

## Disclosure

**Alison Saunders, out-going Director of Public Prosecutions, has described ‘Disclosure’ as a systemic problem that has been around for years. It is good to see that this issue is at last being looked at, and hopefully addressed.**

At KBC, we are specifically concerned about the way in which forensic findings are brought before courts. Although strictly speaking the Streamlined Forensic Reporting Stage 1 (SFR1) process falls outside of disclosure, it is the route by which forensic findings are initially presented. Given the weight attached to forensic evidence, it is important to understand the SRF1 process and its limitations.

### **1. An SFR1 cannot be adduced as a Section 10 admission unless you and your client accept the findings.**

The CPS guidance on what an SFR1 is is mixed, referring to it as both a summary of the forensic evidence and, in the same breath, as being a form completed by police staff, with no input from a forensic expert at all. So how much forensic **evaluation** of the evidence in the context of the case has taken place?

### **2. The strength of SFR1 findings can reduce following further forensic work.**

In a number of cases, as we have reported previously, work undertaken by KBC has shown that the **evidential** value of the forensic evidence assumed in the SFR1 is less than first perceived. For example, a compelling fingerprint match became evidence to support the defendant’s account when the location and placement activity were considered.

### **3. The evidential value of an SFR1 DNA match report will sit on a scale of significance from extremely strong to none.**

An SFR1 DNA match report provides the results of a test only. All too often the criminal justice system seems to leap incorrectly from: *defendant’s DNA present, to: therefore must have committed the crime.* Contextual issues in relation to DNA profiling evidence are set out in a publication (November 2017) by The Royal Society, ‘Primer: Forensic DNA analysis’.



### **4. Mobile phone data—too much to be disclosed?**

Given that analysis of computer hard drives containing vastly more data is routine, this argument does not appear to be sustainable. Forensic tools have evolved, as have the skills to search electronic data. Furthermore, if they are to secure the work to prepare a report for the defence, experts must propose a justifiable, focussed and probative approach to their instructing solicitors and, where applicable, to the Legal Aid Agency.

We look forward to the findings of the House of Commons Select Committee on Justice on Disclosure.

### **GDPR consent:**

### **how would you like to receive your newsletter?**

If you prefer to receive our newsletter by email, you will need to sign up via the link in the footer of our website home page.

We only send out 2 newsletters each year and occasional updates about unusual cases or events that may be of interest to you. And we will not share your data with third parties.

## Death by careless driving

**In the circumstances of a fatal accident and a subsequent charge of death by careless driving, it can appear almost impossible to show that the driver was not careless.**

In one such case, the driver of a heavily laden vehicle was approaching traffic lights at a junction within the 30 mph speed limit. At about 40 metres from the stop line, the traffic lights changed to amber against him and the driver took the decision to proceed. When his vehicle was 15-16m from the junction a cyclist started to cross the road, even though the pedestrian lights were still displaying a red man, and a fatal collision occurred.

KBC's Michael Prime was involved throughout the case and was able to show that the driver's decision to proceed on amber rather than apply emergency braking was not careless in the circumstances.

This subsequently led to a joint report with the police collision investigator and a trial at which the Judge intervened after the prosecution evidence had been presented, and, ultimately, a not guilty verdict recorded. The barrister commented that ***Mr Prime was 'excellent in all respects—a very professional witness.'***

KBC's road incident investigation team accepts instructions funded by insurance companies, privately or by legal aid authorities. If you think we can help with one of your cases, please call us.



### @KBCalison

You can follow Keith Borer Consultants on Twitter for up to date details of CPD training seminars for solicitors and barristers, links to news articles and case excerpts that may be useful to your case.

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