

## PART 33

### EXPERT EVIDENCE

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#### When this Part applies

**33.1.**—(1) This Part applies where a party wants to introduce expert opinion evidence.

(2) A reference to an 'expert' in this Part is a reference to a person who is required to give or prepare expert evidence for the purpose of criminal proceedings, including evidence required to determine fitness to plead or for the purpose of sentencing.

*[Note. Expert medical evidence may be required to determine fitness to plead under section 4 of the Criminal Procedure (Insanity) Act 1964(a). It may be required also under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(b), under Part III of the Mental Health Act 1983(c) or under Part 12 of the Criminal Justice Act 2003(d). Those Acts contain requirements about the qualification of medical experts.]*

#### Expert's duty to the court

**33.2.**—(1) An expert must help the court to achieve the overriding objective by giving opinion which is—

- (a) objective and unbiased; and
- (b) within the expert's area or areas of expertise.

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

(3) This duty includes obligations—

- (a) to define the expert's area or areas of expertise—
  - (i) in the expert's report, and
  - (ii) when giving evidence in person;
- (b) when giving evidence in person, to draw the court's attention to any question to which the answer would be outside the expert's area or areas of expertise; and

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(a) 1964 c. 84; section 4 was substituted, together with section 4A, for section 4 as originally enacted, by section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and amended by section 22 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(b) 2000 c. 6.

(c) 1983 c. 20.

(d) 2003 c. 44.

- (c) 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.

### Introduction of expert evidence

**33.3.**—(1) A party who wants another party to admit as fact a summary of an expert's conclusions must serve that summary—

- (a) on the court officer and on each party from whom that admission is sought;
- (b) as soon as practicable after the defendant whom it affects pleads not guilty.

(2) A party on whom such a summary is served must—

- (a) serve a response stating—
  - (i) which, if any, of the expert's conclusions are admitted as fact, and
  - (ii) where a conclusion is not admitted, what are the disputed issues concerning that conclusion; and
- (b) serve the response—
  - (i) on the court officer and on the party who served the summary,
  - (ii) as soon as practicable, and in any event not more than 14 days after service of the summary.

(3) A party who wants to introduce expert evidence otherwise than as admitted fact must—

- (a) serve a report by the expert which complies with rule 33.4 on—
  - (i) the court officer, and
  - (ii) each other party;
- (b) serve the report as soon as practicable, and in any event with any application in support of which that party relies on that evidence;
- (c) serve with the report notice of anything of which the party serving it is aware which might reasonably be thought capable of detracting substantially from the credibility of that expert;
- (d) if another party so requires, give that party a copy of, or a reasonable opportunity to inspect—
  - (i) a record of any examination, measurement, test or experiment on which the expert's findings and opinion are based, or that were carried out in the course of reaching those findings and opinion, and
  - (ii) anything on which any such examination, measurement, test or experiment was carried out.

(4) Unless the parties otherwise agree or the court directs, a party may not—

- (a) introduce expert evidence if that party has not complied with paragraph (3);
- (b) introduce in evidence an expert report if the expert does not give evidence in person.

*[Note. A party who accepts another party's expert's conclusions may admit them as fact under section 10 of the Criminal Justice Act 1967(a).*

*Under section 81 of the Police and Criminal Evidence Act 1984(b), and under section 20(3) of the Criminal Procedure and Investigations Act 1996(c), Criminal Procedure Rules may require the disclosure of expert evidence before it is introduced as part of a party's case and prohibit its introduction without the court's permission, if it was not disclosed as required.*

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(a) 1967 c. 80.

(b) 1984 c. 60; section 81 was amended by section 109(1) of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c. 39).

(c) 1996 c. 25; section 20(3) was amended by section 109(1) of, and paragraph 378 of Schedule 8 to, the Courts Act 2003 (c. 39).

