



Better Case Management (BCM) Newsletter

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Welcome to the first newsletter of 2017 in which I explain how SFR fits with BCM.

Streamlined Forensic Reporting

Streamlined Forensic Reporting (SFR) is a reporting system for forensic evidence which provides national consistency. It was introduced in 2012. The underlying rationale is to avoid the costs and delays that follow when full scientific evidence is secured, only then not to be used in court because it is not disputed. The SFR process ensures only contested forensic evidence is fully prepared for introduction during the trial. It is a simple process whereby the participants identify and agree which issues are contested.

Expert evidence is often complex, time consuming and costly to produce. Sometimes – far too often – it is sought without establishing whether it is properly required or not. This self-evidently wastes significant resources, both time and cost, but equally seriously it leads to delays, to the prejudice of our justice system.

The aim of the SFR process is, eventually, to replace the myriad of forms and statements seen in the Criminal Justice System (CJS) by one simple and clearly defined process.

The SFR process has been designed to achieve the requirements of CrimPR case management r 3.2 and 3.3 and r 3.2 (e), and particularly that of *ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way*. There is emphasis in CrimPR19.3(1) for the service of an SFR and CrimPR 19.3(2) makes provision for the response.

This allows for lengthy and complicated evidence to be presented in a concise and user-friendly format, facilitating an early indication as to what parts of the case are agreed or contested, as part of the case management process.

This SFR procedure is supported by the Ministry of Justice, the defence, the CPS and the police, enabling evidence to be presented swiftly. It critically supports BCM, by presenting evidence in a manner which is 'fair and proportionate' to the needs of the case.

SFR is a two-staged process, as described below.

The **SFR Stage 1 (SFR1 - MG22b)** involves the provision of a short report, written by the relevant provider, which gives the initial key findings. This is **not** a witness statement nor an expert's report, which would require the level of detail specified in CrimPR r19.3(3).

The SFR1 is sufficient for charging purposes and case management hearings, including the Plea and Trial Preparation Hearing (PTPH). It is a summary of the relevant evidence, and it provides, for instance, the foundation for a section 10 admission or assistance to the defence in identifying the real issues for the trial.

When the evidence is critical to the case, the SFR1 will be included in the **Initial Details of the Prosecution Case** (IDPC) at the first hearing.

As the SFR1 is a summary of an expert's conclusion served under CrimPR 19.3(1), it is deliberately **not** presented in an admissible format as it is **not** intended to be presented at trial. Therefore, the SFR1 will not contain an expert's declaration under CrimPR 19.4(j) and the 2015 Criminal Practice Directions 19B. This is because, for example, the scientists or experts preparing the SFR1 may not have been asked to conduct a full analysis of the exhibits and they may not have performed a detailed evaluation. Indeed, the SFR1 may be completed not by scientists or other experts, but instead by members of the police, or other staff, who enter the relevant findings onto the form.

In light of the above, those preparing the SFR1 should **not** be warned to attend court. In addition, a new form, the MG22(a), is being introduced to alert the court whenever there is a potential "significant risk" (or failure) as regards the forensic analysis under CrimPR 1.2 or CrimPR 19.2 (the participants or expert must immediately inform the court in these circumstances). The prosecution is concerned in this context to prevent the wrong witnesses from being required to attend court, and defence representatives are requested to follow the correct process and not to warn inappropriate witnesses.

The SFR 1 requests that the defence identify any real issue in relation to the evidence, such that an admission cannot be made, at the "earliest possible stage." This duty is created by CrimPR 3.2 and 3.3 (each party must ensure a timely identification of the issues in the case). If early engagement and communication, as required under BCM, takes place it is hoped this will be prior to the PTPH, so that any issues can be resolved and there is an effective hearing. The Legal Aid Agency has confirmed that when an SFR1 results in agreement as to forensic issues, the SFR1 will be treated as Pages of Prosecution Evidence (PPE).

