ACADEMY OF EXPERT WITNESSES

THE JOHN BOLTON MEMORIAL LECTURE

given by

The Rt Hon The Attorney General

EXPERT EVIDENCE – THE PROBLEM OR THE SOLUTION?

The role of expert evidence and its regulation

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- **INTRODUCTION**

Good evening and thank you for those kind words of welcome.

John Bolton, in whose memory this lecture is given, was a member of Lord Woolf's team in the preparation of the Civil Procedure Rules, although he did not live to see the Experts Protocol, which came into force in September 2005. He was clearly a practical man (not always also the hall mark of a lawyer) as well as someone who had an enormous amount of practical experience in representing the interests of his clients in the global oil, chemical and construction sectors. I am told his philosophy was to look to today and tomorrow, so that it what I propose to do tonight.

As you will know, much of the recent controversy about the role of experts and development of the law has been in the area of Criminal Justice. I am therefore going to concentrate on that area, although I will be touching on some of the wider civil issues. In particular, I will be mentioning the recent work of the Chief Medical Officer in relation to the use of medical experts in the family court system.

But of course the first thing I should say is that it isn't easy to be a witness in court, expert or otherwise. I am reminded of the story of the kindly judge (I understand they do exist) who asked a distressed witness what the matter was. The witness replied, "Your Honour, I swore to tell the truth, the whole truth and nothing but the truth, but every time I try that barrister over there complains."

I have entitled this talk "Expert Witnesses. The Problem or the Solution?" My thesis today is that they are both. They are the solution to a host of problems concerned with getting justice. But they have also created a problem for justice. And this is a problem which still requires more work to solve it.

EXPERT WITNESSES – IMPORTANCE

Let me start by saying why experts are a solution to the problem of doing justice.

Expert witnesses play a hugely important role in both our civil and criminal courts. They have for many years had a key role within the CJS. Indeed many charges could never be brought without their involvement. Many events are not witnessed first hand. Many events require expertise to understand and explain them. Some crimes, often the most serious, require scientific evidence to build a case. And modern science enables us to place the culprit in criminal cases where previously it was not possible: the burglar who was not seen but leaves behind his fingerprints; the masked rapist who leaves DNA evidence which ties him to the scene of the crime. Computers may contain the electronic evidence of communications for conspiracy or fraud which only experts can help us retrieve and explain. Much of this was not possible in the past. Indeed there are cases, such as the Shoe rapist in Sheffield, found and convicted

many years after the crimes because of a DNA match which only new science enabled.

The role is an increasing one. Experts are now called to assist the courts in areas that were unheard of 20 years ago. Thus, we have analysis of computers, mobile phones and personal data assistants, all of which give to a jury a real feel for what a defendant was thinking at the time of his crime. Then there is cell site analysis, which shows where a defendant was – or at least where his mobile phone was. This was of course used to great effect in the first Damilola Taylor trial, when the defence said there was "unshakeable" evidence that the defendants were more than a mile from the scene, minutes after the stabbing, thus proving their innocence – "End of story".

We also see an increase in the range of experts who are called to give evidence. Whilst available for many years, techniques such as entomology are now being seen more frequently. Such evidence, by examining the insects in, on and around human remains can assist in determining the time or location of death. It can also be possible to decide if a body was moved after death. Then there is the field of forensic anthropology, much beloved of crime writers, used to recover and identify human remains that are reduced to skeletons and forensic geology, which deals with trace evidence in the form of soils, minerals and petroleums.

I cannot conceive a modern justice system which did not involve frequent recourse to expert evidence.

As I said in my evidence to the Science & Technology Select Committee on 23 November 2005:

It is clear that such widespread use of forensic science expertise is an integral part of convicting the guilty and acquitting the innocent; providing everybody involved understands their role and the necessary processes support them in this.

Thus we see that the modern expert is essential to modern justice.

The Problem

Given the skills that experts can bring to the attaining of justice, it might be thought surprising – not to mention ungrateful on the part of the public – that the involvement of experts in court cases has been so controversial.

A series of cases particularly over the conviction of mothers in relation to killings of their children has, however, had a clear impact on public confidence in expert testimony. The cases of Sally Clark, Trupti Patel and Angela Cannings prompted a major public debate about the role of experts in general and the standing of certain medical experts including especially but not exclusively Professor Sir Roy Meadow in particular - and I will need to come back to his case for another reason later.

