Thoughts for the workshop from Sam Stein KC

From what I have read and also seen of the consultation itself and submissions it looks as though there is general agreement that something must be done i.e. we need to find a way to ensure that the product of computer generated evidence is sufficiently reliable.

BUT: The Criminal Courts are a mess, cases are being set for 2028, there are huge delays in charging with suspects being bailed under investigation (RIU – released under investigation) for years in big cases where there will often be computer generated material. Defendants released on bail who have trial dates often find that their case dates are changed due to courts incapacity to get to their trial. The Criminal Bar has seen people retiring, changing their work practice to the point that there is now a shortage of criminal practitioners. Barristers with caring responsibilities find it very hard to sustain a 'full' on criminal practice if they have to, for example. travel from London to Bedford to do a case and the judge wants to 'sit a bit later to finish this witness' which means that child care is thrown into havoc. Judges are not always allowed to sit the full days they would want, Recorders (part time judges) are underutilised. Victims of incredibly serious offences, sexual assaults, rape, violence, stalking, harassment and threatening behaviour are left for years before they are heard. Sentencing has become meaningless when real mitigation is available from the fact of huge delays caused by the system. Barristers pay is low, the working life chaotic and we already have to do fill out numerous forms and provide analytical documents for many cases which we end up not being able to do.

The prospect of adding into the dreadful state of our courts yet another layer of complex case management fills me with some horror. Many cases include cell site analysis, DNA analysis, telephone records, bank statements etc and so anything that is done in this area to try and ensure that computer generated evidence is reliable needs to be as simple as possible.

To assist your thinking I would say that the majority of computer generated material comes from particular sources:

- Banking data – from Banks (there are more than when we had the 'big four') but their systems must be very similar.
- Mobile Telephone data – several companies but many share or 'buy' their lines from the bigger companies
- DNA analysis – there must be a limited range of standardised software used for this analysis

But as I have learned from the Post Office Inquiry the systems change, oversight gets sloppier and bugs can multiply so there needs to be constant review – some type of regulator?

Lastly, I have started to think that where a case is wholly or substantially based on computer generated evidence that lacks any independent verification then a court/jury should be given a warning about the danger of making a decision where the main stay of the evidence is generated by a computer.

All best

Sam