

Philip Dunbavin

Acoustic Consultant

# **The Expert Witness and the Perfect Report?**

## **A practical Guide.**

**P R Dunbavin**

MSc, FIOA, MSEE, MInstSCE

What exactly is an 'Expert Witness'?

Can you define the term 'Expert Witness'?

Are you an 'Expert Witness'?

# What are the duties of an Expert Witness?

**Experts always owe a duty to exercise reasonable skill and care to those instructing them, and to comply with any relevant professional code of ethics.**

**However when they are instructed to give or prepare evidence they have an overriding duty to help the court on matters within their expertise.**

**This duty overrides any obligation to the person instructing them or paying them.**

**Experts should provide opinions which are independent, regardless of the pressure of litigation. They should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocate.**

# What are the duties of an Expert Witness?

**Experts should confine their opinions to matter which are material and only in relation to matters which lie within their expertise.**

**Experts should take into account all material facts before them at the time they give their opinion.**

**The report should set out those facts, literature, and other material on which they have relied in forming their opinions.**

**Experts should inform those instructing them without delay of any change in their opinions on any material matter and the reason for it.**

## What are the terms of appointment?

**The capacity in which the expert is appointed – party appointed or single joint expert.**

**The services required of the expert such as provision of an expert's report, answering questions in writing, a meeting of experts, attendance at meetings, and attendance at court.**

**Time for the delivery of the report.**

**The basis of the experts charges such as daily or hourly rate or an estimate of a total fee. You will also need to consider travelling expenses and disbursements, cancellation charges, any fees for attending court, the time to payment, and who is paying.**

# What are the instructions?

**These should be clear and include the following:**

**Basic information, such as names, addresses, telephone numbers etc.**

**The purpose of the report and a description of the matters to be investigated/examined.**

**The statement/s of case (if any), disclosure documents, and witness statements.**

**An outline programme, consistent with good case management and the experts availability.**

**Where proceedings have started, the dates of any hearings, the name of the court, the claim number and the track to which the case has been allocated.**

## What should be the contents of the experts report?

**The precise instructions they were given.**

**The expert's experience and qualifications that are relevant to the case.**

**The report must include a statement that they understand their duty to the court and have complied with it and will continue to comply with it.**

**In addition the report must contain a statement that the expert is aware of the requirements of Part 35 and Practice Direction 35.**

**Expert's reports must also be verified by a statement of truth. The normal form of the statement of truth in the UK is as follows-**

**“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.”**

## What should be the contents of the experts report?

**The results of tests of a scientific or technical nature should be accompanied by details of the method used, the standards to which the measurements were made, by whom the tests were undertaken, who supervised the tests, and a summary of those individuals respective qualifications and experience.**

**If experts rely in their reports on literature, published papers, or other material or cite opinions of others without having verified them, they must give details of those opinions relied upon, together with the qualifications of the originators.**

**When addressing the questions of fact and opinion, it is important to keep the two separate and discrete.**

**Experts must state those facts upon which their opinion is based. They must distinguish clearly between those facts which they know to be true and those which they assume to be true.**



## What should be the contents of the experts report?

**Where there are material facts in dispute experts should express separate opinions on each hypothesis put forward. If as a result of a particular expertise and experience, they consider one set of facts as being improbable or less probable, they may express that view , and they should give reasons for holding it.**

**A summary of conclusions is mandatory. The summary should be at the end of the report after all the reasoning.**

**Material should be placed in appendices to aid the flow of the report. These include the experts full CV, all British, International or other standards referred to, a full list of all material “instructions” which includes all material which solicitors place in front of experts. The omission of ‘off the record’ oral instructions is not permitted.**

## So is your report perfect?

The first step is to have it proof read for the use of English, spelling and grammar.

Then have a learned acoustician metaphorically shred it and find all the ways he/she could possibly attack or undermine your evidence. Remember someone less friendly is going to do just that so it is important to know what the weaknesses of your case are and either improve those aspects or prepare to deal with questions on those points.

You may come to the conclusion that your report is perfect. Unfortunately you will have missed the single most important item.

**Go and get some formal training from specialists in how to be an expert witness.**

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