As you will know, I became very much engaged in the debate as a result particularly of those cases which of course concerned convictions and trials for the deaths of infants.

Following the decision of the Court of Appeal in the appeal of Angela Cannings on 9 January 2004 I launched a thorough review of all cases in the previous 10 years in which a parent or carer had been convicted of the unlawful killing of a baby or infant under the age of 2. The specific impetus was the finding of the Court of Appeal.

In its reasons for allowing Angela Cannings' appeal the Court expressed the view that, in the light of present medical knowledge, where there was a sudden and unexplained infant death; where there had been a prior unexplained infant death in the family; where there was a dispute between medical experts as to whether the infant had been unlawfully killed; and where there was no extraneous evidence of physical harm, convictions for those deaths were likely to be unsafe. The Court of Appeal reached this judgement in the light of an extensive review of the substantial medical research into SIDS, including recent new evidence. This tended to show that multiple unexplained infant deaths could be compatible with an innocent explanation.

The judgement therefore showed that, in relation to unexplained infant deaths, where the outcome depends exclusively, or almost exclusively, on a serious disagreement between distinguished and reputable experts and natural causes cannot be excluded as a cause of death, it will often be unsafe to proceed.

My review team examined in the event 297 individual cases. Only 3 were exactly analogous to the Cannings case. There were another 25 which gave rise to concerns. All of these were referred to the Defendants' advisers for possible appeal and some did in fact go back to the Court of Appeal. In 175 cases there was no cause for concern. A further 89 cases raised a separate issue: they were so-called shaken baby syndrome cases. Here there was a real and acute divergence of medical opinion. 4 cases went to the Court of Appeal who, on 21 July 2005, gave judgement allowing the appeal in whole or in part in 3 out of the 4 cases. The Court's decision was very helpful in determining which of the other cases might be unsatisfactory. My team carried out a further review and found another 3 which gave rise to concern. In reaching its conclusion on the underlying science the Court of Appeal heard or considered the reports of no less than 25 experts.

I would add that in addition my team have looked at convictions in cases in which one other doctor was involved; and the possibility of looking at cases involving two other experts has been referred to me for consideration.

However, the extent of public concern went wider than just those cases and the extent of the concern, and in some cases, abuse of experts involved was high.

One particular issue was whether we should accord to experts the deference that in the past we had.

There is nothing new in this. Some will remember, at least by account, Sir Bernard Spilsbury, who acted in the case of Dr Crippen, the Brides in the Bath Murders and the Brighton Trunk murders, amongst many very famous cases. Juries were in awe of him and he was considered invincible in court. Yet, even in the later years of his life (he died in 1947) judges began to express concern about this. His dogmatic manner and unbending belief in his own infallibility gave rise to criticism and some research has indicated that his inflexibility led to miscarriages of justice.

The House of Commons Science and Technology Committee were very concerned about this. Having heard evidence, including from the CPS of the effect that the charisma of a particular expert could have on his influence with a jury they said that they were "disappointed to discover such widespread acknowledgement of the influence that the charisma of the expert can have over a jury's response to their testimony, without proportional concomitant action to address this problem."

In my view both lawyers and experts bear responsibility for this concern. Lawyers have looked more and more to experts to bolster their case, increasingly asking experts to take on a role of advocate for the case; and some experts have been prepared to take on that role. Both have been wrong.

- **EXPERT WITNESSES – ROLE**

Against this background it is vital that experts, those that instruct experts and those that utilise expert reports have a clear understanding of their role.

The Criminal Procedure Rules on expert evidence came into effect on 6 November 2006 and deal with the duty of an expert to the court.

Expert's duty to the court

33.2 —(1) An expert must help the court to achieve the overriding objective by giving objective, unbiased opinion on matters within his expertise.

(2) This duty overrides any obligation to the person from whom he receives instructions or by whom he is paid.

(3) This duty includes an obligation to inform all parties and the court if the expert's opinion changes from that contained in a report served as evidence or given in a statement …

The rules require a party to inform the expert when they have served the expert's report on another party, or on the court. They provide explicitly for pre-trial discussion between experts and they allow the court to order that a single, joint defence expert should give expert evidence for the defence. The rules specify that a party may not introduce expert evidence without the court's permission, if the expert has not complied with a direction of the court.

