Factsheet 46: The Auld Report and Experts

This is now an archive document and was written prior to the introduction of the Criminal Procedure Rules.

In December 1999 the Lord Chancellor, Lord Irvine, commissioned a review into the practices and procedures of the criminal courts. The review was to be conducted by Lord Justice Auld and had as its stated objective that of ensuring that the courts deliver justice fairly, by streamlining their processes, increasing their efficiency and strengthening the effectiveness of their relationships with other elements of the criminal justice system. Furthermore, Sir Robin Auld was asked to complete the task within a year.

At the time, there were many who thought the task was beyond the capability of an individual, especially with respect to the timescale envisaged for the review. There was also concern expressed about the terms of reference: they were so broad as to demand a full-scale inquiry, along the lines of that conducted by Lord Woolf into the working of the civil justice system, or even a Royal Commission. In the event, though, the pessimists were proved wrong. When Lord Justice Auld’s Report was published in October 2001, it was immediately recognised for what it is: a masterly achievement and a major contribution to the reform of criminal justice in England and Wales.

The Report is 685 pages long and makes no fewer that 328 recommendations. Many of these propose radical changes, and not a few have already sparked controversy. One that has been widely welcomed, though, and seems likely to be acted upon quite quickly, is that there should be a set of Rules governing procedure in the criminal courts comparable with those now applied in the civil courts.

The chapter of the Report that is most relevant to our purposes is Chapter 11. Entitled ‘The Trial: Procedures and Evidence’, it contains a lengthy section headed ‘Expert evidence’. We reproduce this below for the benefit of those experts who regularly provide evidence in criminal proceedings.

The Government’s response

The Government published its response to Sir Robin’s Report (and an earlier one by John Halliday on sentencing policy) in July 2002. It took the form of a White Paper with the catchy but nebulous title ‘Justice for All’. This set out a raft of proposals for the reform of the criminal justice system in England and Wales, ranging from the improved detection of offences, through court procedures, to the rehabilitation of offenders.

With such a broad canvas to cover, it is hardly surprising that the White Paper was short on detail as to how many of its aims were to be achieved. This was particularly apparent in its treatment of Sir Robin’s recommendations on expert evidence. For nearly every one of these the only comment it had to offer was ‘Considering further’. In the extract from the Report that is reproduced below, we have inserted after each recommendation the response to it that appears in ‘Justice for All’.

It is more encouraging to note that elsewhere in the White Paper the Government committed itself to the establishment of a Criminal Procedure Rules Committee to advise on the codification of the rules of evidence and of criminal procedure generally. At present, of course, rules of evidence can only be determined from case law, much of which is contradictory and derives from situations wholly different from those of the present day. As for the procedural code, this is needed above all to speed up the trial process and provide a framework for the disclosure of evidence.

Expert evidence in the Criminal Courts

(Extracted from the Report of Sir Robin Auld’s ‘Review of the Criminal Courts of England and Wales’)

129 As with Lord Woolf’s work on Civil Justice, the subject of expert evidence has featured strongly in the Review. The main topics covered were:

- the competence and objectivity of those who put themselves forward as expert witnesses;
- the suitability of calling expert evidence;
- simplification of the manner of presentation of their evidence;
- inequality of arms between prosecution and defence experts;
- delays in obtaining expert evidence;
- the effect of listing practices on busy forensic practitioners;
- and poor pay for publicly funded defence experts.

Although many of these issues concern preparation for trial as well as the trial itself, it seems to me more convenient to deal with them all together here.

Competence

130 The competence of an expert witness is governed by the common law. Whether, in any particular case, a witness is qualified to give expert evidence is for the judge. However, there is no single or comprehensive guide to the courts in the form of a professional register of accreditation to which they or parties may have recourse when considering the suitability of proposed expert witnesses. Although the Runciman Royal Commission did not recommend any fundamental changes on the subject of expert evidence, it gave detailed consideration to this question. It recommended the establishment of a Forensic Science Advisory Council 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.

Although the Government did not implement that recommendation, it supported the principle of development of standards, training and accreditation by a non-statutory body or bodies. The Forensic Science Society and the Academy of Experts were already in the being, each with its draft code of practice. Since then, the field has become more crowded. In 1995, the Society of Expert Witnesses and in 1996 the Expert Witness Institute were founded, each producing its own Code of Practice and maintaining a membership list. And most recently, in early 2000, the Council for the Registration of Forensic Practitioners, a company limited by guarantee, was established with financial support from the Government. The Law Society maintains an annual Directory of Expert Witnesses and there are also other associations of experts from particular disciplines.

