Your Witness

Newsletter of the UK Register of Expert Witnesses, published by J S Publications

Edition 15 in press

Following the fevered activity of February and March, I am pleased to report that the latest edition of the *UK Register of Expert Witnesses* is now in press. As big as ever, the 15th edition will be landing on the desks of leading litigation lawyers early in May.

If you want us to consider including one or more of your instructing solicitor firms on the free distribution list, please do let me know.

The codes combined

We consider in this issue (see pages 4 & 5) the unhappy situation that has arisen with the circulation of two 'rival' codes of guidance for experts. My main difficulty with both codes, though, is that they attempt too much. In my view it would have been altogether better had the 'official' Working Party stuck to its original brief and devised a code for lawyers on the use they make of expert evidence. They could then have left it to another committee to draft the guidance for experts on the performance of their duties under the Civil Procedure Rules (CPR). The resulting documents would certainly have been much shorter, clearer and easier to follow than those we now have.

It is with this belief in mind, and to assist you in assessing the usefulness of the existing codes, that we have extracted from both codes the guidance they offer experts, and have combined it in the single document that accompanies this issue of *Your Witness*. We used the framework provided by the EWI code, and added to it the guidance found in the Academy code.

Since the aim of this document, which we have called simply 'Guidance for Experts', is to bring together *guidance* on the performance of an expert's duties under CPR, we have eschewed repeating CPR provisions that are to be found in Part 35 and its Practice Direction. After all, neither the EWI code nor the Academy code supplants those provisions or removes the need for experts to observe them. In places, too, we have also edited the text taken from the published codes in the interest of consistency and concision.

A living document

Finally, we have also added some text of our own on issues raised with us by experts, in the hope that this will prompt others to identify further topics relating to CPR on which they feel guidance is needed.

If you have identified such a topic, or have advice based on personal experience of dealing with a particular aspect of working under CPR that might help other experts, please do let me know. If there is sufficient interest in this initiative, I will ensure that provision is made for it to be kept under review, and that an up-to-date version of *Guidance for Experts* is made available on our web site (*http://www.jspubs.com*).

My only hope in undertaking this task is that it may eventually contribute to the adoption of a single document offering guidance to experts to which all can give their assent.

Protocol problem

By common consent, pre-action protocols are among the more successful of the innovations introduced by the Woolf Reforms. They are designed to encourage parties to explore ways of resolving their dispute before taking it to court, or at any rate to co-operate in streamlining the issues the court is asked to decide. The trouble is, there is now a risk that these purposes are being undermined by a lack of proper enforcement.

In a recent survey of 150 solicitor firms, almost two-thirds reported that lawyers were not applying for sanctions when protocols were breached because they are discretionary and the willingness to impose them varies widely. The general view appears to be that most judges will only grant such applications in cases of flagrant breach, and that in other circumstances making an application merely incurs delay and extra costs. The problem is, of course, that if the teeth of sanctions are drawn in this way, respect for the observance of protocols can only suffer, and with it the advantages that brings.

Entitlement expanded

It is some while since there has been any good news to report about legal aid, but from January around 5 million more people in England and Wales have become eligible to receive it. This can only benefit those solicitor firms still able to take on publicly funded work – and the experts they instruct.

The increase has come about by raising the income ceilings that determine eligibility for legal advice and assistance. The means test for legal representation has also been simplified, although at the same time a gross income cap has been introduced which could impact unfairly on clients with several dependants and others in receipt of disability benefits. However, the main issue now is that the Legal Services Commision is showing no inclination to increase the number of contracts it awards to cope with the increased demand the reported changes are expected to create.

Chris Pamplin

Inside

Issue 27

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Rule changes

The 26th batch of amendments to the Civil Procedure Rules (CPR) includes a number that affect expert witnesses, and all of them are welcome.

Cresswell principles finally make it into CPR

Cresswell rules OK

In the report of his inquiry into the civil justice system, Lord Woolf quoted with approval the principles of expert evidence laid down by Mr Justice Cresswell in the *Ikarian Reefer* case. It was a matter of some surprise, therefore, that no place was found for the principles in CPR Part 35 when it appeared. That omission has now been repaired. The Part 35 Practice Direction (PD) has been given a new first paragraph that incorporates all but one of the principles, and in most cases it repeats their original wording.

The principle that is not included is the one requiring parties to provide their opponents with copies of photographs, plans, etc., referred to in the expert's report, and this is because the point is covered in the requirements for standard disclosure set out in CPR Part 31. There is, however, one other omission which *is* puzzling. Mr Justice Cresswell's third principle laid down that 'An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.' In the PD, though, the first sentence is left out, and one wonders why. As an expression of good practice it can hardly be considered otiose.

New and improved Statement of Truth

Welcome, though, the incorporation of these principles must be, another change made to the PD is of even greater moment. This is the replacement of the mandatory Statement of Truth with a new one that reads:

> 'I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.'

The new wording is a great improvement on the old ('I believe that the facts ... are true and that the opinions I have expressed are correct'). It acknowledges, first, that experts are often required to assume facts which they have no means of verifying for themselves, and second, the impossibility of anyone in their proper mind being able to assert that their opinions are 'correct'. The most you can claim is that what you have said is a 'true and complete' reflection of your opinion. Expect much to be made of these three little words in future, and in the meantime make sure you conclude your reports with the new statement and not the old!

New Statement of Truth now in use

Disclosure not to be used to harass experts

The first of the changes to the Rules proper that affects experts comes in Part 31, which is concerned with the disclosure and inspection of documents. Hitherto, parties have been entitled to inspect any document mentioned in a statement of case, witness statement, witness summary, affidavit or expert's report. While this reflects the need for openness between parties that the Rules promote, the ability to require an opponent to supply copies of the *published* literature cited by its expert is clearly open to abuse and could be used oppressively.

Accordingly, the reference to experts' reports has been dropped from CPR 31.14, and a new clause has been added (CPR 31.14(2)) which provides that parties may apply to the court for an order for inspection of any document mentioned in a report. The expectation must be that courts will be wary of making such orders if the documents are textbooks, journal articles or are otherwise in the public domain. In other words, don't be tempted to use disclosure to harass your opponent or his expert.

The purpose of expert discussions clarified

The remaining changes occur in Part 35. Until now, CPR 35.12 has provided that courts may order discussions between experts for the purpose of requiring them to '(a) identify the issues in the proceedings; and (b) where possible reach agreement on an issue'. As amended, this purpose is now defined as:

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

This disposes of the ambiguity that experts might attend in order to decide an issue between the parties which is for the court to decide.