The key point is that the expert is not a hired gun. His duty is to the court. But it isn't the court that instructs him – it's one side or the other. An expert can only form an opinion on the basis of the information that he is given. Whilst we gave up trial by combat many years ago, trial by ambush was until recently quite acceptable. As Lord Wilberforce said, "Expert evidence presented to the court should be and be seen to be the

independent product of the expert, uninfluenced as to form or content by the exigencies of litigation". So how to achieve this?

I would summarise the key elements by underlining the importance of the 3 Is and the 3Rs.

THE THREE Is

First, we may look to the Code of this Academy as illustrative:

The Code

> 1. Experts shall not do anything in the course of practising as an Expert, in any manner which compromises or impairs or is likely to compromise or impair any of the following:
>
> a) the Expert's independence, impartiality, objectivity and integrity,
>
> b) the Expert's duty to the Court or Tribunal,
>
> c) the good repute of the Expert or of Experts generally,
>
> d) the Expert's proper standard of work,
>
> e) the Expert's duty to maintain confidentiality

We can see the relationship between the requirements set out here and the Criminal Procedure Rules.

These 3 Is are the reason why the courts should be able to trust the specialist opinions given to them.

Independence - The expert is not an advocate of his client's case. He is not a claims negotiator – or if he is, he should not also present himself as an expert in related court proceedings. He should not be linked to the dispute in which he is giving evidence, because otherwise his independence will be in doubt.

Impartiality – the expert must not write his opinion to suit his paymaster and must be objective and unbiased. If necessary, he should and must point out that his client's case is wrong or weak. It does not help anyone if an expert says a case is strong when later the court entirely rejects it, with serious consequences for a person on trial in a criminal case. If there are facts that detract from the opinion given, they must be stated.

Integrity – the expert must be honest. He must say if a particular area is outside his expertise, although there are of course areas of cross-over between specialities, which means that an expert must also be able to utilise the experience of others, within appropriate boundaries. If, after seeing his opponent's opinion, the expert changes his opinion, he must say so and tell the other party without delay. If the opinion is provisional, particularly if it depends on research in progress, the expert should say so.

There is also the CrPR requirement to discuss the range of scientific opinion in the area. This may be valuable in preventing problems with charismatic witnesses by avoiding the black/white debate that is always what lawyers want and making clear there are shades of grey.

THE THREE Rs

I turn to the 3 Rs. They are illustrated in this way.

On 14 February 2006 I announced the CPS 'Guidance for Experts' booklet 2006; the result of a wide ranging 2 year consultation. This sets out the obligations and standards expected of experts to Retain, Record and Reveal their work.

Retain – retain everything, including physical, written and electronically captured material, unless otherwise instructed. This material should be retained for a period of time which will vary depending on circumstances,

including the nature of the offence, the stage legal proceedings have reached and whether the case is of particular significance or interest.

Record – start to make records when instructions are received, or perhaps even before. For example, a pathologist dealing with an apparently routine post-mortem might come upon signs that the death is in fact suspicious so will be the instigator of a criminal investigation. The expert should keep records of all the work he has carried out and any findings made in the course of the investigation. This will include records of the collection and movement of items, the examination of materials and verbal and other communications, including notes of meetings, sufficiently detailed that another expert in the same field will be able to follow the nature of the work the expert has undertaken.

Reveal – the expert must reveal everything he has recorded. The prosecution team must be aware of all the material in the expert's possession so that they can make informed decisions as to which is relevant and which satisfies the disclosure test. This should be done in 3 ways – the expert is required to provide a report, a police statement and an index of unused material, which will contain a list of all the material in his possession not identified in either the report or the statement.

Well these are all important rules. But who is to be responsible for enforcing and regulating this, ensuring that experts are giving the right help to the criminal justice system?

THE COURTS

Of course the Courts have a primary role in seeing that the experts act responsibly. And we can expect them to act with vigour if they find that an expert has acted in an inappropriate way. Expert witnesses give their evidence for reward and so there will be far less hesitation about disciplining

them for improper conduct than a lay witness. An expression of judicial disapproval of an expert's testimony can be a very powerful sanction. I have in mind by way of example one accountant, a senior man, who was criticised strongly in a High Court judge's judgement and found it hard to get work thereafter. No litigant would knowingly employ someone whose expertise would be so easily undermined by the other side pointing to a previous strong expression of judicial disapproval.

But I do not believe that reference to the judicial sanction can be enough on its own.

PROFESSIONAL BODIES

One of the main reasons that evidence from expert witnesses is so valuable in legal proceedings, and so often so determinative, is because expert witnesses are not giving evidence as a member of the general public. They are giving evidence in their professional capacity as an expert in a particular subject matter. It is not therefore surprising that judges and juries give special weight to their evidence.

