

The Expert Witness Institute

Example Report (Guidance Notes)

1 PREAMBLE

The expert's report fulfils several functions in the legal process. First and foremost it represents the opinion of the expert on the issues in the given case. In addition, it may be the basis on which claims and statements of case are drafted and may be used by counsel whilst in court, both to assist during cross-examination and also as a general aide memoire. It should also not be forgotten that both the parties, Claimants and Defendants, may have sight of the report. The suitability of a report for these various purposes, in terms of clarity and convenience, depends greatly on the manner in which it is drafted. Above all, the Civil Procedure Rules [CPR] and their Practice Directions [CPRPD], particularly CPR Part 35 [Part 35] and its Practice Direction [PD 35], impose certain requirements which if not observed may mean the report will not be acceptable to the Court. The Civil Justice Council has issued a Protocol for the Instruction of Experts to give evidence in civil claims [CJCPIE]. Experts must be conversant with the latest versions of CPR, CPRPD and CJCPIE. In the notes below, reference is given only to the most important and directly relevant paragraphs of the Rules and Practice Directions.

The form in which a report is prepared depends on the nature of the issue and the practice of the individual expert. Nevertheless, it is possible to define certain minimal requirements for an acceptable report. The notes below and the attached model report emphasise these minimal requirements. Beyond these minimal requirements, experts may wish to develop their own forms and style. The order in which the various parts of the Report are placed is suggested as being most logical and helpful to the Court, but experts should feel free to adapt this to their own practice, eg the summary might appear at the end of the document rather than at the beginning.

2 TYPES OF REPORT

2.1 Advice

In the initial stages of a case, all that may be required is consideration of the evidence and an indication as to whether a case or a defence can be made out. If it is not clear when first approached, the expert should enquire whether the solicitor requires advice or the preparation of a report for the court [see CJCPIE (5)]. This is important because whilst advice is privileged from disclosure, the advisor may not be immune from a claim for damages if he can be shown to have been negligent in the preparation of his opinion. There are no specific requirements for the manner in which advice is drafted. However, since most documents are nowadays prepared by word processor it may be expedient and save expense if advice is laid out and stored electronically in such a way that at a later stage it can easily be converted into a formal report.

Where an expert has provided Advice to a party and subsequently prepares a Report under the terms of CPR, he should consider whether it may be advisable to declare that he has previously provided advice, in order to deal with any question of his independence. Experts can be assured that the privilege under which advice is given will not be affected by such a declaration.

2.2 Reports for the Court (Statement of Truth)

The length of report may vary, depending on the circumstances, such as the nature or the extent of the evidence and the opinion based on it, but the report must conform with the basic requirements of CPR, CPRPD and CJCPIE. The report must be addressed to the court and not to the party from whom the expert has received his instructions [PD 35 2.1] and in drafting a report the expert's first duty is to the Court [Part 35.3, PD 35 1.1]. The fact that the preparation of a Report has been initiated by the Claimant or the Defendant in a given case is, therefore, of no consequence except that the expert must strictly consider the evidence in the light of the instructions received. If the expert finds that the

evidence brings to light issues not covered by his instructions, he should inform his instructing solicitor who may then wish to issue modified instructions.

CJCPIE Protocol 13 sets out points to be borne in mind regarding content of experts' reports, such as scope of instructions and general obligations (13.1), professional objectivity (13.2), addressing the Court (13.3), model forms of reports (13.4), statement of truth (13.5), experts' qualifications (13.6), scientific or technical tests (13.7), reliance on work of others (13.8), separation of matters of fact from matters of opinion (13.9), factual basis of opinion (13.10), disputed material facts (13.11), range of opinion (13.12), basis of experts' opinion in the absence of available sources (13.13), summary of conclusions (13.14 mandatory), and substance of material instructions (13.15). It is the case also that reports have also on occasion been criticised by judges for their excessive length.

These points can be met by placing matters of fact and opinion under separate headings, and laying out the report in a suitable sequence in short, suitably headed, sub-headed and numbered sections. Extensive numerical and/or factual detail that would otherwise obstruct the presentation or be confusing in the development of an opinion can be tabulated in appendices to the report. The pages of reports should be paginated for convenience of use and have ample margins at the top, bottom and on both sides. A suitable header should be provided to identify the expert, the name of the party and whether the report is in draft or final form, the date of the report and the page number.

