

PART 35

EXPERTS AND ASSESSORS

CONTENTS OF THIS PART

| | |
|---|------------|
| Duty to restrict expert evidence | Rule 35.1 |
| Interpretation | Rule 35.2 |
| Experts – overriding duty to the court | Rule 35.3 |
| Court’s power to restrict expert evidence | Rule 35.4 |
| General requirement for expert evidence to be given in a written report | Rule 35.5 |
| Written questions to experts | Rule 35.6 |
| Court’s power to direct that evidence is to be given by a single joint expert | Rule 35.7 |
| Instructions to a single joint expert | Rule 35.8 |
| Power of court to direct a party to provide information | Rule 35.9 |
| Contents of report | Rule 35.10 |
| Use by one party of expert’s report disclosed by another | Rule 35.11 |
| Discussions between experts | Rule 35.12 |
| Consequence of failure to disclose expert’s report | Rule 35.13 |
| Expert’s right to ask court for directions | Rule 35.14 |
| Assessors | Rule 35.15 |

DUTY TO RESTRICT EXPERT EVIDENCE

- 35.1 | Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

INTERPRETATION

- 35.2 | A reference to an ‘expert’ in this Part is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings.

EXPERTS – OVERRIDING DUTY TO THE COURT

- 35.3 |
- (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.

COURT'S POWER TO RESTRICT EXPERT EVIDENCE

- 35.4
- (1) No party may call an expert or put in evidence an expert's report without the court's permission.
 - (2) When a party applies for permission under this rule he must identify –
 - (a) the field in which he wishes to rely on expert evidence; and
 - (b) where practicable the expert in that field on whose evidence he wishes to rely.
 - (3) If permission is granted under this rule it shall be in relation only to the expert named or the field identified under paragraph (2).
 - (4) The court may limit the amount of the expert's fees and expenses that the party who wishes to rely on the expert may recover from any other party.

GENERAL REQUIREMENT FOR EXPERT EVIDENCE TO BE GIVEN IN A WRITTEN REPORT

- 35.5
- (1) Expert evidence is to be given in a written report unless the court directs otherwise.
 - (2) If a claim is on the fast track, the court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

WRITTEN QUESTIONS TO EXPERTS

- 35.6
- (1) A party may put to –
 - (a) an expert instructed by another party; or
 - (b) a single joint expert appointed under rule 35.7, written questions about his report.
 - (2) Written questions under paragraph (1) –
 - (a) may be put once only;
 - (b) must be put within 28 days of service of the expert's report; and
 - (c) must be for the purpose only of clarification of the report, unless in any case –
 - (i) the court gives permission; or
 - (ii) the other party agrees.
 - (3) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.
 - (4) Where –
 - (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
 - (b) the expert does not answer that question,

the court may make one or both of the following orders in relation to the party who instructed the expert –

- (i) that the party may not rely on the evidence of that expert; or
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

COURT'S POWER TO DIRECT THAT EVIDENCE IS TO BE GIVEN BY A SINGLE JOINT EXPERT

- 35.7
- (1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.
 - (2) The parties wishing to submit the expert evidence are called 'the instructing parties'.
 - (3) Where the instructing parties cannot agree who should be the expert, the court may –
 - (a) select the expert from a list prepared or identified by the instructing parties; or
 - (b) direct that the expert be selected in such other manner as the court may direct.

INSTRUCTIONS TO A SINGLE JOINT EXPERT

- 35.8
- (1) Where the court gives a direction under rule 35.7 for a single joint expert to be used, each instructing party may give instructions to the expert.
 - (2) When an instructing party gives instructions to the expert he must, at the same time, send a copy of the instructions to the other instructing parties.
 - (3) The court may give directions about –
 - (a) the payment of the expert's fees and expenses; and
 - (b) any inspection, examination or experiments which the expert wishes to carry out.
 - (4) The court may, before an expert is instructed –
 - (a) limit the amount that can be paid by way of fees and expenses to the expert; and
 - (b) direct that the instructing parties pay that amount into court.
 - (5) Unless the court otherwise directs, the instructing parties are jointly and severally liable^(GL) for the payment of the expert's fees and expenses.

POWER OF COURT TO DIRECT A PARTY TO PROVIDE INFORMATION

- 35.9
- Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to –

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the other party.

CONTENTS OF REPORT

- 35.10
- (1) An expert's report must comply with the requirements set out in the relevant practice direction.
 - (2) At the end of an expert's report there must be a statement that –
 - (a) the expert understands his duty to the court; and
 - (b) he has complied with that duty.
 - (3) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.
 - (4) The instructions referred to in paragraph (3) shall not be privileged^(GL) against disclosure but the court will not, in relation to those instructions –
 - (a) order disclosure of any specific document; or
 - (b) permit any questioning in court, other than by the party who instructed the expert,
 unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete.

USE BY ONE PARTY OF EXPERT'S REPORT DISCLOSED BY ANOTHER

- 35.11
- Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial.

DISCUSSIONS BETWEEN EXPERTS

- 35.12
- (1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to –
 - (a) identify and discuss the expert issues in the proceedings; and
 - (b) where possible, reach an agreed opinion on those issues.
 - (2) The court may specify the issues which the experts must discuss.
 - (3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing –
 - (a) those issues on which they agree; and
 - (b) those issues on which they disagree and a summary of their reasons for disagreeing.
 - (4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.
 - (5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

CONSEQUENCE OF FAILURE TO DISCLOSE EXPERT'S REPORT

- 35.13 | A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the court gives permission.

EXPERT'S RIGHT TO ASK COURT FOR DIRECTIONS

- 35.14 |
- (1) An expert may file a written request for directions to assist him in carrying out his function as an expert.
 - (2) An expert must, unless the court orders otherwise, provide a copy of any proposed request for directions under paragraph (1)–
 - (a) to the party instructing him, at least 7 days before he files the request; and
 - (b) to all other parties, at least 4 days before he files it.
 - (3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

ASSESSORS

- 35.15 |
- (1) This rule applies where the court appoints one or more persons (an 'assessor') under section 70 of the Supreme Court Act 1981⁵¹ or section 63 of the County Courts Act 1984⁵².
 - (2) The assessor shall assist the court in dealing with a matter in which the assessor has skill and experience.
 - (3) An assessor shall take such part in the proceedings as the court may direct and in particular the court may –
 - (a) direct the assessor to prepare a report for the court on any matter at issue in the proceedings; and
 - (b) direct the assessor to attend the whole or any part of the trial to advise the court on any such matter.
 - (4) If the assessor prepares a report for the court before the trial has begun –
 - (a) the court will send a copy to each of the parties; and
 - (b) the parties may use it at trial.
 - (5) The remuneration to be paid to the assessor for his services shall be determined by the court and shall form part of the costs of the proceedings.
 - (6) The court may order any party to deposit in the court office a specified sum in respect of the assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.
 - (7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.

51 1981 c.54.

52 1984 c.28. Section 63 was amended by S.I. 1998/2940.