Experts seeking directions from the court

Finally, the rule that entitles an expert to seek directions from the court is amended. Hitherto, CPR 35.14(2) has provided that an expert may do this without giving notice to any party – which is strange, since one might expect that if an expert was in difficulties he or she would first try to sort out the problem with the instructing party (or parties). To a degree, this is what is now required, because paragraph (2) has been amended to read:

> 'An expert must, unless the court orders otherwise, provide a copy of any proposed request for directions...
>
> (a) to the party instructing him at least 7 days before he files the request; and
>
> (b) to all the other parties at least 4 days before he files it.'

and there is a consequential amendment to paragraph (3) of the same rule.

This gives mandatory force to the advice contained in the Academy of Experts' Code of Guidance (see insert in this issue) and, no doubt, reflects the reluctance of courts to get involved with problems which parties and their experts ought to be able to resolve for themselves.

Sally Clark

As many readers will be aware, Sally Clark is a solicitor who is currently serving a life sentence for the murder of two of her three children. Christopher died in October 1996 when he was just 11 weeks old, and after a post-mortem his death was attributed to 'respiratory infection'. Then, a year later, Harry died, also aged 11 weeks. This time the police treated the circumstances as suspicious, and in due course Mrs Clark was charged with the boys' murders. The prosecution case now was that they had both been shaken to death.

The trial

At the trial in October 1999 the pathological evidence was strongly contested. Indeed much of the 17-day hearing was taken up with abstruse discussion of intra-alveolar haemorrhages, haemosiderin-laden macrophages, and the like. Of the 12 experts called, only the local Home Office pathologist who had conducted both post-mortems and the prosecution's star witness, Professor Sir Roy Meadow, were confident of the cause of the boys' deaths. For many observers, the contrary evidence of the paediatric pathologists who appeared for the defence was far more compelling.

With no apparent motive, no external evidence of violence and the weight of specialist medical evidence refuting the prosecution's case, how was it, then, that the jury came to convict? Well, for most of those who were in court, the only reason appeared to be the answer that Sir Roy gave when asked what the chances were of a second 'cot death' occurring in a family such as the Clarks'. He replied, '1 in 73 million', and that seemed to clinch the matter. After all the complex and conflicting medical evidence the jury had heard, here was a *fact* that anyone could grasp. With such formidable odds, what other explanation could there be but murder?

Almost as soon as the trial was over, serious misgivings were being voiced about Sir Roy's soundbite. The author of the report from which he had taken the statistic protested that it was a purely theoretical calculation of the chances of two 'cot deaths' in the same family occurring randomly, and it had been quoted out of context. The statistic took no account of factors, whether genetic or environmental, that might link two such deaths. In the circumstances, it is little short of astounding that the Court of Appeal should have subsequently refused to overturn the trial verdict.

The appeal

In the Court of Appeal, Mrs Clark's lawyers argued, first, that the statistic itself was absurd; second, that this undermined, at least in part, Sir Roy's opinion that the two deaths were unnatural; and last, that the jury might have succumbed to the age-old 'prosecutor's fallacy', i.e. that because natural double infant deaths are rare, the odds on them being unnatural are correspondingly overwhelming.

To counter this, the Crown advanced a remarkable argument that went like this: ' The statistic concerns the probability of two siblings succumbing to a particular kind of unexplained natural death. But we don't think that the deaths in this case *were* natural, and the defence team doesn't think they are *both* unexplained. (Counsel for Mrs Clark had argued at trial that Christopher may well have died of a lung infection, as recorded originally.) Therefore, since neither we nor they consider that double cot death provides the explanation, the probability of it having occurred was irrelevant and the jury should have ignored the statistic.' Which raises, of course, the question: how could they have done so when it was presented to them in such a dramatic way?

Did the dramatic statistics cause confusion?

Despite the specious nature of this line of reasoning, the appeal judges accepted it. They agreed that the statistic should not have been quoted, but then proceeded to second-guess the jury's reaction to it. They concluded that: '*In the context of the trial as a whole, the point on statistics was of minimal significance and there is no possibility of the jury having been misled so as to reach verdicts they might not otherwise have reached.*'

Subsequent developments

The appeal verdict in October 2000 was a devastating blow to the Clark family and its supporters. They still remain hopeful, though, of righting what they see as a glaring miscarriage of justice, and they have been buoyed up in that hope by three developments last year. First came the announcement, in February 2001, that a team of researchers at Manchester University had identified a gene that appeared to be implicated in at least some 'cot deaths'. In those for which it might be responsible, the chances of a second sibling suffering the same fate could be as low as 1 in 4.

Then, in May, the Solicitors Disciplinary Tribunal decided against striking Mrs Clark off the Roll of Solicitors, but merely to suspend her. This was an unprecedented move that reflects the deep unease felt by many lawyers about the safety of her conviction.

Finally, in October, on the eve of Mrs Clark's lawyers petitioning the Criminal Cases Review Commission to re-open her case, the Royal Statistical Society weighed in with a forceful press statement that not only repudiated Sir Roy's assertion, but reminded courts of the dangers inherent in the mis-interpretation of statistical evidence. 'The case of *R. v. Clark*', it said, *'is an example of a medical expert witness making a serious statistical error, one which may have had a profound effect on the outcome of the case.*'

Danger lies in the inexpert use of statistics

We must now wait to see whether the Review Commission agrees.

John Lord

Loads-a-guidance!

Two codes, and neither is official!

As anticipated in our last issue, the final version of the Code of Guidance on Expert Evidence is now available. It has been in preparation since March 1999, but the circumstances of its long-delayed publication are far from happy. The brief statement of welcome issued by the Master of the Rolls, Lord Phillips of Worth Matravers, says it all:

> 'This Code of Guidance has been produced by a Working Party set up by my predecessor Lord Scott of Foscote when he was Head of Civil Justice. Its publication has been delayed in the hope that it would be possible to obtain general agreement on its form and content. This has not proved possible as members of the Academy of Experts find preferable a Guide which they have produced.
>
> 'It is not for me to attempt to adjudicate on the relative merits of the two guides. The Academy guide has been in use for 2 years and has been cited in recent judgments. I consider that this Guide is a useful document that also deserves to be published. I wish to place on record my gratitude to all who have assisted in drafting it.'

So there we have it: two codes, neither of which can be regarded as official. How did this messy situation come about, and what can now be done to resolve it?

