

## **RICS CPD Foundation Seminar: The Expert Witness**

---

*James Davison*

### Agenda

1. Some Context
2. The Witness and the Expert Expert Role
  - The Civil Procedure Rules
  - The RICS Practice Statement
3. The Report
4. Giving Evidence
5. Common Dilemmas
6. Current Practice
7. Hazards for the Expert
8. Conclusions & Discussion


## 1. Some Context

*“ I think that the people of this country have had enough of experts [ ... ] from organisations with acronyms - saying that they know what is best and getting it consistently wrong, because these people - [ ... ] - are the same ones who got consistently wrong what’s happening”*

The Right Honourable Michael Gove Lord Chancellor on Sky TV on 21 June 2016.

## 1. Some Context


- **Who are you?**
- **What are you trying to achieve?**
- **There will be time for questions and discussion**



## 2. The Witness and the Expert Role

- **The different kinds of tribunal**
- **What do they do?**
- **Do they do the same thing the same way?**
- **But what is consistent? Why does that matter?**
- **They need evidence**
- **They will hear Argument**
- **There are limits and there can be a need for expertise**

[www.3pb.co.uk](http://www.3pb.co.uk)



## 2. The Witness and the Expert Role

- **When Is Expert Evidence Allowed?**
- **What can an expert give evidence about?**
- **It is a regulated and supervised role**
- **It is a different job to being a surveyor or engineer (etc)**
- **What guidance is there and what are the Rules**
- **The Civil Procedure Rules Part 35 and its practice direction**
- **The RICS Practice Statement**

[www.3pb.co.uk](http://www.3pb.co.uk)

## 2. The Witness and the Expert Role

- **CPR Part 35:**
- **35.3(1) It is the duty of experts to help the court on the matters within their expertise;**
- **(2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.**
- **The court will limit expert evidence by Field and Topic 35.4**

## 3. The Report

- **It is your evidence. And it must be yours.**
- **It's addressed to the Court**
- **Rubric is in CPR Part 35 PD - do what it requires**
- **Do you need a site investigation or two?**
- **The Part 35 Practice Direction and the declaration of understanding and compliance**
- **All parties get to see your instructions**
- **You may be asked written Questions.**

### 3. Post Report - The Expert Meeting

- Meeting the other expert
- You are not there to sort it out but to consider the expert evidence in light of your duty to the court
- Nor are you “going in to bat”
- They may not understand their duties as well as you
- Use of Scott Schedules
- The facts may not be agreed - agree numbers or principles that will assist the court once the court has made its finding of fact
- Don't step on the judge's toes.

[www.3pb.co.uk](http://www.3pb.co.uk)

### 4. Giving Evidence

- Will you be called?
- Always assume you will be
- Prepare
- Always understand your duty and keep your oath
- Likely procedure
- You will be asked questions and you will have to answer them
- You are not a party, don't pick a fight

[www.3pb.co.uk](http://www.3pb.co.uk)

## 5. Common Dilemmas

- **Changing your mind**
  - **Why**
  - **When**
  - **How and when you communicate that - CPR 35. PD 2.5**
- **The limits of your expertise**
- **The limits of your time**
- **Not getting a good working relationship with your sol -**

[www.3pb.co.uk](http://www.3pb.co.uk)

## 6. Current Practice

- **Hot Tubbing**
- **Court Intervention**
- **The difference between Shopping for Experts and Buying the Market**
- **Experts before the Action**
- **Expert Meetings and documents produced (Scott Schedules)**
- **Single Joint Experts**
- **Which cases actually run?**

[www.3pb.co.uk](http://www.3pb.co.uk)

## 7. Hazards and Rewards

- **Doing the day job and doing expert work**
- **Who will Help YOU? The Expert can apply to the Court.**
- **CPR 35 .14 “request for Directions” usu. the TCC for you.**
- **Making the expert crack - maintaining health and wellbeing**
- **Composite Reports**
- **You are no longer immune**
- **Remember the limits of you instructions - not a trouble shooter or CC**
- **How are you going to get paid? Not.....**

## Some Conclusions

- **Does your employer get it?**
- **Support?**
- **Where does it take you? What is it not?**
- **Read Part 35 and the PD Read the RICS Practice Note**
- **What are the lawyers looking for?**
- **The Court needs good experts**

## Lord Neuberger

"It is important for the **integrity** of the civil justice system that anybody, above all professionals, who take on the role of expert witness have a clear understanding of the duties involved, and that they perform their obligations to the court or tribunal concerned to the best of their ability.

It is crucial for any judicial process which includes the expert evidence that the expert witnesses are **honest, objective and fair**, so that their expertise can properly and helpfully inform, support and enhance the decision maker's decision and the process by which the decision is reached ie - so that justice can be done and can be seen to be done."

[www.3pb.co.uk](http://www.3pb.co.uk)

## RICS CPD Foundation Seminar: The Expert Witness: Discussion

[james.davison@3pb.co.uk](mailto:james.davison@3pb.co.uk)