131 It seems to me that it would be sensible, make better use of resources and be of more value to users and the Courts, if the work of all these bodies could be concentrated in one. It could then set, or oversee the setting of, standards, maintain a register of accredited forensic scientists in all disciplines and regulate their compliance with those standards. I do not suggest that it should be a statutory or governmental body, for I believe that professional self-regulation, albeit with governmental encouragement and financial help to the extent that it may be necessary in the early days, is the better way forward.

The Council for the Registration of Forensic Practitioners, although only recently established, looks a strong candidate for such a role. It is an independent body of forensic practitioners, their managers and bodies and people who use their services, including the police, lawyers and judges. Its Register, which it opened in the Spring of this year, will include forensic practitioners of all kinds. Entry to the Register, which is voluntary, is by peer review of current competence against agreed criteria, with revalidation every four years to ensure that practitioners maintain their skills and keep up to date. The Council has underpinned the Register with a Code of Conduct which includes the principle that a forensic practitioner’s overriding duty is to the court and the administration of justice, and that his findings and evidence must be presented fairly and impartially. There will be procedures to deal with complaints of professional misconduct, poor performance or ill health, with the ultimate disciplinary sanction of removal from the Register. It is hoped that the courts will regard entry on the Register as an indicator of competence, though of course they will retain the power to determine whether a witness is qualified to give expert evidence on a case by case basis. The Crown Prosecution Service and other prosecuting bodies, legal practitioners and the courts should, in their various ways, encourage and support the Council in its work.

I recommend that:
- consideration should be given to concentrating in one self-governing professional body within England and Wales the role of setting, or overseeing the setting, of standards and of conduct for forensic scientists of all disciplines, the maintenance of a register of accreditation for them and the regulation of their compliance with its conditions of accreditation;

Response: ‘Considering further’
- for those purposes, the several existing expert witness bodies providing for all or most forensic science disciplines should consider amalgamation with, or concentration of their resources in, the Council for the Registration of Forensic Practitioners.2

Response: ‘Not for the government to decide’

Objectivity

132 All the inter-disciplinary bodies to which I have referred and, I am sure, all others accept the principle that the overriding duty of their members is to provide the court with objective evidence. The same applies to government agencies, such as the Forensic Science Service, and to every forensic scientist individually contributing to the Review. Indeed, they positively welcome it as a protection against being drawn into the adversarial mode of some of those instructing them. In my view, this consensus should be given the same formal recognition in new Criminal Procedure Rules as it has been given in the civil jurisdiction by Civil Procedure Rules, Part 35.3, which reads:

(1) It is the duty of an expert to help the court on the matters within his expertise.

(2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.3

It would also be a useful reminder to all expert witnesses about to give evidence – and to their clients – to require them to include a declaration to like effect at the start of their witness statements or reports.

I recommend that:
- the new Criminal Procedure Rules that I recommend should contain a rule in the same or similar terms to that in Part 35.3 of the Civil Procedure Rules that an expert witness’s overriding duty is to the court;

Response: ‘Considering further’
- any witness statement or report prepared by an expert witness for the assistance of the court should contain at its head a signed declaration to that effect.

Response: ‘Considering further’

Suitability of expert evidence

133 An expert witness is different from other witnesses in a number of respects, an important one of which is that he is permitted to express an opinion on the issue to which his evidence relates.4 But, at common law, it is for the judge to decide in each case whether the issue is one which is suitable for opinion evidence. Often the issue clearly does justify the calling of an expert. However, there is an increasing tendency, particularly in the criminal courts, for parties to seek to call opinion evidence masquerading as expert evidence on or very close to the factual decision that it is for the court to make. It is for the judges or magistrates to determine whether an issue truly is susceptible to and justifies the calling of expert evidence, in particular whether a proffered expert is likely to be any more expert than anyone else in forming an opinion on separately established facts. In the Crown Court, the judge normally directs or indicates at the pre-trial stage whether any particular issue justifies the calling of expert evidence and, if so, of what nature.
134 There is a side effect to this when the defence seeks to call an expert and needs legal aid to pay for it. If the judge directs or indicates that it is a suitable case for a defence expert, it is still for the Legal Services Commission to decide whether to fund it. That body can and sometimes does effectively second guess the judge’s direction by declining to authorise the instruction of an expert. Even when it agrees with the judge, the need to obtain, and the slowness in grant, of its authorisation is a frequent cause of substantial delay in the preparation of cases for trial. One has only to consider how much has to be done following the grant of authorisation to see why this is so. The expert has then to be instructed, he must be provided with all relevant papers and prosecution forensic science reports, and possibly be given access to original prosecution exhibits. Then he has to prepare his report and often confer with those instructing him.