A little history

The working party responsible for the new code was not the first to attempt the task of producing one. In the first flush of enthusiasm for the Woolf Reforms, various organisations set about devising pre-action protocols for the kinds of litigation with which they were most concerned. One such body was the Association of British Insurers, under whose aegis a working group was established in June 1997 to produce a protocol on the use of experts. This group met a number of times but lost momentum, and within a year it was moribund.

Then, in November 1998, the group was revived as a working party under Sir Louis Blom-Cooper QC, who was (and still is) Chairman of the Expert Witness Institute (EWI). At the suggestion of the Head of Civil Justice, Sir Richard Scott, membership of the committee was broadened to include a representative from the Bar Council, a district judge and a master of the Supreme Court. It also had a more ambitious remit.

Academy and EWI refuse to make peace

A change in aim

Pre-action protocols are intended primarily for lawyers, to govern the ways in which they conduct disputes before initiating proceedings. Most issues concerning expert evidence, however, arise after proceedings have begun. For this reason, the Working Party took as its objective the preparation of a code of guidance, rather than a protocol, which would cover the use of expert evidence at all stages of litigation and would apply to experts as well as those instructing them. The hope was that such a code, if approved by the Head of Civil Justice, might then be incorporated in a Practice Direction governing the use of expert evidence in all the civil courts of England and Wales

The Working Party beavered away throughout the spring of 1999, and in July of that year produced a draft code for consultation. Initially, though, this document enjoyed a singularly limited distribution for, as we noted at the time (*YW17*), Sir Louis appears to have decided that only EWI members needed to be consulted! In the event, though, and partly as a result of the coverage given to the code in *Your Witness*, the draft document elicited comments and suggestions from a far wider audience. Sir Louis himself has described the response as 'huge'.

The Academy goes its own way

It was at this stage that problems began to emerge. Although the Working Party claims to have found the suggestions it received helpful, they do not appear – initially, at least – to have prompted it into making many changes to the draft code. The Academy, in particular, felt slighted that more account was not taken of its own contribution. So in January 2000 it unveiled a code of its own, ostensibly for the benefit of its members, but not exclusively so.

We are not privy to the steps that were taken during the course of 2000 to reconcile the positions adopted by the Academy and Sir Louis' Working Party, but it would appear that some official pressure was applied on the latter to revise its draft once more in an effort to keep the Academy on side. The Working Party met in December 2000 to approve what was intended to be a final draft , but the Academy's representative did not attend the meeting and it soon became clear that the Academy was not going to accept this version either.

Enter Lord Phillips

By now, a new Head of Civil Justice had been appointed, Lord Phillips of Worth Matravers. He decided to make one further attempt to crack this obstinate nut. He invited a recently retired High Court judge, Sir Anthony Evans, to review the Working Party's latest text in the light of the Academy's code. It was Sir Anthony's version which Lord Phillips announced at last November's Bond Solon Conference that he was intending to publish by Christmas. Yet, as we have seen, he was still unable to secure the Academy's acceptance of it. In these circumstances he had no option but to wash his hands of the whole affair and leave Sir Louis to arrange for the Working Party's code to be published by the EWI.

Last minute tweaking

It is worth mentioning at this point that the published code, though similar to the version made available at the Bond Solon Conference, is not identical to it. For the most part, however, the differences are minor. Some slips of the pen have been corrected, and here and there a few words added by way of explanation or to reinforce what has gone before. Indeed, the only change of moment is one of emphasis concerning meetings of experts. According to the earlier version, 'lawyers may be present at such discussions, but only for the purpose of assisting the experts in their discussion'. According to the published version, however, lawyers 'will not normally be present', and if they do attend 'they should not normally intervene save to answer questions put to them by experts or to advise them on the law'.

Not everything is gain, though. The substitution of 's/he' for the masculine pronoun has not been followed through consistently. There is also some scope for confusion in the section on single joint experts, with one paragraph stoutly maintaining that an SJE should not communicate with or meet any party independently of the others, while a new sentence tacked on to the previous paragraph states that the *opportunity* must be given to the other parties and their legal representatives to attend such a meeting. In general, though, the published version of the Working Party's code is the best it has yet devised.

The aftermath

Whatever the rights and wrongs of this sorry business, there can be little doubt that they have polarised the attitudes of the two expert witness organisations principally concerned. In a press release issued on the same day as Lord Phillips' statement, the EWI went out of its way to pin on the Academy the entire blame for the delay in the publication of the Working Party's code. (It actually said delay in its 'authorisation' – which, of course, has yet to happen and may never do so.) The press release also expressed the curiously worded hope that 'every judicial officer who, in pursuance of court management, authorises the admissibility of expert evidence, will adopt the Working Party's code'.

It is clear, then, that an impasse has been reached, and to judge from a recent editorial in the *New Law Journal*, we are not alone in deploring that fact. The journal's acting editor wrote of her disappointment that two respected organisations should be unable to work together for the benefit of their members and the lawyers who instruct them. She pointed out, too, that if the Government acts on Lord Auld's proposals for the regulation of expert evidence in the criminal courts, another code of guidance will soon be needed for them as well. In that event, given the sorry precedent that has been set in the civil arena, the Government might well be tempted to bypass expert witness organisations altogether and arrange for others to devise the new code. Meanwhile, the editorial continued, a decisive and speedy ruling is needed as to which of the two codes for civil litigation should be followed. For reasons set out below, we are not so sure about that.

Academy code gives more guidance for experts

The codes compared

The first thing that will immediately strike anyone about the two codes is that the code published by the EWI is only half as long as the one prepared by the Academy. The main reason for this is that the Academy code is a good deal more expansive in the guidance it offers. A case in point is the coverage it provides on the form and content of expert reports. Both codes rehearse, as they are bound to do, the requirements set out in the Part 35 Practice Direction. That, however, is all the EWI code does. The Academy code, in contrast, offers a further three pages of advice on the fulfilment of those requirements.

Another instance of where we feel the Working Party has missed a trick is in its treatment of that puzzling CPR provision enabling experts to request directions from the court. The EWI code merely paraphrases CPR 35.14, without offering any guidance whatsoever as to the circumstances under which an expert might find it appropriate to make such a request. The Academy's code, in contrast, devotes several paragraphs to the topic, stressing that the circumstances would need to be exceptional and setting out the procedure to be followed if a request is made.

