

The Academy of Experts

INFORMATION SHEET

Experts Reports

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A Guide to reports produced by Experts
for Civil Proceedings instructed under
Part 35 of the Civil Procedure Rules.

EXPERT

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**THE
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Why do you want a Report from an Expert?

- ❑ Generally speaking when somebody is dissatisfied with a situation, for example a new central heating installation system is not working properly, they want an expert to tell them why and what they can do about it and possibly even whether they are likely to get compensation. A report of this nature is what is called an 'Advisory Report'. It is not prepared with a view to using it in court or arbitration. Put another way it enables somebody to decide what they can do and helps them decide what action to take.
- ❑ If it is decided that legal action should be taken either to 'right the wrong' or to seek compensation (damages), the chances are that an Expert Witness will be required to give evidence. Before this can happen the Expert will be required to produce an Expert Report.

What is an Expert Report?

- ❑ The purpose of an Expert's Report is to set out the Expert's opinion on matters within his expertise that he has been instructed to report on.
- ❑ The ultimate use of the Report is to inform the court on matters outside its expertise and on which it has to reach a decision in order to resolve the dispute before it.
- ❑ In addition to the court's use, the Report will also inform the instructing party and its lawyers on technical matters to enable them to determine the strength of their legal case. During the preparation for the Hearing it will be disclosed to the other side in the dispute thus helping them to assess the strength of their own legal case. Should the other side have their own Expert Witness, a copy of their Expert's Report will be given to you at the same time as they receive your Expert's Report.

General content of an Expert Report

- ❑ The Report should be a concise statement of the facts and assumptions used by the Expert and his analysis followed by the Expert's opinion. It will have to comply with legal requirements.
- ❑ Facts and the Expert's opinion should be clearly separated.
- ❑ The reader should be able to understand and to follow the reasoning leading to the conclusions reached in the Report. Although the Report may deal with very technical matters these should be expressed in a way that can be understood by an intelligent lay person. It should not contain unexplained jargon or acronyms.
- ❑ The Expert is required to include a summary of the instructions he has received in whatever form they have been given. To avoid misunderstandings it is safer to give written instructions or, where the instructions are given verbally, to confirm them in writing.

Rules applying to an Expert Report

- ❑ Because the Expert's Report will become the main evidence of the Expert (known as 'Evidence in Chief') to be given to the court, the Civil Procedure Rules (CPR) set out very clearly what must be included in an Expert's Report. The exact CPR requirements are shown in 'Useful Resources'.
- ❑ Broadly speaking the CPR requirements for an Expert's Report can be looked at as a way the court can be sure that the Expert has clearly laid out his qualifications and methodology as well as showing who has worked on the preparation of the Report. These and other matters are necessary to show clearly that the Expert has given his own Independent professional opinion. This must include matters which may harm the case of the party for whom the Report has been prepared.
- ❑ CPR also makes very clear that the Expert's overriding duty is to the court not to the party who appoints or pays the Expert.

Format of the Expert Report

- ❑ Because the Report is for use in legal proceedings its format is rather different to reports which have been prepared for other purposes. To assist both the parties and Experts as well as the judges, The Academy of Experts publishes a Model Form of Expert's Report which has been prepared and approved by its Judicial Committee which consists of senior judges. This provides guidance on the best practice for setting out the Report in a user-friendly way.
- ❑ The Academy's Judicial Committee has also designed and published a Model Form of Expert Witness CV for insertion into the Model Form of Expert's Report. This enables the information required by the court to be presented in the format desired by the judges.
- ❑ The Academy recommends a declaration, parts of which are mandatory, be used to comply both with CPR and best practice. The wording of the Declaration is shown in 'Useful Resources'.

What if the Report is not to your (the Instructor) liking?

- ❑ The facts shown in the Expert Report should be carefully checked. Should they not be correct the Expert should be told as soon as possible.
- ❑ If the Instructor (that is your legal representative or you) disagrees with any part of the Report this should be made known to the Expert at the earliest possible stage so that the Expert may carefully consider your comments and take the appropriate action. However the opinion expressed by the Expert must always be the Expert's own independent and impartial professional opinion irrespective of whether it supports or harms the instructor's case. This applies not only to the inclusion of matters and how they are expressed

but also to requests to omit parts of the Report.

- ❑ Although the instructor pays the Expert's fees for the Report, the Expert has an overriding duty to the court which is over and above any duty owed to the instructing party.

