

7. EXPERT EVIDENCE

7.1 Admissibility generally

- 7.1.1 Expert opinion evidence is admissible in criminal proceedings if, in summary:
- a. it is relevant to a matter in issue in the proceedings;
 - b. it is needed to provide the court with information likely to be outside the court's own knowledge and experience;
 - c. the witness is competent to give that opinion; and
 - d. the expert opinion is sufficiently reliable to be admitted.
- 7.1.2 Factors which the court may take into account in determining the reliability of expert opinion, and especially of expert scientific opinion, include:
- a. the extent and quality of the data on which the expert opinion is based;
 - b. the validity of the methodology employed by the expert;
 - c. if the expert's opinion relies on an inference from any findings, whether the opinion properly explains how safe or unsafe the inference is (whether by reference to statistical significance or in other appropriate terms);
 - d. if the expert's opinion relies on the results of the use of any method (for instance, a test, measurement or survey), whether the opinion takes proper account of matters, such as the degree of precision or margin of uncertainty, affecting the accuracy or reliability of those results;
 - e. the extent to which any material upon which the expert's opinion is based has been reviewed by others with relevant expertise (for instance, in peer-reviewed publications), and the views of those others on that material;
 - f. the extent to which the expert's opinion is based on material falling outside the expert's own field of expertise;
 - g. the completeness of the information which was available to the expert, and whether the expert took account of all relevant information in arriving at the opinion (including information as to the context of any facts to which the opinion relates);
 - h. if there is a range of expert opinion on the matter in question, where in the range the expert's own opinion lies and whether the expert's preference has been properly explained; and
 - i. whether the expert's methods followed established practice in the field and, if they did not, whether the reason for the divergence has been properly explained.

- 7.1.3 In addition, in considering reliability, and especially the reliability of expert scientific opinion,⁷⁶ the court must be astute to identify potential flaws in such opinion which detract from its reliability, for example:
- a. being based on a hypothesis which has not been subjected to sufficient scrutiny (including, where appropriate, experimental or other testing), or which has failed to stand up to scrutiny;
 - b. being based on an unjustifiable assumption;
 - c. being based on flawed data;
 - d. relying on an examination, technique, method or process which was not properly carried out or applied, or was not appropriate for use in the particular case; or
 - e. relying on an inference or conclusion which has not been properly reached.
- 7.1.4 In order to enable full assessment of the reliability of any expert evidence relied upon, all potentially relevant information must be disclosed, both in relation to the expert and in relation to any corporation or other body with which the expert works, as an employee or in any other capacity; see the non-exhaustive list of examples below:⁷⁷
- a. any fee arrangement under which the amount or payment of the expert's fees is in any way dependent on the outcome of the case;
 - b. any conflict of interest of any kind, other than a potential conflict disclosed in the expert's report;
 - c. adverse judicial comment regarding a particular expert or corporation or other body for whom the expert works whether by a first instance tribunal or on appeal;
 - d. any case in which an appeal has been allowed by reason of a deficiency in the expert's evidence;
 - e. any adverse finding, disciplinary proceedings or other criticism by a professional, regulatory or registration body or authority, including the [Forensic Science Regulator](#);
 - f. any such adverse finding or disciplinary proceedings against, or other such criticism of, others associated with the corporation or other body with which the expert works which calls into question the quality of that corporation's or body's work generally;
 - g. conviction of a criminal offence in circumstances that suggest:
 - i. a lack of respect for, or understanding of, the interests of the criminal justice system (for example, perjury; acts perverting or tending to pervert the course of public justice),
 - ii. dishonesty (for example, theft or fraud), or
 - iii. a lack of personal integrity (for example, corruption or a sexual offence);

⁷⁶ The court may be assisted by the [Royal Society primers](#).

⁷⁷ **CrimPR 19.3(3)(c) and CrimPR 19.2(3)(d)**.

- h. lack of an accreditation or other commitment to prescribed standards where that might be expected;
- i. a history of failure or poor performance in quality or proficiency assessments;
- j. a history of lax or inadequate scientific methods;
- k. a history of failure to observe recognised standards in the expert's area of expertise;
- l. a history of failure to adhere to the standards expected of an expert witness in the criminal justice system.

7.1.5 In a case in which an expert, or a corporation or body with which the expert works, has been criticised without a full investigation, for example by adverse comment in the course of a judgment, those criticised must supply information about the conduct and conclusions of any independent investigation into the incident, and explain what steps, if any, have been taken to address the criticism.