This is not to say that the EWI code is lacking in useful guidance. But as the above examples show, it does not provide as much guidance as does its rival. On the other hand, the EWI code does cover some matters that are not even mentioned in the Academy code. For instance, it has a useful paragraph reminding both experts and those instructing them of the need to agree terms of appointment and of what those terms should include. It also stresses in another couple of paragraphs the need for lawyers to keep their experts informed about deadlines, timetables set by the court, and progress of the case generally. Though, strictly speaking, these are not obligations that derive from CPR, it is good to see them incorporated in a code intended for lawyers as much as the experts they instruct.

Codes are largely complementary

The fairest conclusion one can reach is, perhaps, that both codes provide some advice on the issues that arise in the provision of expert evidence, but neither can claim to cover them all. In the main, the codes complement each other and deserve to be read together.

Note

Please see the front page for details of our own initiative to help you deal with the rival codes.

Court reports

Hubbard -v- Lambeth, Southwark & Lewisham Health Authority

A meeting of experts is not a requirement...

This was one of four related clinical negligence claims brought by or on behalf of the children of Mrs Janet Hubbard. The particulars of claim need not concern us here, beyond noting that the numerous allegations of negligence were directed primarily at three specialists, one of whom is an eminent paediatric neurologist known to everyone in that field.

When should experts *not* meet?

At a case management conference in April 2000, Master Ungley gave leave for the parties to call evidence from doctors in six disciplines. In July of that year he ordered that the experts of like discipline should meet with a view to narrowing the issues between them 'unless otherwise agreed by all the parties' solicitors'.

Although they did not object to the order at the time, the claimants' lawyers subsequently raised concerns about it. At a further hearing in July 2001 their counsel explained that two of their experts had said they would find it difficult to take part in meetings at which the professional competence of a distinguished colleague would be discussed. Counsel also argued that the matters in dispute were so many and so complicated that they could only be satisfactorily defined in oral evidence, and there was therefore no point in the experts meeting. Master Ungley disagreed, taking the view that it was precisely because the issues, etc., were so numerous and complex that any narrowing of them would be helpful to the trial judge. The claimants thereupon decided that they would appeal the original order.

Article 6 rears its head

Before the Court of Appeal, counsel for the claimants amplified their reasons for concern. It was not so much the embarrassment their experts might suffer under the peer pressure to which they might be exposed, the claimants' fear was that in a closed meeting with colleagues from the other side their experts might pull their punches, whereas that would not be the case when they came to give their evidence in open court. Counsel further argued that if the experts attending the meeting were to reach an agreement which cut down the scope of the claimants' case, as supported by the reports exchanged on their behalf, that would introduce an element of unfairness at trial which was contrary to Article 6 of the European Convention on Human Rights.

... but the court may order experts to meet

Dealing with the latter issue first of all, Lord Justice Tuckey said that it did not seem to him that discretionary orders made in accordance with CPR were capable of challenge under the Convention. If client concerns gave good reason for not ordering experts to meet, courts had ample jurisdiction to act on them. The Rules do not require that experts should meet, only that the court *may* order them to do so. On the other hand, there was nothing in the Rules to prevent a judge ordering a meeting if he thought some good might come of it. This was so, even if all the parties were opposed to the idea.

Only for very good reason

Mere objection by one party is not sufficient to prevent a meeting being ordered. A very good *reason* needs to be shown why one should not take place. In the instant case, the claimants' experts had already committed to paper their criticisms of their distinguished colleague, and they had done so, moreover, in the knowledge that they were likely to have to defend their views from the witness box. Any sensitivity they might feel about discussing these views with experts from the other side was *not* a good enough reason to inhibit a court from ordering them to meet. In view of the many allegations being made in the case, this was, *par excellence*, one where they should meet.

Should lawyers be present?

In their appeal, the claimants' fall-back position had been that if the court upheld the Master's decision, it should direct that the discussions take place in the presence of lawyers. Master Ungley had informed the court that this was an issue frequently raised at case management conferences, and it was one on which the guidelines issued by the Academy of Experts and those of the Clinical Disputes Forum were diametrically opposed.

Lord Justice Tuckey briefly reviewed the arguments for and against having lawyers attend meetings of experts and gave three reasons why it was not necessary in this instance. First, each side had solicitors who were very experienced in clinical negligence work and could be relied upon to draft agenda that clearly spelt out the tasks the experts had to perform, in both applying the correct legal tests and looking at the right facts. Second, if one side was intent on exerting an improper influence over the other, it would take care to do so away from any meeting attended by lawyers. Consequently, the presence of a lawyer was no safeguard that the thing the claimants most feared would not happen. Last, the respondents had sought to address the claimants' concerns by suggesting that the experts' discussions be recorded. It would then be apparent to anyone looking at the transcript whether there had been any misunderstanding about the law or the facts, and whether one side had brought improper pressure to bear on the other.

The appeal was accordingly dismissed without an order being made for lawyers to attend the experts' meetings.

Footnote

The other judge hearing this appeal was Lady Justice Hale, and she had a novel suggestion to make derived from her long experience of expert meetings in family cases. It was that in clinical

negligence cases, or indeed civil cases generally, consideration should be given to appointing a neutral person to chair meetings of this kind. It would not be appropriate in every case, but it might be where clients were concerned about the subtle pressures that can influence debate among colleagues in a relatively small area of expertise. Allaying their fears on this point was an important consideration that should not be underestimated.

It would be interesting to learn from readers of *Your Witness* if any of them have taken part in expert meetings at which they would have welcomed the presence of a neutral chairperson to ensure fair play.

Peet -v- Mid-Kent Healthcare Trust

Considerations other than fair play were uppermost in the Court of Appeal's judgment in this case – which, by coincidence, also arose from an order of Master Ungley's.

The claimant, a child, suffered from cerebral palsy and was seeking damages through his father. The defendant trust accepted 95% liability and both parties agreed to an order that they jointly instruct seven non-medical experts to deal with issues of quantum. The claimant's solicitors subsequently asked to meet with the experts in the absence of lawyers for the other side. Not surprisingly, the Trust objected to this, and it secured an order from Master Ungley that the claimant should not confer with any of the joint experts save with its written consent. It was this order that the claimant sought to challenge.

The Court of Appeal unanimously upheld the Master's decision. To the question, 'when, if at all, should one party, without the consent of the other party, be permitted to have sole access to a single joint expert?', the answer had to be an unequivocal 'Never'. As Lord Justice Simon Brown observed, it was 'necessarily inconsistent with the very concept of a jointly instructed expert, owing, as such an expert does, an equal duty of openness and confidence to both parties, besides his overriding duty to the court'.

