

See also [Part 35](#)

PRACTICE DIRECTION [35](#) – EXPERTS AND ASSESSORS This Practice Direction supplements CPR Part 35

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Introduction

1

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 only one

expert. Experts and those instructing them are expected to have regard to the guidance contained in the Protocol for the Instruction of Experts to give Evidence in Civil Claims annexed to this practice direction. (Further guidance on experts is contained in Annex C to the Practice Direction (Pre-Action Conduct)).



Expert Evidence – General Requirements

2.1

Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

2.2

Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

2.3

Experts should consider all material facts, including those which might detract from their opinions.

2.4

Experts should make it clear –

(a) when a question or issue falls outside their expertise; and

(b) when they are not able to reach a definite opinion, for example because they have insufficient information.

2.5

If, after producing a report, an expert's view changes 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 an Expert's Report

3.1

An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.

3.2

An expert's report must:

(1) give details of the expert's qualifications;

- (2) give details of any literature or other material which has been relied on in making the report;
- (3) contain a statement setting out the substance of all facts and instructions 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 opinions; and
 - (b) give reasons for the expert's own opinion;
- (7) contain a summary of the conclusions reached;
- (8) if the expert is not able to give an opinion without qualification, state the qualification; and
- (9) contain a statement that the expert –
 - (a) understands their duty to the court, and has complied with that duty; and
 - (b) is aware of the requirements of Part 35, this practice direction and the Protocol for Instruction of Experts to give Evidence in Civil Claims.

3.3

An expert's report must be verified by a statement of truth in the following form –

"I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer."

(Part 22 deals with statements of truth. Rule 32.14 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)



Information

4

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

5

Cross-examination of experts on the contents of their instructions will not be allowed unless the court permits it (or unless the party who gave the instructions consents). 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.



Questions to Experts

6.1

Where a party sends a written question or questions under rule 35.6 direct to an expert, a copy of the questions must, at the same time, be sent to the other party or parties.

6.2

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 fees.



Single joint expert

7

When considering whether to give permission for the parties to rely on expert evidence and whether that evidence should be from a single joint expert the court will take into account all the circumstances in particular, whether:

(a) it is proportionate to have separate experts for each party on a particular issue with reference to –

- (i) the amount in dispute;
- (ii) the importance to the parties; and
- (iii) the complexity of the issue;

(b) the instruction of a single joint expert is likely to assist the parties and the court to resolve the issue more speedily and in a more cost-effective way than separately instructed experts;

- (c) expert evidence is to be given on the issue of liability, causation or quantum;
- (d) the expert evidence falls within a substantially established area of knowledge which is unlikely to be in dispute or there is likely to be a range of expert opinion;
- (e) a party has already instructed an expert on the issue in question and whether or not that was done in compliance with any practice direction or relevant pre-action protocol;
- (f) questions put in accordance with rule 35.6 are likely to remove the need for the other party to instruct an expert if one party has already instructed an expert;
- (g) questions put to a single joint expert may not conclusively deal with all issues that may require testing prior to trial;
- (h) a conference may be required with the legal representatives, experts and other witnesses which may make instruction of a single joint expert impractical; and
- (i) a claim to privilege^(GL) makes the instruction of any expert as a single joint expert inappropriate.



Orders

8

Where an order requires an act to be done by an expert, or otherwise affects an expert, the party instructing that expert must serve a copy of the order on the expert. The claimant must serve the order on a single joint expert.



Discussions between experts

9.1

Unless directed by the court discussions between experts are not mandatory. Parties must consider, with their experts, at an early stage, whether there is likely to be any useful purpose in holding an experts' discussion and if so when.

9.2

The purpose of discussions between experts is not for experts to settle cases but to agree and narrow issues and in particular to identify:

- (i) the extent of the agreement between them;
- (ii) the points of and short reasons for any disagreement;
- (iii) action, if any, which may be taken to resolve any outstanding points of disagreement; and
- (iv) any further material issues not raised and the extent to which these issues are agreed.

9.3

Where the experts are to meet, the parties must discuss and if possible agree whether an agenda is necessary, and if so attempt to agree one that helps the experts to focus on the issues which need to be discussed. The agenda must not be in the form of leading questions or hostile in tone.

9.4

Unless ordered by the court, or agreed by all parties, and the experts, neither the parties nor their legal representatives may attend experts discussions.

9.5

If the legal representatives do attend –

(i) they should not normally intervene in the discussion, except to answer questions put to them by the experts or to advise on the law; and

(ii) the experts may if they so wish hold part of their discussions in the absence of the legal representatives.

9.6

A statement must be prepared by the experts dealing with paragraphs 9.2(i) - (iv) above. Individual copies of the statements must be signed by the experts at the conclusion of the discussion, or as soon thereafter as practicable, and in any event within 7 days. Copies of the statements must be provided to the parties no later than 14 days after signing.

9.7

Experts must give their own opinions to assist the court and do not require the authority of the parties to sign a joint statement.

9.8

If an expert significantly alters an opinion, the joint statement must include a note or addendum by that expert explaining the change of opinion.



Assessors

10.1

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.

10.2

Where any person has been proposed for appointment as an assessor, any party may object to that person either personally or in respect of that person's qualification.

10.3

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 10.1 and will be taken into account by the court in deciding whether or not to make the appointment.

10.4

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.