

## GETTING THE MOST FROM YOUR EXPERT

*by*

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## GENERAL

CPR Pt 35 consists of (i) the rules concerning expert evidence (ii) a practice direction and (iii) a Protocol for the Instruction of Experts to give evidence in civil claims. These need to be mastered and implemented.

## STEPS IN THE CALLING OF EXPERT EVIDENCE

### A. Identify the issues on which expert evidence is required

- what are the issues?
- what are the issues on which expert evidence will assist?
- what are the issues on which expert evidence will not assist?
- what legal or factual issues or issues of construction need to be resolved for the expert's opinion to be accepted?

### B. Apply for expert evidence to be adduced

- Pt 35.1, 35.4, 35PD.2, Protocol para 6.1 (d)
- is a single joint expert appropriate (Pt 35.7)?
- what expert fields or disciplines are involved (Pt 35.4(2))?

### C. Identify your expert

- for general requirements, see Protocol para 7
- in addition, consider whether the intended expert has the exact specialised knowledge and experience you need, is able to articulate his opinions persuasively and can maintain his views and coherence under pressure

### D. Instruct your expert

- "material" instructions (oral or in writing) will have to be disclosed
- but not draft reports (Jackson v Marley Davenport Ltd [2004] EWCA Civ 1225)
- so (a) give no instructions until you are ready to instruct formally
  - (b) draft the letter of instruction to identify the issue on which the expert evidence is needed but not so as to suggest what the conclusion should be or so as to limit the expert's evidence on that issue
  - (c) make sure (by the letter of instruction or otherwise) that the expert understands and complies with his duties to the court and the formal requirements for the form and content of his report (Pt 35.6, 35PD.3, Protocol para 13.3)
  - (d) consider the report in draft with the expert to ensure that it deals with the issue, represents his true and complete opinion and otherwise complies with above requirements

#### E. The Report

- requirements as above
- disclose literature or other materials relied upon (35PD.3.2(2))

#### F. The other side's report

- does it comply with the above requirements (including the supporting materials)?
- if not, make sure that it does
- note Pt 35.9 (power to order disclosure)
- note also Pt 35.6 and Protocol para 16 (right to put written questions to expert)
- start identifying weaknesses in the report with assistance from your expert

#### G. Experts' meeting

- power to order meeting at Pt 35.12 (now standard)
- for purpose of discussions and terms on which they take place, see 35PD.9 and Protocol para 18
- ensure your expert is properly briefed to deal with what is in issue and that any joint statement correctly deals with the issues it needs to address before it is agreed

#### H. Trial

- do you need a supplementary report or supplementary examination in chief to tie up loose ends which have emerged in discussions or to deal with points raised by other expert?
- prepare detailed cross-examination with input from your expert