Crown Prosecution Service – Supplementary written evidence (FRS0097)

Letter sent by Adrian Foster, Chief Crown Prosecutor, Crown Prosecution Service (CPS) Proceeds of Crime following an evidence session on Tuesday, 30 October 2018

Thank you for inviting me to give evidence to the Committee’s Forensic Science Inquiry on 30 October.

During the session, I committed to provide members of the Committee with further information relating to the guidance we provide to prosecutors on the use of forensic evidence and working with experts.

Our Legal Guidance provides advice on a wide range of forensic science issues, both through specific guidance on use of experts and in our offence-based guidance for prosecutors. Our guidance follows the criminal law in referring to expert evidence that includes not just matters of science (and medicine) but areas of expert knowledge that are based on experience of a particular issue (such as so called “Honour-Based” Violence).

Our guidance1 for prosecutors on the use of expert evidence covers a number of general topics:

- The definition and duties of an expert
- The admissibility of expert evidence
- How to approach expertise in areas of new or novel techniques as well as challenges to admissibility
- Choosing, and when the CPS or police will be instructing
- Instructing experts
- Content of an expert’s report
- Understanding an expert’s report
- Case management including joint reports and case conferences
- Disclosure and doubts about the competence and credibility of an expert witness
- Disclosure to the defence in current and past cases
- Instructing a second expert
- Expert witnesses at court – examination in chief and cross examination
- Challenging defence experts
- Expert fees
- Streamlined Forensic Reporting guidance and toolkit2

The guidance provides additional information specific to the following areas of expertise:

- DNA

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Ear prints
Facial mapping and video evidence
Fingerprints
Footwear impressions
Forensic Anthropology
Forensic Archaeology
Forensic Pathology
Handwriting
Hypnosis
Psychological autopsies
Sexually Transmitted Infections
Voice recognition

Following Lord Vallance of Tummel’s question about probability, the Committee may be interested to note that the section of the expert evidence guidance relating to DNA includes discussion of the “Prosecutor’s Fallacy” and probability. I also include, at annex A, a list of our offence-based guidance, where it makes reference to the potential use of expert evidence in those offence categories. The links are to our publicly available guidance on our website. Please note that our Legal Guidance is currently being updated.

Please let me or my officials know if you require any further information or clarification regarding the information contained within this letter, or any other aspect of our evidence to the Committee.

13 November 2018

Annex A – offence-based guidance with reference to expert evidence

The following subject-specific guidance also includes guidance on expert evidence in relation to those offences (links are to CPS external website):

Child Abuse (non-sexual) - prosecution guidance
Child Sexual Abuse: Guidelines on Prosecuting Cases of Child Sexual Abuse
Computer Misuse Act 1990
Coroners
Corporate Manslaughter
Cybercrime - prosecution guidance
Dangerous Dog Offences
Deaths in Custody
Defences - Sleepwalking as a defence in Sexual Offence cases
Disclosure - A guide to "reasonable lines of enquiry" and communications evidence
Domestic Abuse Guidelines for Prosecutors
Drink Driving Offences
Drug Driving Offences
Drug Offences
Education - Department for Education Prosecutions
Exhibits
Explosives
Extreme Pornography
Female Genital Mutilation Prosecution Guidance
Firearms
Fraud Act 2006, The
Hare Coursing
Hunting Act 2004, The
Homicide: Murder and Manslaughter
 Honour-Based Violence and Forced Marriage
Indecent Images of Children (IIOC)
Intellectual Property Crime
Intentional or Reckless Sexual Transmission of Infection
Non Accidental Head Injury Cases (NAHI, formerly referred to as Shaken Baby Syndrome [SBS]) - Prosecution Approach
Obscene Publications
Offences against the Person, incorporating the Charging Standard
Offences Involving Domestic and Captive Animals
Older People: Prosecuting Crimes against
Prison-related Offences
Proceeds Of Crime Act 2002 Part 7 - Money Laundering Offences
Psychoactive Substances
Psychological Evidence Toolkit - A guide for Crown Prosecutors
Relations with other prosecuting agencies
Road Traffic Offences
Road Traffic Offences: Guidance on Charging Offences arising from Driving Incidents
Safeguarding Children as Victims and Witnesses
Speaking to Witnesses at Court
Special Measures
Stalking and Harassment
Therapy: Provision of Therapy for Child Witnesses Prior to a Criminal Trial
Therapy: Provision of Therapy for Vulnerable or Intimidated Adult Witnesses
Victim Personal Statements
Victims and Witnesses who have Mental Health Issues and/or Learning Disabilities - Prosecution Guidance
Violence against Women Guidance
Wildlife Offences