Woolf on 'medical mishaps'

No surprises here, then. One wonders, indeed, why an appeal on such a narrow point should ever have reached the Court of Appeal. What *is* surprising, though, is that Lord Woolf, who now presides over the Criminal Division of the Court, should have heard this civil appeal and delivered the lead judgment on it. One can only speculate as to why he chose to do so.

The Lord Chief Justice began by deploring the scale of litigation over medical mishaps *(his term, not ours. Ed.)*. The costs can be extremely high and they almost invariably fall on the National Health Service. In these circumstances, he went on, it is the duty of the lawyers on both sides, as well as the courts, to restrain those costs. One way of doing so is by ensuring that expert evidence is restricted as far as possible. In some cases it may be difficult to restrict medical evidence because there are issues as to the appropriate treatment or standard of treatment, but the appeal in the instant case related to non-medical evidence.

Sole access to SJEs by a party rejected unequivocally

His Lordship acknowledged that the amount of a claim could be significantly influenced by non-medical evidence. Even so, it was his view that in the great majority of cases such evidence could and should be given by a single expert. The Civil Procedure Rules permit courts to require parties to use joint experts, and in the absence of special circumstances that is the appropriate way to deal with non-medical issues. To have contested evidence on them makes litigation disproportionate.

The need to rely on joint experts

After this surprisingly forceful attack on the use of party-appointed experts, Lord Woolf turned his attention to the substantive issue of the appeal. He outlined the framework provided by the Rules with regard to expert evidence, and emphasised the unrestricted power of the court to direct that it be given by a single expert. He noted, too, that one of the single experts in the instant case, a nurse, had interviewed the claimant's parents preparatory to writing her report, and felt that there could be no objection to that. It was quite another matter, though, for the parents and their lawyers to hold an experts' conference in the absence of any representatives of the defendant. That would be totally contrary to what should be an open process designed to ensure that both sides know exactly what information is placed before the single expert.

Finally, the Lord Chief Justice dealt with a matter that had been raised in the course of argument, to avoid, as he put it, uncertainty in the future. The Court had been referred to a passage in Sweet & Maxwell's *Civil Procedure* which reads: 'If a single joint expert is called to give oral evidence at trial it is submitted... that both parties will have the opportunity to cross examine him / her, but with a degree of restraint, given that the expert has been instructed by the parties.' In his Lordship's view, that advice may be applicable in some cases, but it was certainly not of general application.

Woolf hardens his views on expert evidence

The starting point is that, unless there is some reason for not having a single expert, there should only be a single expert. Furthermore, if there is no reason to justify more evidence than that from a single expert, then in the normal way the report of that expert should be the evidence on the issues it covers. It followed that, again in the normal way, there should be no need for the report to be amplified or tested by cross-examination.

Where parties have agreed the appointment of a single expert and the expert has produced a report, it remains possible for the court to permit a party to instruct his or her own expert and for

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that expert to be called at the hearing. It must be for a good reason, though. Indeed, where non-medical evidence is concerned, courts should be slow to allow it to happen. The fact that substantial sums may be at stake does not warrant a departure from this general approach. It is one thing if there is an issue requiring cross-examination, but the courts should seek to avoid that situation arising. Otherwise the objectives of having a single expert will, in many situations, be defeated.

Comment

It is clear from his remarks in this case that Lord Woolf now considers that expert evidence should be limited, where possible, to a single written report, even in heavy multi-track cases. This is in stark contrast to the approach he adopted 2 years ago when delivering the lead judgment in *Daniels -v- Walker* (see *YW20*). On that occasion the court allowed the appeal of the defendant in a road traffic case who was dissatisfied with the report of a joint expert and had been refused permission to call one of his own.

In that case, Lord Woolf took a much less stringent view of the procedure parties should follow in relation to expert evidence. The instruction of a joint expert was merely a 'first step'. If either party had concerns about that expert's report, the next step was to put written questions to the expert. Then, if the party was still not satisfied and wished, 'for reasons which are not fanciful', to obtain its own report, it should be permitted to do so, subject to the court's discretion. The only reservation his Lordship voiced on that occasion was that in smaller value cases the instruction of a further expert might be disproportionate.

As a result of the new, harder line, we can expect lower courts to be less willing in future to allow a second expert to be instructed in circumstances where one party is unhappy with a joint expert's report. Yet for a claimant, the consequences of this refusal could be calamitous.

In cases of catastrophic injury, the assessment of future care needs is often the most difficult part of determining quantum. It is not unknown for rival assessments in the same case to be millions apart. The claimant's lawyers owe him or her a duty to achieve the best result they can, and they are more likely to succeed if they have confidence in the supporting expert evidence. If the court has ruled that the evidence is to be provided by a single expert, that confidence may not exist.

This raises human rights issues which Lord Woolf, for one, has always sought to minimise. In the *Daniels* case, for example, he ruled that Article 6 of the European Convention was of no relevance whatsoever. But if lawyers are prevented from conducting litigation responsibly in the best interests of their clients, what price the litigant's right to a fair trial?

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CPR watch

A protocol to end all protocols?

The amendments made in the 26th update all took effect on 25 March. Meanwhile, we await the outcome of a consultation exercise mounted by the Lord Chancellor's Department (LCD) on the principle of a General Pre-action Protocol.

The adoption of pre-action protocols was recommended by Lord Woolf as a means of reducing cost and delay in civil proceedings. The trouble is that those approved so far deal with only a handful of the many kinds of action that come before the civil courts. One reason for this is that, initially at least, the Government left it to professional groups to devise protocols for the type of litigation with which they were primarily concerned. At one time 20 such groups were engaged in the work, but most of them have yet to produce even a draft document for consultation. Evidently, the Lord Chancellor has wearied of this lack of progress: hence the proposal for a general protocol to cover areas of court business for which provision has still to be made. The hope must be that once it is in place, some, at least, of the protocols still in preparation will no longer be needed.

What, then, does the draft General Protocol have to say about the use of experts prior to the commencement of proceedings? Well, in the document itself, nothing at all. There is, however, in annex C, a detailed discussion of the use of experts that tackles the issues in a refreshingly pragmatic way.

Agreeing on a single joint expert could save time and money, and there are arrangements suggested for choosing one. Either party may take the lead in this, but the terms and conditions of appointment need to be agreed. So, too, should the instructions that are to be given to the single expert, though separate instructions may be sent. Failing all else, the parties may instruct experts of their own, though if proceedings are subsequently issued, the court may decide whether either of them acted unreasonably and determine costs in the light of that decision.

