

PRACTICE DIRECTION – EXPERTS AND ASSESSORS

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 35

Part 35 is intended to limit the use of oral expert evidence to that which is reasonably required. In addition, where possible, matters requiring expert evidence should be dealt with by a single expert. Permission of the court is always required either to call an expert or to put an expert's report in evidence.

EXPERT EVIDENCE – GENERAL REQUIREMENTS

- 1.1 It is the duty of an expert to help the court on matters within his own expertise: rule 35.3(1). This duty is paramount and overrides any obligation to the person from whom the expert has received instructions or by whom he is paid: rule 35.3(2).
- 1.2 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.
- 1.3 An expert should assist the court by providing objective, unbiased opinion on matters within his expertise, and should not assume the role of an advocate.
- 1.4 An expert should consider all material facts, including those which might detract from his opinion.
- 1.5 An expert should make it clear:
 - (a) when a question or issue falls outside his expertise; and
 - (b) when he is not able to reach a definite opinion, for example because he has insufficient information.
- 1.6 If, after producing a report, an expert changes his view on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

FORM AND CONTENT OF EXPERT'S REPORTS

- 2.1 An expert's report should be addressed to the court and not to the party from whom the expert has received his instructions.
- 2.2 An expert's report must:
 - (1) give details of the expert's qualifications;
 - (2) give details of any literature or other material which the expert has relied on in making the report;
 - (3) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;

- (4) make clear which of the facts stated in the report are within the expert's own knowledge;
 - (5) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
 - (6) where there is a range of opinion on the matters dealt with in the report–
 - (a) summarise the range of opinion, and
 - (b) give reasons for his own opinion;
 - (7) contain a summary of the conclusions reached;
 - (8) if the expert is not able to give his opinion without qualification, state the qualification; and
 - (9) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty.
- 2.3 An expert's report must be verified by a statement of truth as well as containing the statements required in paragraph 2.2(8) and (9) above.
- 2.4 The form of the statement of truth is as follows:
- ‘I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.’
- 2.5 Attention is drawn to rule 32.14 which sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.
- (For information about statements of truth see Part 22 and the practice direction which supplements it.)
- 2.6 In addition, an expert's report should comply with the requirements of any approved expert's protocol.

INFORMATION

- 3 Under Rule 35.9 the court may direct a party with access to information which is not reasonably available to another party to serve on that other party a document which records the information. The document served must include sufficient details of all the facts, tests, experiments and assumptions which underlie any part of the information to enable the party on whom it is served to make, or to obtain, a proper interpretation of the information and an assessment of its significance.

INSTRUCTIONS

- 4 The instructions referred to in paragraph 1.2(8) will not be protected by privilege (see rule 35.10(4)). But cross-examination of the expert on the contents of his instructions will not be allowed unless the court permits it (or unless the party who gave the instructions consents to it). Before it gives permission the court must be satisfied that there are reasonable grounds to consider that the statement in the report of the substance of the instructions is inaccurate or incomplete. If the court is so satisfied, it will allow the cross-examination where it appears to be in the interests of justice to do so.

QUESTIONS TO EXPERTS

- 5.1 Questions asked for the purpose of clarifying the expert's report (see rule 35.6) should be put, in writing, to the expert not later than 28 days after receipt of the expert's report (see paragraphs 1.2 to 1.5 above as to verification).
- 5.2 Where a party sends a written question or questions direct to an expert, a copy of the questions should, at the same time, be sent to the other party or parties.
- 5.3 The party or parties instructing the expert must pay any fees charged by that expert for answering questions put under rule 35.6. This does not affect any decision of the court as to the party who is ultimately to bear the expert's costs.

SINGLE EXPERT

- 6 Where the court has directed that the evidence on a particular issue is to be given by one expert only (rule 35.7) but there are a number of disciplines relevant to that issue, a leading expert in the dominant discipline should be identified as the single expert. He should prepare the general part of the report and be responsible for annexing or incorporating the contents of any reports from experts in other disciplines.

ASSESSORS

- 7.1 An assessor may be appointed to assist the court under rule 35.15. Not less than 21 days before making any such appointment, the court will notify each party in writing of the name of the proposed assessor, of the matter in respect of which the assistance of the assessor will be sought and of the qualifications of the assessor to give that assistance.
- 7.2 Where any person has been proposed for appointment as an assessor, objection to him, either personally or in respect of his qualification, may be taken by any party.

- 7.3 Any such objection must be made in writing and filed with the court within 7 days of receipt of the notification referred to in paragraph 6.1 and will be taken into account by the court in deciding whether or not to make the appointment (section 63(5) of the County Courts Act 1984).
- 7.4 Copies of any report prepared by the assessor will be sent to each of the parties but the assessor will not give oral evidence or be open to cross-examination or questioning.