

## **IMPORTANT BULLETIN TO ALL CRIMINAL PRACTITIONERS**

### **EXPERTS AFTER *BOWMAN***

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**Andrew Edis QC and Stuart Driver recently appeared in the Court of Appeal for the Crown in the case of R v. Bowman [2006] EWCA Crim 417.**

**The paragraphs of general application are set out below in the Appendix.**

**We suggest that all those who instruct expert witnesses in criminal cases (including the CPS and the Police) should develop a standard form letter when instructing experts, which includes the following material. This should be used on every occasion when an expert is instructed, including where on an exchange of experts' reports matters arise which require a further or supplemental report. This should be complied with by all experts, including Forensic Pathologists and Forensic Psychiatrists who are very familiar with the preparation of expert reports:-**

#### **“INSTRUCTIONS**

*Set out what is required of the expert.*

#### **TIMETABLE**

*Specify the date by which the Report is required and, if known, the trial date.*

#### **MATERIAL PROVIDED**

*List the documents supplied.*

#### **BASIS OF INSTRUCTIONS**

Please note that the law now requires expert witnesses in criminal cases always to include the material set out in paragraphs 1-6. We would ask you to comply with this requirement when preparing your Report.

1. Details of the expert's academic and professional qualifications, experience and accreditation relevant to the opinions expressed in the report and the range and extent of the expertise and any limitations upon the expertise.
2. A statement setting out the substance of all the instructions received (with written or oral), questions upon which an opinion is sought, the materials provided and considered, and the documents,

statements, evidence, information or assumptions which are material to the opinions expressed or upon which those opinions are based.

3. Information relating to who has carried out measurements, examinations, tests etc and the methodology used, and whether or not such measurements etc were carried out under the expert's supervision.
4. Where there is a range of opinion in the matters dealt with in the report a summary of the range of opinion and the reasons for the opinion given. In this connection any material facts or matters which detract from the expert's opinions and any points which should fairly be made against any opinions expressed should be set out.
5. Relevant extracts of literature or any other material which might assist the court.
6. A statement to the effect that the expert has complied with his/her duty to the court to provide independent assistance by way of objective unbiased opinion in relation to matters within his or her expertise and an acknowledgment that the expert will inform all parties and where appropriate the court in the event that his/her opinion changes on any material issues."

## APPENDIX

### *Experts*

174. In *R v Harris and Others* [2006] 1 Cr App. R.5 this court gave guidance in respect of expert evidence given in criminal trials (see page 55). The way that the expert reports have been prepared and presented for this appeal leads us to believe that it would be helpful to give some further guidance in order to underline the necessity for expert reports to be prepared with the greatest care.

175. On 14 February 2006 the Attorney General, announcing the outcome of his review of Shaken Baby Syndrome cases published three papers including a booklet entitled “Disclosure: Expert’s Evidence and Unused Material- Guidance Booklet for Experts”. The instructions contained in this booklet were “designed to provide a practical guide to disclosure for expert witnesses instructed by the Prosecution Team”. The booklet sets out three key obligations arising for an expert as an investigation progresses. The relevant steps are described as to retain, to record and to reveal. No doubt any expert instructed by the prosecution will, of course, comply with these guidelines. What follows applies equally to experts instructed by the prosecution and defence.

176. We desire to emphasise the duties of an expert witness in a criminal trial, whether instructed by the prosecution or defence, are those set out in *Harris*. We emphasise that these duties are owed to the court and override any obligation to the person from whom the expert has received instructions or by whom the expert is paid. It is hardly necessary to say that experts should maintain professional objectivity and impartiality at all times.

177. In addition to the specific factors referred to by Cresswell J in the *Ikarian Reefer* [1993] 2 Lloyd’s Rep 68 set out in *Harris* we add the following as necessary inclusions in an expert report:

7. Details of the expert’s academic and professional qualifications, experience and accreditation relevant to the opinions expressed in the report and the range and extent of the expertise and any limitations upon the expertise.
8. A statement setting out the substance of all the instructions received (with written or oral), questions upon which an opinion is sought, the materials provided and considered, and the documents, statements, evidence, information or assumptions which are material to the opinions expressed or upon which those opinions are based.
9. Information relating to who has carried out measurements, examinations, tests etc and the methodology used, and whether or not such measurements etc were carried out under the expert’s supervision.
10. Where there is a range of opinion in the matters dealt with in the report a summary of the range of opinion and the reasons for the

opinion given. In this connection any material facts or matters which detract from the expert's opinions and any points which should fairly be made against any opinions expressed should be set out.

11. Relevant extracts of literature or any other material which might assist the court.
12. A statement to the effect that the expert has complied with his/her duty to the court to provide independent assistance by way of objective unbiased opinion in relation to matters within his or her expertise and an acknowledgment that the expert will inform all parties and where appropriate the court in the event that his/her opinion changes on any material issues.
13. Where on an exchange of experts' reports matters arise which require a further or supplemental report the above guidelines should, of course, be complied with.

178. In this case, at times, some of the experts expressed to the court for the first time opinions which had not featured in their reports. A number of additional reports were also supplied at a late stage. Mr Martin-Sperry explained forcefully the funding constraints and difficulties faced by those representing the appellant in approaching and obtaining experts' reports. We are mindful of these difficulties and aware of the constraints placed on the appellant's advisers in this appeal but they do not wholly explain why some of the material placed before the court was not included in the relevant expert's initial report. They also do not explain or excuse the failure to refer to the instructions given and material provided before the reports were written. Failure to adhere to the guidelines can cause considerable difficulties and some delay in the conduct of the proceedings. These remarks are designed to help build up a culture of good practice rather than to be seen as critical of the experts in this case. We should add that it may be that some of the difficulties experienced by the experts were caused by late supply to them of information, from whatever source.