All this will be familiar enough to those well versed in the procedure for appointing experts after an action has commenced. Indeed, the only major point of difference concerns payment to a party-appointed expert for answering questions on the report: under CPR it is the instructing party who pays, whereas under the protocol it is the party who asks the question. Again, this is sensible, since costs incurred pre-proceedings will usually be irrecoverable.

Altogether this is a welcome change from the prescriptive detail of, for example, the Personal Injury protocol, or from the contrasting provisions of the others that have already been approved. One could wish, indeed, that the LCD had set its sights on producing a General Protocol from the outset, and thereby avoided some of the variation that mars the rest.

Guidance for Experts

Introduction

For reasons that reflect little credit on those responsible, there are now two codes designed to guide experts, and those who instruct them, when working under the Civil Procedure Rules (CPR). Many find this situation unfortunate, to say the least.

One of the codes was produced by the Academy of Experts (AE) some 2 years ago, while the other appeared in December 2001, having been prepared by a Working Party under the chairmanship of Sir Louis Blom-Cooper QC. This latter code is published under the aegis of the Expert Witness Institute (EWI).

The Practice Direction (PD) accompanying Part 35 of the CPR requires, at Section 1.6, that an expert's report comply with the requirements of any approved experts' protocol. Neither the AE code nor the EWI code is an approved protocol. So, logically, no expert should be open to censure for not complying with either of them. However, both codes offer guidance that many experts will see as sensible and worth following. They are, moreover, complementary to a considerable extent.

To enable readers of *Your Witness* to assess and benefit from the guidance provided by the codes, J S Publications has extracted and combined those sections of each of them that relate specifically to experts. We have deliberately omitted the advice intended for lawyers on their use of expert evidence, as well as repetitions, circumlocutions and mere iteration of the provisions of CPR Part 35. We have also abbreviated some passages and made several changes in wording, tense and number for the sake of consistency and readability. None of these changes, we believe, alter the sense of the original text. Finally, we have augmented the combined text with a few passages of further guidance from ourselves on CPR issues that experts have raised through the *UK Register of Expert Witnesses* helpline.

We hope that our efforts in synthesis will encourage readers to raise yet further issues relating to CPR on which they feel guidance is needed, and that in this manner the authorities can be made aware of ways in which the AE and EWI codes might be improved.

Throughout this document words importing the masculine also include the feminine where the context so requires.

Preamble

Both the AE and EWI codes offer guidance to experts in the satisfaction of their duties under CPR Part 35 and its associated Practice Direction. They aim to assist in the interpretation of those provisions but do not replace them. The existence of the codes – and, indeed, of this document – does not remove the need for experts to familiarise themselves with the requirements of Part 35 and the Practice Direction. The latest versions of these are available on the Lord Chancellor's Department's web site, www.lcd.gov.uk, and may be downloaded from there.

Assistance from an expert may be needed at various stages of a dispute and for different purposes. Indeed, advice may be sought long before any decision to litigate has been taken. The expert always owes a duty to the instructing party to exercise reasonable skill and care and to comply with any relevant professional code of ethics.

However, when an expert is instructed to give or prepare evidence for the purpose of court proceedings, rather than to give advice before proceedings have started, CPR Part 35 applies[1]. The expert then owes a duty to the court to help it on matters within his expertise[2], and this overrides any obligation to the person from whom he has received instructions or is being paid[3].

The court needs this help to fulfil its overriding obligation to try each case justly. As defined in Part 1 of CPR, dealing with a case justly has a number of attributes, among which are (i) ensuring that the parties are on an equal footing, (ii) saving expense, (iii) dealing with the case in ways proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party, and (iv) ensuring that the case is dealt with expeditiously and fairly. Considerations such as these are of particular relevance to the work of single joint experts.

The guidance that follows has been drafted in general terms so as to apply to every type of civil litigation. Experts should note, however, that some courts, for example the Commercial Court, have published their own Guides which supplement the CPR for proceedings in those courts. These contain provisions affecting expert evidence, and an expert witness should be familiar with them when they are relevant to his evidence.

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Any failure by an expert to comply with the Rules or court orders, or any excessive delay for which the expert is responsible, may result in the party who instructed him being penalised in costs or, in extreme cases, being debarred from placing the expert's evidence before the court[4].

Duties of the expert generally

To be independent

The expert should provide an opinion that is independent, regardless of the exigencies of litigation[5]. In this context, a useful test of 'independence' is that the expert would give the same opinion if given the same instructions by an opposing party. The expert should not take it upon himself to promote the point of view of the party instructing him.

To respect the limits of his expertise

The expert should confine his opinions to matters that are material to the dispute between the parties and provide opinions in relation only to matters that lie within his expertise. Accordingly, the expert should indicate clearly where a particular question or issue put to him falls outside his expertise.

To be clear on the status of his opinion

In expressing his opinion, the expert should take into consideration the whole of the material facts before him at the time the opinion is expressed[6]. The expert should indicate that his opinion is provisional (or qualified, as the case may be) where, for any other reason, he is not satisfied that this opinion can be expressed finally and without qualification[7].

To keep the parties informed

The expert should communicate promptly with all the parties of any change of opinion on any material matter, and the reasons therefor.[8]

Privilege and disclosure

Pre-action advice is likely to be privileged

Advice given by an expert before court proceedings are started is likely to be confidential to the client and privileged from disclosure to other parties.

The issue of proceedings may remove privilege

Note, though, that where Part 35 applies[9], the expert must state in his report the substance of the instructions he received[10]. These instructions are not privileged, though normally the court will not order their disclosure or permit the expert to be cross-examined on them. It may do so, however, if there are grounds for supposing that the statement he made about them in his report is inaccurate or incomplete.[11] In certain circumstances, this power to order disclosure might extend to instructions or advice that were privileged when they were given.

Assume no privilege would be claimed

An expert must not be given any information that is legally privileged unless it has been decided that privilege should be waived. An expert should therefore assume that his instructions do not contain any information for which privilege would be claimed.

Payment

Bar on conditional or contingent payment

Experts must not accept payments that are conditional or contingent upon the nature of the evidence they give, or upon the outcome of a case, because this may be seen to compromise the expert's fundamental duty of independence.

Solicitors should not offer such terms anyway

It should be remembered that the Law Society's *Guide to the Professional Conduct of Solicitors* specifically states 'A solicitor must not make or offer to make payments to a witness contingent upon the nature of the evidence given or upon the outcome of a case'.[12]

Instructions

Insist on clear instruction

An expert who does not receive clear instructions should request clarification and indicate that he is not prepared to act unless and until such clear instructions are received.