It is therefore vitally important that expert witnesses are competent in their field. A key safeguard in ensuring that expert witnesses are competent is that they are subject to fitness to practice proceedings by their regulatory body.

As you will know, the High Court cast doubt on whether a regulatory body had competence to launch fitness to practice proceedings against a person in connection with his conduct as an expert witness in the case of Meadow v GMC. This case concerned the appeal by Professor Sir Roy Meadow against the outcome of fitness to practice proceedings taken against him by the GMC in connection with his conduct as an expert witness in the trial of Sally Clark.

At first instance, Mr Justice Collins held that the GMC could not take fitness to practise proceedings against a doctor in connection with the evidence he had given in court. The only exception to this rule would be where the judge himself referred the matter to the professional body on the ground that the evidence fell short of proper professional standards and so might merit an investigation of the doctor's fitness to practise.

I felt that this ruling gave rise to serious issues which affected the public interest. In my view, it was wrong in principle for expert witnesses to be immune from fitness to practice proceedings. Immunity might be read as a licence to expert witnesses not to act professionally at a time when the Government is working hard to improve expert witness standards generally within the criminal justice system. And at a time when the criminal justice system depends ever more on forensic expert evidence, the possibility of fitness to practise proceedings is essential if the public are to have confidence in the quality of expert evidence.

This is why I personally intervened in the case when it reached the Court of Appeal.

(I should make it clear that I did not intervene in the case in connection with the outcome in relation to Professor Meadow – I made no submissions to the Court as to the correctness of the GMC's decision in relation to Professor Meadow; my intervention in the case related solely to the question of whether expert witnesses should have immunity.)

The Court of Appeal unanimously accepted my argument that expert witnesses should <u>not</u> be immune from fitness to practice proceedings by their regulatory body in relation to the evidence that they give in court. The Court of Appeal accepted that, if a change is needed in this area, it is for Parliament rather than the courts to make that change. The decision of Mr Justice Collins was overturned.

I very much welcome the decision of the Court of Appeal. The fact that expert witnesses can be subject to fitness to practice proceedings by their regulatory body is vital in preserving public confidence in expert witnesses and the evidence that they give in court. As Lord Justice Auld said in the Meadow judgement -

> **"Why should an expert witness be entitled to go into the witness box secure in the knowledge that what he says will have immunity not only from civil suit .. but also disciplinary proceedings for conduct so bad that, if established, would bring his profession into disrepute and, if unchecked, be potentially harmful to the public?"**

INSTRUCTING BODIES

There is a key role also for those who instruct experts.

As I mentioned, the CPS has the rule of the 3Rs, to retain, record, and reveal. What does this mean? In summary, retain everything until otherwise instructed, begin making records at the time of receipt of instructions and for the whole time the expert is involved and reveal everything that has been recorded.

These obligations assist in ensuring that the Prosecution Team can comply fully with their statutory disclosure obligations. They take precedence over any internal codes of practice or other standards set by any professional organisations to which the expert may belong.

As the CPS explicitly warns, a failure to comply with these guidelines may have a number of adverse consequences which could include:

- A prosecution being halted or delayed;
- The appellate courts finding that a conviction is unsafe;

- The tribunal making an adverse judicial comment about the expert as an expert. Such an adverse judicial comment could seriously undermine his credibility as an expert and consequently his fitness to be instructed in future cases;
- Professional embarrassment, including possible action by a professional body, loss of accreditation and the potential for civil action by an accused.

Conversely, credibility as an expert will be enhanced by the considered application of this guidance and the appropriate management of the materials within the investigation.

Assurance in the scheme is dealt with by the Expert's Self-Certificate

The expert instructed should submit to the investigating officer or disclosure officer, a completed self-certificate (the Certificate), revealing, whether or not there is information which may be capable of adversely affecting his or her competence and/or credibility as an expert. This should be submitted to the investigating or disclosure officer as soon as the expert is instructed.

Expert witnesses will be asked to complete a Certificate on every occasion that the expert is asked to provide expert evidence in the form of a full statement or report.

Failure by an expert to complete the Certificate may cause the prosecutor either to seek an expert who will, or to continue with that expert and disclose the information to the defence, if it meets the disclosure test.

Where an expert refuses to complete a Certificate, consideration will be given by the Prosecution Team to the use of the expert in future cases.