*Under section 30 of the Criminal Justice Act 1988(a), an expert report is admissible in evidence whether or not the person who made it gives oral evidence, but if that person does not give oral evidence then the report is admissible only with the court's permission.]*

### Content of expert's report

**33.4.** Where rule 33.3(3) applies, an expert's report must—

- (a) give details of the expert's qualifications, relevant experience and accreditation;
- (b) give details of any literature or other information which the expert has relied on in making the report;
- (c) contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert's own knowledge;
- (e) say who carried out any examination, measurement, test or experiment which the expert has used for the report and—
  - (i) give the qualifications, relevant experience and accreditation of that person,
  - (ii) say whether or not the examination, measurement, test or experiment was carried out under the expert's supervision, and
  - (iii) summarise the findings on which the expert relies;
- (f) where there is a range of opinion on the matters dealt with in the report—
  - (i) summarise the range of opinion, and
  - (ii) give reasons for the expert's own opinion;
- (g) if the expert is not able to give an opinion without qualification, state the qualification;
- (h) include such information as the court may need to decide whether the expert's opinion is sufficiently reliable to be admissible as evidence;
  - (i) contain a summary of the conclusions reached;
  - (j) contain a statement that the expert understands an expert's duty to the court, and has complied and will continue to comply with that duty; and
  - (k) contain the same declaration of truth as a witness statement.

*[Note. Part 27 contains rules about witness statements. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(b). Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the Criminal Justice Act 2003(c).]*

### Expert to be informed of service of report

**33.5.** A party who serves on another party or on the court a report by an expert must, at once, inform that expert of that fact.

### Pre-hearing discussion of expert evidence

**33.6.—**(1) This rule applies where more than one party wants to introduce expert evidence.

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- (a) 1988 c. 33; section 30 was amended by section 47 of, and paragraph 32 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and paragraph 60 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).
  - (b) 1967 c. 80; section 9 was amended by section 56 of, and paragraph 49 of Schedule 8 to, the Courts Act 1971 (c. 23), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.
  - (c) 2003 c. 44; section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, S.I. 2004/2035.

- (2) The court may direct the experts to—
- (a) discuss the expert issues in the proceedings; and
  - (b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.
- (3) Except for that statement, the content of that discussion must not be referred to without the court's permission.
- (4) A party may not introduce expert evidence without the court's permission if the expert has not complied with a direction under this rule.

*[Note. At a pre-trial hearing, a court may make binding rulings about the admissibility of evidence and about questions of law under section 9 of the Criminal Justice Act 1987(a); sections 31 and 40 of the Criminal Procedure and Investigations Act 1996(b); and section 8A of the Magistrates' Courts Act 1980(c).]*

### **Court's power to direct that evidence is to be given by a single joint expert**

- 33.7.**—(1) Where more than one defendant wants to introduce expert evidence on an issue at trial, the court may direct that the evidence on that issue is to be given by one expert only.
- (2) Where the co-defendants cannot agree who should be the expert, the court may—
- (a) select the expert from a list prepared or identified by them; or
  - (b) direct that the expert be selected in another way.

### **Instructions to a single joint expert**

- 33.8.**—(1) Where the court gives a direction under rule 33.7 for a single joint expert to be used, each of the co-defendants may give instructions to the expert.
- (2) A co-defendant who gives instructions to the expert must, at the same time, send a copy of the instructions to each other co-defendant.
- (3) The court may give directions about—
- (a) the payment of the expert's fees and expenses; and
  - (b) any examination, measurement, test or experiment which the expert wishes to carry out.
- (4) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.
- (5) Unless the court otherwise directs, the instructing co-defendants are jointly and severally liable for the payment of the expert's fees and expenses.

### **Court's power to vary requirements under this Part**

- 33.9.**—(1) The court may extend (even after it has expired) a time limit under this Part.
- (2) A party who wants an extension of time must—
- (a) apply when serving the report, summary or notice for which it is required; and

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(a) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by section 45 of the Criminal Justice Act 2003 (c. 44) is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

(b) 1996 c. 25; section 31 was amended by sections 310, 331 and 332 of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(c) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (b) explain the delay.