135 Whenever there is a possible need for the instruction of expert witnesses on either side, the decision is for the court. It should be taken at the earliest possible stage and, in my strong view, in publicly funded cases, it should not be subject to further authorisation by the Legal Services Commission. Once a judge has directed that expert evidence is appropriate to authorise the instruction of an expert. Even when it agrees with the judge, the need to obtain, and the slowness in grant, of its authorisation is a frequent cause of substantial delay in the preparation of cases for trial. One has only to consider how much has to be done following the grant of authorisation to see why this is so. The expert has then to be instructed, he must be provided with all relevant papers and prosecution forensic science reports, and possibly be given access to original prosecution exhibits. Then he has to prepare his report and often confer with those instructing him.

136 In my view, the criminal courts’ power to control the admission of expert evidence should be formalised in the new Criminal Procedure Rules that I have recommended, and put on a similar footing to that for the civil courts as set out in the Civil Procedure Rules, Part 35, 1 and 4, namely by imposing upon them a duty, and declaring their power, to restrict expert evidence to that which is reasonably required to resolve any issue of importance in the proceedings.

I recommend that:

- criminal courts’ power to control the admission of expert evidence should be formalised in the new Criminal Procedure Rules that I have recommended, and put on a similar footing to that for the civil courts as set out in the Civil Procedure Rules, Part 35, 1 and 4, namely by imposing upon them a duty, and declaring their power, to restrict expert evidence to that which is reasonably required to resolve any issue of importance in the proceedings;

Response: ‘Considering further’

- judges and magistrates should rigorously apply the test governing that power and duty, and the Court of Appeal should support them;

Response: ‘Considering further’

- in publicly funded defence cases, where a judge or magistrates’ court has directed that it would be justifiable to call a defence expert, that direction should constitute authorisation for the expenditure of public money on an expert at a specified rate.

Response: ‘Considering further’

Manner of presentation of expert evidence

137 At the heart of this question is the seeming absurdity in our present system of entrusting to a tribunal, whether judge, magistrates or jury, unversed in a particular discipline the task of determining which of two conflicting experts is right. However, to hand over the decision to a single expert or body of experts would remove that part, possibly the crucial part, of the decision-making from the court. Lord Justice May ruminated on this central dilemma in an address to last year’s Annual Conference of the Expert Witness Institute, when citing the following passage from a seminal article of Judge Learned Hand in 1901:

‘The trouble with all this is that it is setting the jury to decide, where doctors disagree. The whole object of the expert is to tell the jury, not facts, as we have seen, but general truths derived from his specialised experience. But how can the jury judge between two statements each founded upon an experience confessedly foreign in kind to their own? It is just because they are incompetent for such a task that the expert is necessary at all… If you would get at the truth in such cases, it must be through someone competent to decide.’

That conviction of Judge Learned Hand led him to stop short, but only just, of removing the decision from the court. He turned instead to a removal of adversarial expert evidence, replacing it with a board of experts or a single expert on the assumption that, in all but exceptional cases, the court would adopt its or his advice in reaching its conclusion.

138 The same dilemma, most acutely present in an adversarial and jury system, and at its sharpest in criminal trials, has remained the subject of debate ever since, and is still unresolved. It has given rise to a large number of submissions in the Review, as did it in Lord Woolf’s Review of Civil Justice. Short of providing specialist courts of one sort or another for every discipline in which expert evidence may be required, the search is to find some compromise by which the court more closely controls the way in which expert evidence is put before it. It could be done by the court appointing or selecting a single expert or body of experts to advise it, or by more closely controlling the parties in the manner in which they deploy their own expert evidence.

139 A number of contributors to the Review have suggested that criminal courts should have power to appoint a court expert to give evidence to the exclusion of expert evidence on each side. Lord Woolf made such a recommendation in his interim report, but it did not find general support and he did not pursue it in his final report. Others have suggested that criminal courts should have similar powers to that in fact introduced in the Civil Procedure Rules, that the court should have power to direct that evidence is to be given by a single joint expert, leaving it only with a residual power of selection of the expert where the parties cannot agree who it should be. Where a civil court exercises that power, the practice is for the preparation of the joint expert’s report to be treated as the first step and, if one or other party is dissatisfied with it, then, subject to the court’s discretion, he should be allowed to call his own expert evidence.

