



The Surveyor as an Expert Witness

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The Surveyor as an Expert Witness

- ▶ If you're interested in becoming an expert witness, or are likely to be involved in a case where an expert witness has been appointed, it's important that you understand fully what the court rules and protocol have to say.
- ▶ Do you know what the RICS Practice Statement and Guidance Note says?
- ▶ What does a lawyer want from an expert witness?
- ▶ Some cases to note
- ▶ Who is responsible for the expert's fees?



The Surveyor as an Expert Witness

- ▶ Role of an Expert Witness
- ▶ Court Rules
- ▶ Practical Advice



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The Role of an Expert



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Civil Procedure Rules (CPR)

www.justice.gov.uk

Civil Justice Council's 'Guidance for
the Instruction of Experts in Civil
Claims 2014'



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Rule 35.2

A reference to an 'expert' in this Part is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings.



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The Expert Witness - Opinion



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Court Procedure

- ▶ High Court
- ▶ County Court
- ▶ Business and Property Courts



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Court Procedure

- ▶ Pre Action Correspondence
- ▶ Issuing the Claim
- ▶ Acknowledgement of service
- ▶ Defence (and counterclaim)
- ▶ Allocation
- ▶ Case Management Conference



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Case Management Conference

- ▶ Disclosure
- ▶ Witness statements
- ▶ Expert Reports
- ▶ Preparation for Trial



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Directions – Expert Evidence

- ▶ Deadline for preparing reports
- ▶ Date for exchange – sequential / mutual
- ▶ Single joint expert
- ▶ Meeting of experts
- ▶ Joint statements

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Instructions

- ▶ Clear and unambiguous
- ▶ Written
- ▶ What is required, in what form, by when
- ▶ Time Resource
- ▶ Fees
 - ▶ *Ikarian Reefer* [1993]2 LL Rep 68
 - ▶ *Bank of Ireland v Watts Group Plc* [2017] EWHC 1667 TCC
- ▶ Conflict check all parties



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The Civil Procedure Rules

- ▶ The Parties are required to help the Court further the overriding objective
 - ▶ Deal with cases justly
 - ▶ Ensure parties are on an equal footing
 - ▶ Saving expense
 - ▶ Dealing with cases in a proportionate, expeditious and fair manner



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Duty to restrict expert evidence

Rule 35.1

Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.



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Experts – Overriding duty to the Court

Rule 35.3

It is the duty of an expert to help the court on the matters within his expertise.

This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.



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Court's power to restrict expert evidence

Rule 35.4

No party may call an expert or put in evidence an expert's report without the court's permission.



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Court's power to restrict expert evidence

2. When a party applies for permission under this rule he must identify –
 - a) the field in which he wishes to rely on expert evidence; and
 - b) where practicable the expert in that field on whose evidence he wishes to rely

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Court's power to restrict expert evidence

3. If permission is granted under this rule it shall be in relation only to the expert named or the field identified under paragraph (2).
4. The court may limit the amount of the expert's fees and expenses that the party who wishes to rely on the expert may recover from any other party.



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General requirement for expert evidence to be given in a written report

Rule 35.5

1. Expert evidence is to be given in a written report unless the court directs otherwise.
2. If a claim is on the fast track, the court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.



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Written questions to experts

Rule 35.6

1. A party may put to –
 - a) an expert instructed by another party; or
 - b) a single joint expert appointed under rule 35.7,
written questions about his report.

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Written questions to experts

Rule 35.6

2. Written questions under paragraph (1) –

a) may be put once only;

b) must be put within 28 days of service of the expert's report;



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Written questions to experts

Rule 35.6

c) must be for the purpose only of clarification of the report, unless in any case –

I) the court gives permission; or

II) the other party agrees



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Written questions to experts

Rule 35.6

3. An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.



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Written questions to experts

Rule 35.6

4. Where –

- a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
- b) the expert does not answer that question,



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Written questions to experts

Rule 35.6

the court may make one or both of the following orders in relation to the party who instructed the expert –

- I) that the party may not rely on the evidence of that expert; or
- II) that the party may not recover the fees and expenses of that expert from any other party.



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Power of Court to direct a party to provide information

Rule 35.9

Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to –

- a) prepare and file a document recording the information; and
- b) serve a copy of that document on the other party.

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Contents of Report

Rule 35.10

1. An expert's report must comply with the requirements set out in the relevant practice direction. – Practice Direction to CPR Part 35

Laindon Holdings Limited v South Essex Mental Health and Community Care NHS Trust [2016]

Car Giant Ltd and another v Mayor and Burgesses of the London Borough of Hammersmith [2017]



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Contents of Report

Rule 35.10

The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

The instructions referred to in paragraph 2.2(3) shall not be privileged against disclosure



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Contents of Report

At the end of an expert's report there must be a statement that –

- a) the expert understands his duty to the Court; and
- b) he has complied with that duty

Must be a Statement of Truth



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Discussions between experts

Rule 35.12

1. The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to –

- a) identify and discuss the expert issues in the proceedings; and
- b) where possible, reach an agreed opinion on those issues.

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Discussions between experts

Rule 35.12

2. The court may specify the issues which the experts must discuss.
3. The court may direct that following a discussion between the experts they must prepare a statement for the court showing –
 - a) those issues on which they agree; and
 - b) those issues on which they disagree and a summary of their reasons for disagreeing.

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Discussions between experts

Rule 35.12

4. The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

5. Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.



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The Trial

- ▶ Check with solicitors what you need / want to take into the witness box
- ▶ Confirm name, address and contents of report are true
- ▶ Are there any corrections to be made?
- ▶ Cross examination
- ▶ Face the judge when speaking
- ▶ Re Examination
- ▶ Once sworn do not discuss case with anyone during breaks / overnight

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The Trial

- ▶ Speak clearly and if necessary slowly
- ▶ Listen carefully to the questions and answer only the question asked
- ▶ Do not evade questions or argue
- ▶ If you have made a mistake then correct it
- ▶ Address the judge correctly



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The Trial

- ▶ Hot-tubbing
- ▶ Speak clearly and, if necessary, slowly
- ▶ Listen carefully to the questions and answer only the question asked
- ▶ Do not evade questions or argue
- ▶ If you have made a mistake then correct it
- ▶ Address the judge correctly
- ▶ General Conduct
 - ▶ D(A child: Parental alienation) [2018] EWFC B64

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Conclusion

- ▶ Remember everything you write may be looked at by a judge one day
- ▶ Conflict check all parties
- ▶ Clear written instructions
- ▶ Obtain a copy of the order for directions
- ▶ Ensure the report complies with the provisions of the rules
- ▶ Make the report user friendly

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Conclusion

- ▶ Duty to the court when instructed as an expert witness
- ▶ Manage client's expectations
- ▶ Meetings of experts – be clear as to aim of meeting – narrow issues
- ▶ Prepare for Trial

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QUESTIONS?





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