Where the SFR1 is not agreed, the process set out in CrimPR 19.3(2) must be followed. That provides that the defence must serve a response stating which, if any, of the expert's conclusions are admitted and which are disputed. This requirement involves the defendant explaining why he or she does not accept the conclusions in the SFR1. For example, a defendant whose DNA has been reported as matching DNA in material found at the scene in the SFR1 may accept matching DNA was found but he or she may nonetheless dispute they are guilty of the offence. The aim in these circumstances is to obtain agreement that the DNA originated from the accused, to enable the trial to focus on how the accused's

DNA came to be at the scene. On some occasions, the prosecution and defence DNA experts will need to work together ahead of the trial.

At the **SFR Stage 2 (SFR2)**, a form is produced to answer the issue(s) raised by the defence in response to the SFR1. CrimPR 19.3(3) sets out the process for service of an expert's SFR 2. SFR2 evidence is prepared by the relevant person or expert, and it is presented in witness statement format with an expert's declaration under CrimPR 19.4(j) and the 2015 Criminal Practice Directions 19B, if required. These witnesses can be warned to attend the forthcoming trial if their evidence is not agreed.

Where expert evidence is not agreed, the 2015 Criminal Practice Directions 19C requires the parties to consider, at an early stage, whether it would be useful to hold an experts' discussion. Standard directions for this to take place are set out in the PTPH Form.

SFR1 is now routinely used for:

- Fingerprint identification;
- DNA matches;
- Footwear comparison;
- Drug identification, purity and valuation; and
- Toxicology.

Next Steps.

The SFR process is being developed to incorporate an increased number of scientific and non-scientific evidence types.

In January, a pilot commenced in Yorkshire and Humberside which will introduce SFR into 'Biology Case Work'. This will see the SFR process of case management expanded into more evaluative and opinion-based biology evidence.

SFR BENEFITS

Some of the identified benefits for the courts, police, prosecution and defence are outlined below.

BENEFITS TO THE COURT INCLUDE:

- Evidence provided in an SFR format facilitates case management and the early identification of the real issues in the case.
- Increased early guilty pleas.
- Reduction in delays, avoiding additional expert evidence being requested in circumstances when

it is not needed.

- Swifter resolution of cases involving expert evidence.
- Allowing prosecution and defence experts to work together at the earliest opportunity, ensuring only genuinely contested issues are raised at trial.
- Enabling the court to address prosecution and defence submissions on suggested relevant material.

BENEFITS TO THE POLICE INCLUDE:

- Fewer officers and staff need to attend court as witnesses due to increased early guilty pleas.
- Reduced forensic science costs. Cases are prepared on the basis of real requirements, which do not include unnecessary expert evidence.
- Allowing forensic scientists to focus on the real issues.
- Avoids full expert evidence being prepared when an early guilty plea is expected.
- Quicker and more succinct scientific information.

BENEFITS TO PROSECUTION INCLUDE:

- The SFR Stage 1 report provides key expert evidence in a way that makes it easily understood.
- SFR material is suitable for digital transmission.

BENEFITS TO THE DEFENCE INCLUDE:

- Early provision of SFR evidence allows the defence to advise their client on the basis of a firm understanding of a potentially important area in the case.
- Enables the defendant in many cases to enter an appropriate plea at the first hearing.
- Helps ensure the defendant receives full discount for his or her plea.
- Enables the defence to raise specific issues in respect of forensic evidence.
- Prevents unnecessary delays.

I hope that by explaining the processes and benefits of this procedure, the judiciary and the parties will be best placed to use the SFR system appropriately and in accordance with the CrimPR, in order to prevent the failures noted in the recently published annual report by Dr Gillian Tully, the Forensic Science Regulator.

This is my last update as SPJ, and I extend my thanks to you all for helping further the aims and objectives of BCM.

Lord Justice Fulford

Senior Presiding Judge for England and Wales

Further Information

More information on BCM can be found at Judiciary.gov.uk

The Forensic Science Regulator's annual report can be found at <https://www.gov.uk/government/publications/forensic-science-regulator-annual-report-2016>