The rule is, I believe, increasingly used. A recent survey of 500 experts has indicated that a single joint expert is being appointed in about 40% of cases. In the civil jurisdiction there may not be any Article 6 difficulties in a system of court-appointed or directed and selected experts, save that our adversarial process would probably entitle both sides to be actively involved in the process by which he prepares his report, for example, in submitting to interviews and having access to documents on which the report is based.

140 Interestingly, the Runciman Royal Commission, despite its drive to introduce a more inquisitorial flavour to the pre-
trial stage, showed little interest in court-appointed experts in criminal proceedings, either to the exclusion of parties’ experts or in addition to them. The overwhelming majority of the many contributors to this review were against it. Where the court has directed that expert evidence is appropriate, I too cannot see any scope for introduction to criminal trials of a system of court-appointed experts to the exclusion, even in the court’s discretion, of the right of each party to call its own expert evidence. Even without Article 6¹, it seems to me that there are fundamental difficulties in denying a criminal defendant that entitlement, particularly where the issue is highly controversial and central to the case and – I would add with Lord Bingham – whatever the weight of the case. He would have to instruct an expert to obtain advice as to whether to accept the court expert’s view and, if not, he would probably need his assistance for the purpose of cross-examining the court expert. Yet he would be unable, unless permitted by the judge, to call him to justify the points put in cross-examination or to give his contrary view on which they were based. To leave it to the judge’s discretion, as under the Civil Procedure Rules, would, I believe, result in most judges allowing the defendant, or the prosecution for that matter, to call their own expert witness – effectively making the provision a dead letter. Otherwise, the court-appointed or selected expert would effectively decide the issue and, depending on its importance, possibly the case.

141 Nor do I believe that it would be helpful for the court to appoint its own expert in addition to any expert witnesses called by the parties, since, in jury cases, the very nature of his appointment might suggest to a jury a greater authority than one or other or both of the parties’ experts. Accordingly, where there is an issue on a matter of importance on which expert evidence is required, I can see no justification for empowering the court to appoint or select an expert, whether or not it excludes either party from calling its own expert evidence. Of course, where there is no issue or one in which the parties are content that the matter should be resolved by a single expert, they should be encouraged to deal with it in that way, agreeing his report or a summary of it as part of the evidence in the case.

I recommend that:

• where there is an issue on a matter of importance on which expert evidence is required, the court should not have a power to appoint or select an expert, whether or not it excludes either party from calling its own expert evidence;

Response: ‘Considering further’

• where there is no issue, or there is one in which the parties are content that the matter should be resolved by a single expert, they should be encouraged to deal with it in that way, agreeing his report or a summary of it as part of the evidence in the case.

Response: ‘Considering further’

142 Two other, less controversial, aspects of simplifying the presentation of expert evidence to courts are advance mutual disclosure of experts’ reports and pre-trial meetings between them to identify and narrow what is in issue.

143 As to mutual disclosure, there is already detailed provision for it in rules made under section 81 of the Police Criminal Evidence Act 1984, corresponding broadly to Part 35, 10 and 13 of the Civil Procedure Rules. However, slowness in prosecution disclosure of expert evidence is a major cause of delay in many criminal trials. Until it is provided, the defence expert cannot get on with or complete his work, the preparation of the defence statement may have to wait and, in turn, secondary prosecution disclosure. The delays are in large part due to poor co-ordination between the police, the Crown Prosecution Service and the Forensic Science Service, the government agency responsible for providing prosecution expert witnesses. A second factor is the tendency of the police not to refer matters to the Forensic Science Service for examination unless and until they are sure the case is to be contested, a saving in money for the police but a negation of the advance disclosure system the object of which is to inform the defendant at the earliest of the nature and strength of the case he has to meet. A third factor is the time taken by the Forensic Science Service itself to prepare its reports. In fairness to the Service, the tight time constraints imposed by the present pre-trial programme and the increasing demands on its services do not help. But the result of all these factors is often serious delay to the mutual disclosure regime, unreadiness of both parties for the plea and directions hearing, necessitating a second hearing and a generally disorderly preparation for trial.

