **only** on live issues
- Outgoing Senior Presiding Judge directive issued Jan 2010
  - applying R3 is “compulsory”
- **Rule 33: Duty to the Court;**
  - R 33.2; objective, unbiased, within expertise
- **Contents of Report;**
  - R 33.3; qualifications, accreditation, area of expertise
  - where there is a range of opinion on the matters dealt with in the report:
    - summarise the range of opinion, and
    - give reasons for his own opinion
- **Identify issues and areas of agreement;**
  - R 33.5; pre-hearing discussion of expert evidence



# CrPR 2011, Rule Criminal Procedure & Investigations Act, 1996, ss 5 & 6



- ***R v Reed & Reed***, [2009] EWCA Crim 2698 – CrPR, Rules 3 & 33 (paras 129 – 13)
- ***R v Balogun***, [2010] EWHC 799 (Admin) – Compliance with the spirit of CrPR (para 16)
- ***R v Weller***, [2010] EWCA Crim 1085 – Identification of the issues (paras 16 – 18)
- ***R v Butler, Henderson & Oyerderin***, [2010] EWCA Crim 1269 – CrPR, Case Management (paras 209 – 214)
- ***R v T***, [2010] EWCA 2439 – Third parties reveal base methodology
- ***R v Olu***, [2010] EWCA Crim 2975 – MG Schedules (para 45)

# IDENTIFICATION OF THE ISSUES



- In [R v Reed, Reed \[2009\]](#) the Court of Appeal dealt with the complex science of admissible DNA evidence, ordered that a "primer" or guide to the basic science applicable should be provided - no reason why such a document should not be agreed and provided to a jury in all scientific or complex medical cases (para 28)
- The Court clearly set out and emphasised the importance of the use of and adherence to Rule 33 of the CrPRs (paras 128 – 131);
- Parties must provide identification of agreement and disagreement within the experts' reports.
  - That notification of those areas of disagreement thereafter must be given to the court and the case then must be brought before the judge. This obligation falls to both the prosecution and the defence.
  - The judge should then order a meeting of experts to take place.
  - A statement under Rule 33.6 should be then drafted setting out in clear terms the agreed science, for use at trial.
  - Any non-observance of an order for such a statement will be met in most cases by a refusal by the trial judge to admit the evidence of the expert not complying.

# CPS Guidance Booklet for Expert Witnesses 2010



## Aims:

- **To set Criminal Justice System wide standards for the use of expert witnesses.**
  
- **Raise Experts' awareness of the importance of disclosure of unused material and their role in compliance with Criminal Procedure and Investigations Act 1996.**
  
- **Raise Experts' awareness of the importance of compliance with the Criminal Procedure Rules 2010.**
  
- **The standards and guidance are intended to provide public confidence in the administration of justice**

# CPS Guidance Booklet for Expert Witnesses 2010



- **Clear standard for prosecution disclosure obligations – compliance with Criminal Procedure & Investigations Act (CPIA) 1996**
- **Clear standard for case management – compliance with the CrPR 2011**
  - **Rule 1 – overarching interests of justice**
  - **Rule 3 – identification of the issues**
  - **Rule 33 – Experts’ duties**
- **The Three ‘R’s:**
  - **RETAIN - all materials, unless otherwise instructed**
  - **RECORD – everything you do**
  - **REVEAL – everything you have recorded**

# CPS Guidance Booklet for Expert Witnesses 2010



- **Indicates that peer reviewability is a baseline and provide disclosure flowchart and index template**
- **A requirement for experts to self-certificate their expertise**
  - **Appendix C of the booklet**
- **Guidance on issues of competence / credibility of experts**

# Selection of Experts 1



- **The CPS does not hold a register of experts.**
- **Independent prosecution service - inappropriate to appear to endorse any expert.**
- **CPS not in a position to quality assure individuals or organisations who provide expert witness services to the CJS, other than duty on a case by case basis.**
- **The National Police Improvement Agency (NPIA) can provide information about experts in certain fields.**



# Selection of Experts 2



- **Forensic Science Regulator is now responsible for setting applicable validation (for scientific processes) and accreditation (for individuals) quality management standards.**
- **Principal commercial organisations in England and Wales representing the interests and services of a variety of expert witnesses available via Internet.**
- **Information on experts should be obtained from professional representative / regulatory body, eg; Medical professionals, Home Office FP Register etc**

# Authorities and guidance



- **Criminal Procedure and Investigations Act (CPIA) 1996**
- **CPIA Codes of Practice (section 23)**
- **Criminal Procedure Rules 2010, as amended (2011 effective 3 October; especially Parts 1,3,21 & 22, 33): [www.justice.gov.uk](http://www.justice.gov.uk)**
- **Attorney General's Guidelines on Disclosure: [www.attorneygeneral.gov.uk](http://www.attorneygeneral.gov.uk)**
- **Crown Court Disclosure Protocol: [www.judiciary.gov.uk](http://www.judiciary.gov.uk)**
- **CPS Disclosure Manual (Annex K = Guidance for Expert Witnesses): [www.cps.gov.uk](http://www.cps.gov.uk)**



## Any Questions?

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