Inability to comply with a court order

An expert must not accept instructions if he is not satisfied that he can comply with any orders the court has made. Where an expert has already been instructed, the expert should notify those instructing him immediately if he considers he may not be able to comply with an order.

Obtain all relevant material

Once he has accepted instructions, the expert should request any material relevant to his consideration of the case that has not already been provided.

If a time limit has been imposed for delivery of the report, an expert's task can be made more difficult if he accepts instructions but then has to wait for a party to furnish him with missing material. For this reason, an expert may prefer to only formally accept the instruction once all the material relevant to his consideration has been delivered.

Declining instructions

Where instructions may not be acceptable because, for example, they require expertise that falls outside his expertise or impose unrealistic deadlines, the expert must inform those wishing to instruct him without delay.

Further or altered instructions

If at any stage the expert considers that his instructions are or have become insufficient for him to complete his work, he must request further instructions without delay.

Should he become aware at any stage that he may not be able to fulfil any of the terms of his appointment, he should seek to agree an appropriate variation to his instructions without delay.

Withdrawal from the case

Where an expert considers that his instructions are incompatible with his duties, whether through their incompleteness, because they conflict with his duty to the court, or for any other substantial reason, he may consider withdrawing from the case on notice. If, however, proceedings have by then already begun, the expert should not withdraw without first having considered carefully whether it would be more appropriate to make a written request for directions from the court.

The expert's report

General considerations

The content and extent of the expert's report will be governed by the scope of the expert's general obligations, his overriding duty to the court[13] and the overriding objective.[14] For its mandatory contents see PD 35.2.

In preparing their reports, experts:

a) should maintain professional objectivity and impartiality at all times;

b) in addressing questions of fact and opinion, should keep the two separate and discrete; and

c) where there are facts in dispute –

   i) should not express a view in favour of one or other disputed set of facts, unless, because of their particular learning and experience, they perceive one set of facts as being improbable or less probable, in which case they may express that view, and should give reasons; and

   ii) should express separate opinions on every set of facts in dispute.

Qualifications[15]

The detail of the expert's qualifications given in the report should be commensurate with the nature and complexity of the case. It may be sufficient merely to state the expert's qualifications in the relevant profession. However, where highly specialised expertise is called for, the expert should include the

detail of the particular training and / or experience that qualifies him to provide that highly specialised evidence.

An expert may also wish to state the number of appointments as an expert witness that he has accepted in respect of such period prior to his appointment as he considers will assist the court, identifying the number of appointments which were for a claimant and for a defendant.

Reliance on the work of others[16]

Where an expert 'relies' in his report on 'literature or other material', and he cites, in support of his own opinion, the opinion of another without having verified it for himself, he must give details of any such opinion relied on. In such a case, it may assist the court if he also states the qualifications of the originator.

Ranges of opinion[17]

If the mandatory summary of the range of opinion is based on published sources, the expert should reference those sources and, where appropriate, should state the qualifications of the originator(s) of the opinions from which he differs, particularly if such opinions represent a well-established school of thought.

Where there is no available source for the range of opinion, the expert may need to express an opinion on what he believes to be the range that other experts would arrive at if asked. In those circumstances, the expert should make it clear that the range he summarises is based on his own judgement and explain the basis of that judgement.

Summary[18]

A summary of the expert's conclusions is mandatory. It should come at the end of the report after all of the reasoning. There may be cases, however, where the benefit to the court is heightened by placing a short summary at the beginning of the report, whilst giving the full conclusions at the end. For example, it can assist with comprehension of the analysis and with absorption of the detailed facts if the court is told, at the outset, of the direction in which the report's logic will flow in cases involving highly complex matters falling outside the general knowledge of the court.

Statement of known and assumed facts[19]

In addition to the mandatory statement of the substance of all his material instructions, the expert must also include in his report a statement of those facts (whether assumed or otherwise) upon which his opinion is based. This statement should distinguish clearly between those facts the expert knows to be true, those facts he has assumed, and those facts he has been instructed to assume.

Statements of truth and duty to the court

The wording of the mandatory statement of truth must not be modified. This statement[20], together with the mandatory statement that the expert understands his duty to the court and has complied with that duty[21], must be placed at the end of the report and may be incorporated in an Expert's Declaration.

Key documents and glossary

Where there are extensive documents on which the expert has relied, a chronological schedule of such documents that incorporates an outline of their factual content should be annexed to the report to help the court.

Copies of documents that are of key significance to the opinions in the report should be annexed to the report where practicable. Documents that are not of key significance should be neither scheduled nor annexed.

If the report contains technical terms, the provision of a glossary may help the court.

The amendment of an expert's report

Do not distort the opinion

An expert must not agree to amend, expand or alter any part of his report in a manner that distorts his true opinion. He may, however, agree to amend or expand it to ensure accuracy and internal consistency, completeness, relevance to the issues and clarity.

Amend or append?

Amendment may also be necessary as a result of an exchange of questions and answers or following an agreement reached at a discussion between experts, although only if the court's comprehension of the report is likely to be impaired by being shown the answers or agreement separately. Otherwise, they need only be appended to the report.

Where, however, there is new evidence that has resulted in the expert significantly altering his opinion, he must amend his report to reflect that fact and include in the report his reason(s) for amending it.

Seeking further information

The court's powers

The court has power to direct a party to provide information to which it has access and which is not reasonably available to the other party.[22] Such information may be relevant to the duties of an expert whether he is appointed jointly or otherwise.

Deciding whether to request further information

Where an expert is aware of the existence or likely existence of such information, he needs to decide whether it is essential, important but not essential, or merely useful for the work in hand. If he takes the view that it is essential, he will request those instructing him to provide it. Those who instruct him must then provide that information expeditiously or, if unable to do so, must so advise the expert, giving the reason why.

Would its provision be proportionate?

Save in respect of a document that he considers to be essential, the expert should assess the cost and time to any party of a document being provided and will thus form a view as to whether its provision would be proportionate in the context of the case. If he decides that it is, he should again request those instructing him to provide it, together with brief reasons as to why that provision is justified.

Seeking directions from the court

In extremis

In very exceptional circumstances, experts may file with the court a written request for directions to assist them in carrying out their function as experts.[23]

It is difficult to see circumstances where this course of action would be either justified or desirable from the expert's perspective. The expert works under instruction. If he has any difficulty with his instructions, he should stop working and seek clarification from those who instruct him. If they cannot resolve the problem, it is for the instructing party or parties to seek directions from the court.