144 Under the present regime, it is not easy to find a sure solution. A start is the theme that permeates this Report, the need for closer co-ordination and less sectionalism among the various agencies responsible for the process of a case through the courts, in this case the police, the Crown Prosecution Service and the Forensic Science Service. To be fair to them, they have attempted, within the constraints of their individual budgets, to do something about it by entering into a tripartite agreement in June 1999 for better co-ordination of their working practices in this respect. Another step is to speed the flow of communication by greater use of electronic transfer of documents and for providing ready access to defence experts of original exhibits where required. Greater co-operation and joint efficiency at some individual cost at this stage of the proceedings could produce significant savings for all in the quicker resolution of issues and smoother progress to trial.

145 As to pre-trial meetings between experts¹⁰, this occasionally takes place on an informal basis with the agreement of both parties, but I believe it to be the exception rather than the rule. If the views expressed in the Review are representative, the reluctance to arrange such meetings comes mainly from the defence, not the prosecution or the expert witnesses themselves, both of whom urge it. Subject to proper safeguards of confidentiality as to undisclosable information on both sides, I strongly encourage it. It is obviously of great assistance to the court in the simplification of the expert evidence overall. And it can give no improper advantage to either party if they can discuss and identify in advance the extent of the likely issue between them when the matter goes to court. It is of particular importance where one side is proposing to use information technology for the presentation of some of its evidence, since there will need to be discussion of the system to be used, as well as of content of the evidence.

146 Two further questions are whether the court should be given a power to direct such discussion, which could be in person or over the telephone or by video-conferencing, similar to that which civil courts have under paragraph 35.12 of the Civil Procedure Rules, and who, if anyone, should be
present at or party to it in addition to the experts. As to the former, I consider that the court should have power to direct such discussions and, normally, to exercise it. It could be subject to the sort of conditions set out in CPR Part 35, 12, that the content of the discussions would not be divulged at the trial or the parties be bound by any agreement reached unless they, the parties, agree. As to who, if anyone, should be at such discussions in addition to the experts, I do not think it necessary or wise to be too prescriptive; much may depend on the nature and circumstances of the overall issue or issues and the relationship to them of the proposed expert evidence. I note that this has been the subject of much debate in the civil jurisdiction but, as yet, there is no all-purpose solution. It may be that this could be left for the specific direction of the judge in each case after hearing representations from both sides, as the Runciman Royal Commission appears to have considered when making a similar recommendation.

I recommend that:

- the prosecution and defence should normally arrange for their experts to discuss and jointly to identify at the earliest possible stage before the trial those issues on which they agree and those on which they do not agree, and to prepare a joint statement for use in evidence indicating the measure of their agreement and a summary of the reasons for their disagreement; and
- failing such an arrangement, the court should have power to direct such a discussion and identification of issues and preparation of a joint statement for use in evidence and to make any consequential directions as may be appropriate in each case.

Response: ‘Considering further. We will bring forward a comprehensive package of reforms to improve case preparation and management across the Criminal Justice System and will be considering these recommendations as part of that work.’

147 I have suggested a wide-ranging reconsideration of the rule against hearsay in criminal matters. It is of particular relevance to scientific evidence with its increasing reliance on the build-up of conclusions from electronic records and reports by others of their work. Most advocates co-operate sensibly on matters of continuity of treatment of exhibits and as to various stages of testing and/or analysis that have gone into producing a final report. There is provision of a conditional nature for the admission of such hearsay material in the Advance Notice of Evidence Rules and of the final reports themselves under section 30(1) Criminal Justice Act 1988; and the Runciman Royal Commission and the Law Commission have proposed some extension of it. Nevertheless, points, good and bad, can be taken on such minutiae, and unrepresented defendants have been known to spin out trials for weeks unjustifiably putting the prosecution to proof of everything in sight. The wide-ranging and fast-moving developments in information technology will have a particular impact in the field of expert evidence, its preparation and the way it is given. Just one of the matters for attention will be the admissibility, where the point is taken, of electronically transmitted certificates or other documents bearing a scanned copy of a signature. I am sure that there will be many others.

148 Other facilities of modern technology that are already well established are video-conferencing and the giving of evidence by video-link or, increasingly, via the internet. As they become more widely available, these new techniques should be used wherever possible for instructing and conferring with experts. And the law should be developed and facilities provided nationally to enable experts in appropriate cases to give evidence via one or other of these technologies at locations remote from the court and more convenient to them, for example, where their evidence is self-contained and does not turn on possible developments in other evidence in the course of the trial. Expert witnesses are particularly exposed to the vagaries of our listing system, which result in them committing themselves to court fixtures that are cancelled or delayed at the last moment, or which require them to spend much wasted time waiting around at court to give evidence. Anything that can be done, by more efficient preparation of cases for trial, greater use of fixed listing dates and by shorter or alternative ways of giving evidence, will make for better use of busy professionals’ time and a more respectable trial process.