7.1.6 Where matters ostensibly within the scope of the disclosure obligations come to the attention of the court without having been disclosed⁷⁸ then subject to any enquiry into the circumstances the potential for exclusion of that evidence will arise.⁷⁹

7.2 Declarations of truth in expert reports

7.2.1 The statement and declaration⁸⁰ should be in the following terms, or in terms substantially the same as these:

“I (name) DECLARE THAT:

1. I understand that my duty is to help the court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.

⁷⁸ The rules require disclosure of what the expert, or the party who introduces the expert evidence, is aware. The rules do not require persistent or disproportionate enquiry, and courts will recognise that there may be occasions on which neither the expert nor the party has been made aware of criticism.

⁷⁹ For example under [s.81 Police and Criminal Evidence Act 1984](#) or [s.20 CPIA 1996](#).

⁸⁰ Required by **CrimPR 19.4(j) and (k)**.

4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
6. I have shown the sources of all information I have used.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.
10. I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification.
11. I understand that:
 - (a) my report will form the evidence to be given under oath or affirmation;
 - (b) the court may at any stage direct a discussion to take place between experts;
 - (c) the court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with the reasons;
 - (d) I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert.
 - (e) I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
12. I have read **Part 19 of the Criminal Procedure Rules** and I have complied with its requirements.
13. I confirm that I have complied with the code of practice or conduct for experts of my discipline, namely [identify the code], in all respects save as identified in [schedule][annexe][x] to this report. That [schedule][annexe] gives details of the action taken to mitigate any risk of error that might arise as a result.
14. [For Experts instructed by the Prosecution only]

I confirm that I have read the [CPS Guidance for Experts on Disclosure, Unused Material and Case Management](#) which details my role and documents my responsibilities, in relation to revelation as an expert

witness. I have followed the guidance and recognise the continuing nature of my responsibilities of disclosure. In accordance with my duties of disclosure, as documented in the guidance booklet, I confirm that:

- (a) I have complied with my duties to record, retain and reveal material in accordance with the Criminal Procedure and Investigations Act 1996, as amended;
- (b) I have compiled an Index of all material. I will ensure that the Index is updated in the event I am provided with or generate additional material;
- (c) in the event my opinion changes on any material issue, I will inform the investigating officer, as soon as reasonably practicable and give reasons.

I confirm that the contents of this report are true to the best of my knowledge and belief and that I make this report knowing that, if it is tendered in evidence, I would be liable to prosecution if I have wilfully stated anything which I know to be false or that I do not believe to be true.”

7.3 Pre-hearing discussion of expert evidence

- 7.3.1 The court must give a direction for a pre-hearing discussion between experts in every case unless unnecessary.
- 7.3.2 The purpose of discussions between experts is to agree and narrow issues and in particular to identify:
 - a. the extent of the agreement between them;
 - b. the points of and short reasons for any disagreement;
 - c. action, if any, which may be taken to resolve any outstanding points of disagreement; and
 - d. any further material issues not raised and the extent to which these issues are agreed.
- 7.3.3 Any experts' meeting should be conducted in the manner most convenient and cost effective to those involved. The parties must agree an agenda that helps the experts to focus on the relevant issues. The agenda must not be in the form of leading questions and must promote an open discussion. No party may require or encourage an expert to avoid reaching agreement, or to defer reaching agreement, on any matter within the experts' competence.
- 7.3.4 If the legal representatives do attend:
 - a. they should not normally intervene in the discussion, except to answer questions put to them by the experts or to advise on the law; and
 - b. the experts may if they so wish hold part of their discussions in the absence of the legal representatives.
- 7.3.5 A statement must be prepared by the experts dealing with paragraphs (a) - (d) above. Individual copies of the statements must be signed or otherwise authenticated by the experts at the conclusion of the discussion, or as soon

thereafter as practicable, and in any event within five business days. Copies of the statements must be provided to the parties no later than 10 business days after signing.

- 7.3.6 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 joint statement should include a brief re-statement that the experts recognise their duties, which should be in the following terms, or in terms substantially the same as these:

“We each DECLARE THAT:

1. We individually here re-state the Expert’s Declaration contained in our respective reports that we understand our overriding duties to the court, have complied with them and will continue to do so.
2. We have neither jointly nor individually been instructed to, nor has it been suggested that we should, avoid reaching agreement, or defer reaching agreement, on any matter within our competence.”

- 7.3.7 If an expert significantly alters an opinion, the joint statement must include a note or addendum by that expert explaining the change of opinion.