Procedure

Where a request for directions is justified, the expert should make it as soon as it becomes apparent to him that it is necessary or desirable. The letter to the court must give the title of the claim, its reference number (if allocated), the full name of the expert, and full details as to why directions are being sought.

Notice must first be given to the parties

Experts must provide a copy of any proposed request for directions to the party or parties in the manner prescribed by the Rules.[24]

Answering questions

The purpose of questions

The procedure for questions and answers is intended to facilitate the helpful exchange of information by the parties after expert reports have been served The expert has a duty to provide answers to questions properly put.[25] The importance of that duty is reflected in the court's considerable powers of sanction should he fail to do so.

Ensuring questions have been 'properly put'

For a question to be properly put, it must conform to the requirements of Rule 35.6(2). Generally, it is for lawyers to

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decide whether a question meets the requirements, not experts. However, experts can avoid all possibility of censure for answering questions they ought not to have answered by relying on Rule 35.6.(2)(ii). This permits any questions to be put (regardless of frequency, timing or purpose), providing all the parties agree.

If instructed by one party, an expert should send any questions he receives from another party to his instructing party and ask for permission to answer them. If permission is given, he will be covered by Rule 35.6.(2)(ii).

A jointly instructed expert should only receive questions that have already been circulated to all parties[26], but he should nonetheless ensure all the parties agree to his answering any questions put to him.

Answers are part of the report

Written questions seeking clarification of a report should be answered within 28 days, unless the court directs or the parties agree otherwise. The expert's replies are treated as part of his report and are thus covered by his statement of truth.

Who pays?

The fee for dealing with questions properly put should be met by the instructing party or parties.[27]

Discussions between experts

Need for an agreed agenda

The court has powers to direct a discussion between experts for the purposes set out in the Rules[28]. Before it takes place, the claimant's expert should prepare and agree an agenda with the other parties' experts. It will include a summary of agreed matters, and those in issue, stated as concisely as the case allows at that stage.

The purpose is not negotiation

The purpose of discussions between experts is to identify, discuss and, where possible, agree opinion on expert issues. Experts should also seek to identify areas where their opinions differ, and give reasons for their disagreement. Experts should not treat the discussion as a negotiation. It is never acceptable for an expert to shift his opinion purely to obtain a concession from the other expert.

Party representation

Where a single joint expert has been instructed but a party has, with the permission of the court, instructed its own expert, there should normally be a discussion between the single joint expert and the additional expert. Such discussion should be confined to those matters within the remit of the additional expert or as ordered by the court. Where there is such a discussion, any party that does not have its own expert shall be entitled to appoint an expert advisor to participate in that discussion.

How to 'meet'

Discussion between experts may be face to face or by any other appropriate means proportionate to the circumstances of the case and the court track.

Lawyers at meetings

Lawyers will not normally be present, but if they do attend, they should not normally intervene save to answer questions put to them by the experts or to advise them on the law.

Instructions not to reach agreement

An instructing party is not permitted to instruct its expert to limit the discussion and, in particular, must not encourage, request or instruct the expert not to reach agreement on any matter that is within the expert's competence. An expert is not permitted to accept any such instruction.

Form of the joint statement

At the conclusion of any discussion between experts, a statement must be prepared that sets out:

a) a list of issues that have been agreed, including, in each instance, the basis of agreement;

b) a list of issues that have not been agreed, including, in each instance, the basis of disagreement;

c) a list of any further issues which have arisen that were not included in the original agenda for the discussion;

d) a record of further action, if any, to be taken, including, as appropriate, the holding of further discussions between the experts.

Wherever practicable, the statement should be signed by all the experts engaged in the discussion before leaving any face-to-face meeting. In other circumstances, a statement should be agreed and signed by all the parties to the discussion as soon after the discussion as may be practicable. If an expert fails to co-operate in this respect, the party instructing him may be debarred from relying on his evidence.

Attendance at trial

Experts must take all steps to ensure availability to attend court. They should be aware of the fact that a solicitor may need to serve them with a witness summons in the event of difficulties. The use of a witness summons will not affect the contractual or other obligations of the parties to pay the expert's fees[29], unless its use has been forced on them by the expert's refusal to appear willingly.

Single joint experts

Overriding duty to the court

The single joint expert owes the same duties of professional competence as does an expert instructed by one of the parties, and the same overriding obligation to the court.

Fairness and transparency

The conduct of the single joint expert should be determined by the principles of fairness and transparency. He should keep each of his instructing parties informed of any material steps that he may be taking by, for example, copying all correspondence to each of them. Furthermore, he should not attend any meeting or conference that is not a joint one, unless all the instructing parties have first agreed in writing.

Avoid the telephone

If a jointly appointed expert is to avoid all possibility of censure, he would be wise to avoid all telephone contact with the parties, as the telephone tends to be bilateral in nature. Rely instead on written communication which can easily be copied to all parties simultaneously.

Dealing with conflicting instructions

The single joint expert should provide a single report, even though he may have received instructions that contain areas of conflicting fact or allegation. To the extent that conflicting instructions lead to different opinions (for example, because the instructions require the expert to make different assumptions of fact), the report may need to contain more than one set of opinions on any issue. It will be for the court to determine the facts.

The expert's report should comply strictly with the provisions relating to those of a party-appointed expert, and the expert may be questioned and must provide answers in the same manner.

1 *CPR 35.2, except in the Small Claims Court where, with some exceptions, the provisions of CPR Part35 do not apply.*
2 *CPR 35.3(1)*
3 *CPR 35.3(2)*
4 *Stevens -v- Gullis*
5 *PD 35.1.2*
6 *PD 35.1.4*
7 *PD 35.1.5, PD 35.2.2(8)*
8 *PD 35.1.6*
9 *CPR 35.2*
10 *CPR 35.10(3), PD 35.2.2(3)*
11 *CPR 35.10(4)*
12 *LSGPCS 21.11*
13 *CPR 35.3(2)*
14 *CPR 1.1*
15 *PD 35.2.2(1)*
16 *PD 35.2.2(2)*
17 *PD 35.2.2(6)*
18 *PD 35.2.2(7)*
19 *PD 35.2.2(3)*
20 *PD 35.2.4*
21 *CPR 35.10(2), PD35.2.2(8)*
22 *CPR35.9, PD 35.3*
23 *CPR 35.14*
24 *CPR 35.14(2)*
25 *CPR 35.6 PD 35.5*
26 *PD 35.5.2*
27 *PD 35.5.3*
28 *CPR 35.12(1)*
29 *LSGPCS 21.11*