I recommend:

- close attention in any further and general review of the rule against hearsay to the increasing reliance of forensic science laboratories and of many experts in certain disciplines on electronic recording, analysis and transmission of data;
- greater use by legal practitioners of video-conferencing and other developing new technology for communicating and conferring with experts in preparation for trial; and
- development of the law and the provision of national facilities to enable experts to give evidence by video-link or other new technologies in appropriate cases.

149 I leave the subject of experts by commenting, without recommendation, on a few miscellaneous matters that have prompted many submissions. The first is the practice of some defence solicitors of ‘shopping around’ for an expert who will support the defence case and not disclosing the reports of those who have reported unfavourably to it. The problem arises mainly in the cases of privately funded defences, not in the vast bulk of cases where the defence is publicly funded and there are tight financial constraints on such expenditure. There have been suggestions that the defence should be required to disclose all ‘unused’ expert reports of this sort. So long as our system remains adversarial, I can see no proper basis upon which the defence should be required to disclose material of this or any sort that is unfavourable to their case. There is undoubtedly a lack of parity between the prosecution and the defence in this respect, but that is a necessary consequence of where the burden of proof lies.

150 The second matter that has been the subject of considerable complaint by defence solicitors and experts is the low level of publicly funded experts’ fees. I have had a look at the current scales, and, without going into detail on the figures, they are meagre for professional men in any discipline. I am not surprised that solicitors complain that they have often had difficulty in finding experts of good calibre who are prepared to accept instructions for such poor return. The best expert witness in most cases is likely to be
one who practises, as well as giving expert evidence, in his discipline, rather than the ‘professional’ expert witness – one who does little else. Justice is best served by attracting persons of a high level of competence and experience to this work. If we expect them to acknowledge an overriding duty to the court and to develop and maintain high standards of accreditation, they should be properly paid for the job. I hope that the Legal Services Commission will take an early opportunity to review and raise appropriately the levels of their publicly funded remuneration.11

11 Finally, I state the obvious in urging the judiciary, magistracy and criminal practitioners to maintain and, where possible, improve their familiarity with the more common aspects of forensic science that engage the courts. If we expect experts to raise their act in the manner of presentation of their evidence, the least we can do is complement and assist their task by ensuring a basic level of understanding of what they are talking about. I am conscious that much is already being done in this field, most recently, for example, in presentations by the Forensic Science Society on DNA evidence to the Judicial Studies Board and publication of a guide on the subject.

Footnotes
1 The full report is available on the Review’s website, http://www.criminal-courts-review.org.uk, or from the HMSO, price £45.
2 The suggestion that the various expert witness organisations should amalgamate with the CRFP seems unlikely to be adopted. Even the Head of Civil Justice, Lord Phillips, has labelled it ‘over-ambitious’. The main difficulty is that the CRFP aims to be a regulatory body and nothing more than that, whereas the Academy, the Institute and the Society each fulfil other functions (the Society exclusively so). On the other hand, Lord Phillips has also said that he would welcome a reduction in the number of expert witness organisations, and this might yet come about if two or more of them were to merge.
3 The full text of Part 35 is set out in another factsheet in this series – Factsheet 35: Experts and Assessors.
4 For a fuller discussion of the nature of expert evidence, see Factsheet 2 in this series.
5 See Factsheet 3 for the recommendation Lord Woolf made concerning expert evidence in civil proceedings.
6 CPR Part 35.7.
7 For a fuller account of this topic, see Factsheet 44: The Single Joint Expert.
8 The reference here is to Article 6 of the European Convention on Human Rights, which was incorporated into English law by the Human Rights Act 1998.
9 Article 6(3) of the Convention guarantees to a defendant the right not only to cross-examine witnesses, but to call and examine his own witnesses under the same conditions.
10 For a fuller account of this topic, see Factsheet 23: Meetings of Experts.
11 Lord Justice Auld would appear to have overlooked the fact that, whereas the Legal Services Commission (LSC) meets the cost of reports written by experts in cases where the defence is publicly funded, it is the Ministry of Justice (MoJ, formerly the Department for Constitutional Affairs and before that the Lord Chancellor’s Department) that is responsible for paying experts for the evidence they give in court – and the MoJ’s rates are just as niggardly as those of the LSC. For further details, see Factsheet 9: Payment of Expert Witnesses in Criminal Cases, and Factsheet 11: Expert Witness Allowances in Criminal Cases.