

Royal Society of Chemistry, Law Group
Expert Witnesses

Selecting and Instructing Expert Witnesses

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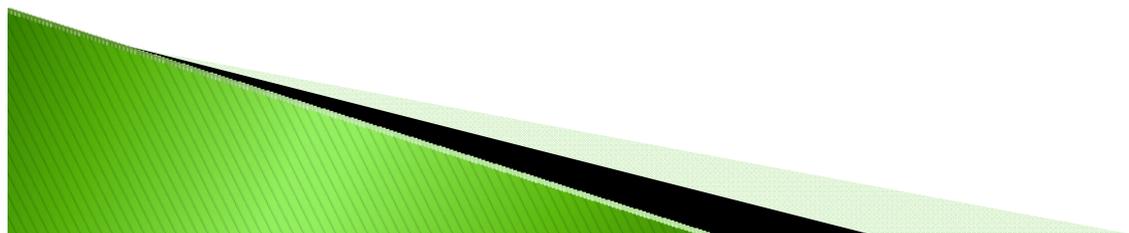
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“...an expert.....is.....a person who has been instructed to give or prepare expert evidence for the purpose of proceedings.”

Rule 35.2(1)

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

Rule 35.4(1)

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“It is the duty of experts to help the court on matters within their expertise.” Rule 35.3(1)

“This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.”
Rule 35.3(2)

“An expert’s report should be addressed to the court and not to the party from whom the expert has received instructions” PD 3.1

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Difference between an expert appointed to advise, and an expert witness

An expert appointed merely to advise cannot give evidence

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The Dilemma

An expert owes a duty to the court, and must
give an honest opinion,
yet,
each party wants the expert it appoints to help
its case.

How can both objectives be achieved?

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The Solution

Experts do genuinely have different opinions.

You can ask as many experts as you like.

But, you cannot tell an expert what to write or say, or ask him to be an advocate.

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Finding an expert

Consultants

Research institutes

Academics

Chemists employed in industry

– by the party

– by another company

Retired industrial chemists

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What to look for in an expert

Expertise

Relevant experience

At the right level

At the right time

Ability to give and explain evidence

Appearance of open-mindedness

Ability to hold opinion under cross examination

Appropriate gravitas for the court



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Selecting an expert 1

Ask what is the expert's opinion

Consider not revealing identity of client before selection

Try not to lead the expert

Consider what information to give to the expert

– prior to selection and appointment

– after appointment

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Selecting an expert 2

The expert must:

- have sufficient the time
- be able to attend trial if required
- have no potential conflict of interest
- be willing to act at a cost that is
proportionate

Conditional or contingency fees cannot be
accepted by an expert

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Instructing an expert

Explain:

- background and issues to be decided
- general requirements for expert evidence
- procedure

Ask expert to design experiments if needed

Assist expert with preparing expert report

Do not coach

Witness training is permitted

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Obligations of an Expert

Give independent evidence uninfluenced by litigation

Give unbiased opinions on matters within his expertise

Not assume the role of an advocate

Consider all material facts

Make it clear if an issue falls outside expertise

State if unable to reach a definite opinion

Contents of the Expert Report 1

Expert's qualifications

Literature relied upon

Details of facts and instructions

Statement of facts within expert's knowledge

Details of experiments and who conducted them

Summary of range of opinions and reasons for
expert's own opinion

Summary of conclusions

Contents of the Expert Report 2

Any qualifications to opinions

Statement that the expert understands and has complied with his duty to the court, and is aware of Part 35, the Practice Direction and the Protocol

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Contents of the Expert Report 3

Signed statement of truth:

“I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.”