This guidance has been very well received as consistent information on the expectation of experts by the CJS.

OTHER BODIES

This is the role played by this Academy, the Council for the Registration of Forensic Practitioners and the Society of Expert Witnesses, a crowded field.

It will enable judges to be sure that experts really are experts and testify within their area of expertise. Although I clearly cannot say too much about a case that is *sub judice,* I could mention in this context the Gene Morrison case. Morrison is currently on trial in Manchester on charges of attempting to pervert the course of justice and obtaining money by deception. He supposedly set up the Criminal and Forensic Investigations Bureau and said he had a BSc in Forensic Science, a Masters in Forensic Investigation and a doctorate in Criminology, all of which were allegedly bought from a website.

How are judges to evaluate experts without such assistance across such a wide range of subjects? One register avoids problem of judges trying to keep track of the value of different registers. This needs to be balanced with the need to preserve judicial discretion, overseas experts and those with a very narrow specialism who simply never sought to register themselves. But who guards the guardians?

While it is recognised that judicial discretion will come to bear on the acceptability to the Court of any expert witness, a recognisable standard of scientific competence of that witness and validity of their methods is to be welcomed.

There is an expectation among police, CPS and forensic science providers of the provision of some form of regulatory function. A need for regulation is assumed in work being carried out on the ACPO strategy for the future of forensic science and that of the Forensic Science Procurement Steering Group.

A number of related issues have been presented in Parliament and the Courts which make clear the need to safeguard quality in this area. These include:

- The need to maintain public confidence in forensic science and the Criminal Justice System
- The need for expert witnesses to be independent of those instructing them and act in the interest of justice
- Recent cases which have raised concerns related to expert testimony with regard to the competence and integrity of expert witnesses and, as a consequence, the effectiveness of the CJS
- The Royal Commission on Criminal Justice (reported 1993) recommended the establishment of a Forensic Science Advisory Council (FSAC) to oversee matters including accreditation, performance evaluation and professional development, with a view to the possible introduction of an enforceable code of conduct for all forensic scientists.
- The recommendation, by the House of Commons Science and Technology Committee, that a Forensic Science Advisory Council be created, and
- The need for independent and transparent governance of the NDNAD with appropriate legal and ethical safeguards.

Reform of forensic science service market, the recent change in status of the Forensic Science Service (FSS) and retention of the National DNA Database (NDNAD) under public sector control have resulted in concern about wider oversight and standard setting for forensic science services and highlighted the need for greater clarity about how the oversight could be best provided.

There has been no strategic oversight of these existing arrangements to ensure that they provide adequate coverage of all potential areas of risk. In particular, there is no focussed responsibility for anticipating potential future risks that may affect the quality of forensic science.

It has been proposed that regulation would cover two main areas:

1. The accreditation of those supplying forensic science services to the CJS including in-house police services as well as forensic science suppliers to the wider CJS;
2. The oversight and control of the associated forensic science intelligence databases, including National DNA Database and the National Forensic Firearms Intelligence Database (NFFID) and extending to others as they arise.

It is not intended that the forensic science regulator should cover economic regulation or act as a representative body for forensic science practitioners or organisations.

It is anticipated that the regulator would be:

- independent of any provider of forensic science
- a named individual, initially appointed and with powers delegated by the Home Secretary
- located in a Government department, reporting to the Chief Scientific Adviser
- guided by a FSAC (which may include representatives of the Government, CJS, police, forensic science suppliers, professional bodies and the general public), and
- initially funded by the Home Office, with the option for future examination of alternative locations and sources of funding, such as by subscription.

The forensic science regulator would not duplicate or replace existing arrangements where they are working well, but rather provide oversight to ensure that existing arrangements provide the required scope, coverage, definition and robustness of monitoring and enforcement to deliver the required level of quality and resilience.

It is proposed that the Regulator should be held accountable for ensuring that arrangements are in place for:

- recognising or setting standards for entry to the forensic science market
- setting standards for forensic science activities and processes performed by the police
- monitoring of compliance with these standards
- taking action as required to address shortfalls in performance against standards
- oversight and control of forensic science intelligence databases
- ensuring that quality standards continue to be assured and improved through development of a contestable and transparent market for forensic science, with appropriate assurance of continuity of supply
- creating an environment where innovation is encouraged, with 'type approval' awarded as appropriate to new techniques or products
- identifying, assessing and mitigating potential future risks through modification of regulatory arrangements
- supporting public confidence in the contribution of forensic science to the criminal justice system.