Useful Resources

- ❑ The Civil Procedure Rules; in particular Part 35 and Practice Direction 35.
www.justice.gov.uk/courts/procedure-rules/civil
- ❑ The Guidance for the instruction of experts in civil claims published by the Civil Justice Council.
www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/
- ❑ The Model Form of Expert's Report published by The Academy of Experts.
- ❑ The Model Form of Expert Witness CV published by The Academy of Experts.
- ❑ The Academy of Experts.
www.academyofexperts.org

CPR* says an Expert's Report must:

- (1) give details of the expert's qualifications;
- (2) give details of any literature or other material which has been relied on in making the report;
- (3) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;
- (4) make clear which of the facts stated in the report are within the expert's own knowledge;
- (5) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
- (6) where there is a range of opinion on the matters dealt with in the report –
 - (a) summarise the range of opinions; and
 - (b) give reasons for the expert's own opinion;
- (7) contain a summary of the conclusions reached;
- (8) if the expert is not able to give an opinion without qualification, state the qualification; and
- (9) contain a statement that the expert –
 - (a) understands his duty to the court, and has complied with that duty; and

- (b) is aware of the requirements of CPR Part 35, Practice Direction 35 and the Guidance for the Instruction of Experts in Civil Claims 2014.”

*CPR Part 35 and Practice Direction 35

Expert’s Declaration (Civil Cases)

[Note: this Declaration can be amended as appropriate when used in proceedings which are not covered by the CPR jurisdiction.]

This Declaration should be inserted between the end of The Report and the Expert’s signature.

I [Insert Full Name] DECLARE THAT:

- 1 I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.
- 2 I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
- 3 I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
- 4 I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
- 5 I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
- 6 I have shown the sources of all information I have used.
- 7 I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
- 8 I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
- 9 I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
- 10 I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.
- 11 I understand that;
 - 11.1 my report will form the evidence to be given under oath or affirmation;
 - 11.2 questions may be put to me in writing for the purposes of clarifying my report and that my answers

shall be treated as part of my report and covered by my statement of truth;

- 11.3 the court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties;
 - 11.4 the court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing;
 - 11.5 I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
 - 11.6 I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
- 12 I have read Part 35 of the Civil Procedure Rules, the accompanying practice direction and the Guidance for the instruction of experts in civil claims and I have complied with their requirements.
 - 13 I am aware of the practice direction on pre-action conduct. I have acted in accordance with the Code of Practice for Experts.

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.

Note

- Although many of the principles are the same there are differences required for reports prepared for use in other proceedings such as Family, Criminal and Tribunals.

The Academy of Experts

The Academy

Located in Gray's Inn TAE was founded in 1987 with the objective of providing, for the first time, a professional body for experts to establish and promote high objective standards.

Although there is representation on the Academy's Council from the legal profession the majority of the officers, including the Chairman, are practising Experts - The Academy of Experts (TAE) is run by Experts for Experts and those using them.

Training and development

TAE offers a comprehensive range of training programmes to enable members to develop their expert skills, and undertake Continuous Professional Development activity. Courses range from basic Role and Responsibilities through to the requirements of Procedure Rules and the practice of Giving Evidence.

TAE is also a training and accreditation body for ADR Neutrals, including Mediators, Conciliators and Expert Determiners. It publishes and maintains The Register of Qualified Dispute Resolvers and awards the designatory letters QDR to those achieving the approved standard. Standards are enforced in exactly the same way as for experts.

Accreditation of experts

All applicants to TAE who wish to become Accredited Practising Expert Witnesses undergo a rigorous vetting procedure to ensure standards of excellence are maintained. This is the process which gives the officially recognised full accreditation as a Practising Expert. Those achieving it are awarded the designatory letters MAE. Ethical and professional standards are underlined by Codes of Practice and enforced by a disciplinary committee.

ADR

The promotion of Cost Efficient Dispute Resolution became increasingly important to TAE. It is now a major force in the introduction and development of Alternative Dispute Resolution (ADR) and has led to the development of the Faculty of Mediation and ADR.



Range of services

TAE provides a full range of services to its members including:

- Technical Helpline
- Bespoke Training
- Technical Meetings
- Magazine and regular newsletters
- A detailed Expert's Handbook for Practical Guidance
- A regular survey of expert's fees
- Regular meetings on matters of expert interest
- Social functions

TAE provides a number of services which assist both Academy members and the legal profession including:

- ExpertSearch Finding and matching the right accredited expert to the case.
- Full training & accreditation of Commercial Mediators. The Academy awards the qualification QDR (Qualified Dispute Resolver) to members on its register.
- Mediator Appointment Service - Finding the right accredited mediator.
- Membership also open to the legal profession.