3 THE EXAMPLE REPORT

The details below should be read with reference to the Example Report shown in the Appendix.

A report should consist of the following parts:

[a] Cover sheet

This is for identification purposes and must include at the top, if available, the name of the court and the case number. Centred below this should be the names of the parties to the case, whether the report is a draft or a final version, the identity of the author and his specialism and on whose behalf the report has been prepared and the name of the instructing solicitors. Various other details (including the expert's contact details) can be included on the cover page at the discretion of the expert.

[b] Table of Contents

This may not be necessary for short reports of less than, say, seven to ten pages.

[c] Expert's qualifications [PD 35 2.2(1)]

This should, in effect, be a brief curriculum vitae. If it is thought necessary a fuller curriculum vitae can be added as an appendix.

[d] Summary of conclusions [PD 35 2.2(7)]

This summary should be placed at the end of a report. It should consist of the factual conclusions and the opinions of the expert.

[e] Instructions [Part 35.10(3)]

The report must state the substance of all material oral and/or written instructions on the basis of which the report is written and the questions the expert is instructed to answer. In some cases it may be necessary or convenient to reproduce the relevant paragraphs of the solicitor's letter of instruction.

[f] Documentation and other sources of evidence [PD 35 3.2(2)]

This must list the documents examined and detail any other sources of evidence, such as any examinations and tests carried out and referred to later in the report.

[g] Chronology

For certain issues it will be important to set out the chronology, details and circumstances of the events under consideration. It is in this section of reports that they may most markedly differ

depending on the expert's specialism. Thus, for example, in medical cases the chronology may be a case summary under date headings. If the documentation has been paginated, it may at a later stage of the litigation become convenient for the page of the documentation to be identified against each dated item.

[h] Technical Background

Where the issues under consideration are complex and not likely to be within the experience of those who must consider the expert's report, it can be helpful to summarise the scientific or technical background of the case. This may be the stage of the report at which reference is made to any literature or other matter, other than the documentation, on which the expert has relied when preparing his report [PD 35 3.2(2)].

[i] Opinion

This should be a closely and carefully reasoned analysis of the evidence and the opinion of the expert derived from that evidence. Where a chronology of the evidence has been presented (see [g] above), it is helpful to present the opinion in the sequence or along the lines of that chronology. The conclusions of the opinion should be clear, reasoned and unambiguous with reference to any literature or other matter on which the expert has relied [PD 35 3.2(2)]. It is important that the expert does not stray outside the scope of his own experience. PD35 2.4(a) makes it clear that if a question or issue falls outside his expertise, or he is unable to reach a conclusion because of insufficient information this must be stated. Similarly when a range of opinions is possible the expert must indicate what that range is and give reasons for his own opinion [PD35 3.2 (6)]. It is important to bear in mind:

- i. That the expert is required to consider all material facts including those which might detract from his opinion [PD35 2.3], and
- ii. It is his duty to assist the court and in carrying out that duty, care must be exercised to ensure that the role of the judge is not usurped [PD35 2.2].

[j] Literature citations [PD 35 3.2(2)]

This should consist of full citations for any literature, work of reference or other information on which reliance has been placed. The citations should be listed in a numerical or other convenient way to allow easy reference by the reader. Ideally, unless too extensive, copies of any literature or other matter relied on may be attached to the report as an appendix labelled in the manner in which reference to them is made in the report.

[k] Experts' Declaration CJCP1E 13.5(ii) (B) PD 35 3.2.9

This consists of a series of statements that show that the expert is aware of his various obligations when preparing his report. The Expert Witness Institute has published a model Experts' Declaration for use by its members [see which has been included in the model report (p5)]. It should be noted that the EWI model Experts' Declaration may, as necessary, require modification by the expert should special circumstances arise, eg where incomplete instructions are received from instructing solicitors.

[l] Statement of Truth PD 35 3.3 CJCP1E 13.5ii

This is an essential part of all expert's reports addressed to the court and it must be given precisely as prescribed in PD 35 2.4. It should be noted that the terms of the Statement were modified in January 2002; the older form of the Statement of Truth is no longer acceptable.

[m] Signature

Final reports must be dated and signed by the author and preferably number the pages.

Appendices

In order to ensure that the report is concise it is often preferable to include detail in appendices attached to the report.