Note the Home Office have only initiated formal action against forensic pathologists on 3 occasions in the last 16 years. The two recent ones were in relation to miscarriages of justice where there was criticism from the Court of Appeal. Even here there was a full investigation/tribunal before deciding there was a failure by the expert.

CHIEF MEDICAL OFFICER'S REPORT: Bearing Good Witness

Before reaching my conclusion I should refer to a countervailing concern: that the effect of too strong a supervision and system of sanctions for

experts, the more risk that they will become unavailable to assist the courts and litigants. This was a particular concern in the Family courts and led to specific comment in the Meadow case by LJ Thorpe.

The Department of Health has looked at this problem.

A radical overhaul of the system for providing medical expert witnesses for the family courts is proposed by Professor Sir Liam Donaldson, England's Chief Medical Officer (CMO), in his report, 'Bearing Good Witness: Proposals for reforming the delivery of medical expert evidence in family law cases'.

The key proposal is that the NHS establishes a new service - teams of specialist doctors and other professionals in local NHS organisations will group together to improve the quality of the service by introducing mentoring, supervision and peer review, backed up by a new National Knowledge Service to support the medical expert witness programme.

These measures should avoid the risk of reports for the courts being biased by the view of a particular individual, or lacking in the authority that comes from a sound evidence base. It will also address the difficulty in maintaining an adequate supply of medical expert witnesses.

My colleagues in government have decided Sir Liam's report should form the basis for a consultation document, and be published for a period of public consultation. Early analysis of responses suggests there is support from many bodies, including the medical Royal Colleges and the GMC itself, for key elements of the reforms proposed.

The CMO's report recommended that the GMC publishes further detailed supplementary guidance for expert witnesses. This has been in the pipeline for some time, but was put on hold while awaiting the outcome of the various Meadow-related decisions. The GMC is likely to launch a small consultation in the next few weeks on the text of its draft supplementary

guidance, which does not recommend major changes, but seeks to expand on their core guidance document for experts, *Good Medical Practice*.

THE CRIMINAL CASE MANAGEMENT FRAMEWORK – STREAMLINING EXPERT EVIDENCE

The Government has made considerable improvements in relation to the way that criminal cases are managed from start to conclusion. Along with the judiciary and the other CJS ministers I issued the Criminal Case Management Framework in July 2004. The framework provides operational practitioners with guidance on how to effectively manage cases in the magistrates' and Crown Court. It also sets out the expectations of the judiciary. The framework has been customised in each criminal justice area to meet local needs.

A third edition of the framework will be issued shortly to deliver the changes brought about by the Criminal Justice Simple Speedy Summary Magistrates' Courts Streamlining Project.

CCMF & Expert Evidence

The third edition of the Criminal Case Management Framework will draw the parties' attention to the recently revised Criminal Procedure Rules on expert evidence (part 33). The framework will also set out the importance of identifying expert evidence early in the process and will remind the defence to make timely applications for public funding for expert witnesses, if appropriate.

Is this enough?

What this review shows is that there are a number of bodies and initiatives to remedy the problems, to give sound guidance to experts as to their duties and to police their compliance

I welcome this activity because I believe that it is critical that the public has confidence in expert evidence without which we will not be able to do justice. But I have a concern that we may end up with too many sets of guidance, perhaps subtly different. In my experience a plethora of slightly difference guidance hinders rather than assists effective maintenance of appropriate standards. It would be very undesirable, for example, for an expert to shop around for a form of guidance with suited him best.

CONCLUSION

My conclusion therefore is that we should, having realised the problem, now seek to ensure that the solution is effective. Should we look for a single set of standards to which both public sector and the private sector can subscribe? Should the different experts' bodies agree with themselves and the public sector a set of standards to which all are bound or continue with somewhat different standards? Have we now established sufficiently the safeguards both conceptual and practical to ensure that when evidence is given by experts in court we can have reasonable assurance that it complies with the 3 Is and 3 Rs?

In short, do we have too many cooks or at least too many recipes? And if so who should be our Master Chef for experts' standards? Who is to be the Jamie Oliver of expert evidence?

This is a subject I intend to discuss with the Lord Chief Justice and other senior judges whom I am meeting next month. And I trust that you will consider it too and engage in this debate.

If I have done one thing this evening I hope I will have started that debate. I trust that John Bolton, practical lawyer, would have approved.

E N D S