

## **PRACTICE DIRECTION – EXPERTS**

*This practice direction supplements Part 15 of the Court of Protection Rules 2007*

### **PRACTICE DIRECTION A – EXPERT EVIDENCE**

#### **General**

1. Part 15 is intended to limit the use of expert evidence to that which is reasonably required. In addition, where possible, matters requiring expert evidence should be dealt with by a single expert. After a permission form or an application form is issued, no person may file expert evidence unless the court or a practice direction permits.<sup>1</sup>

#### **Expert evidence – general requirements**

2. It is the duty of an expert to help the court on matters within his own expertise.<sup>2</sup>
3. Expert evidence should be the independent product of the expert uninfluenced by the pressures of the proceedings.
4. An expert should assist the court by providing objective, unbiased opinion on matters within his expertise, and should not assume the role of an advocate.
5. An expert should consider all material facts, including those which might detract from his opinion.
6. An expert should make it clear:
  - (a) when a question or issue falls outside his expertise; and
  - (b) when he is not able to reach a definite opinion, for example because he has insufficient information.
7. If, after producing a report, an expert changes his view on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

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<sup>1</sup> Rule 120.

<sup>2</sup> Rule 122.

## **Form and content of expert's report**

8. An expert's report should be addressed to the court and not to the party from whom the expert has received his instructions.
9. An expert's report must:
  - (a) give details of the expert's qualifications;
  - (b) give details of any literature or other material which the expert has relied on in making the report;
  - (c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based (or annex the instructions insofar as they are in writing);
  - (d) make clear which of the facts stated in the report are within the expert's own knowledge;
  - (e) 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;
  - (f) where there is a range of opinion on the matters dealt with in the report—
    - (i) summarise the range of opinion, and
    - (ii) give reasons for his own opinion;
  - (g) contain a summary of the conclusions reached;
  - (h) if the expert is not able to give his opinion without qualification, state the qualification; and
  - (i) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty.
10. An expert's report must be verified by a statement of truth as well as containing the statements required in paragraph 9(h) and (i) above.
11. The form of the statement of truth is as follows:

"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."

12. Attention is drawn to rule 14 which sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.

(Practice direction B accompanying Part 4 sets out more detailed requirements for statements of truth.)

### **Questions to experts**

13. Questions asked for the purpose of clarifying the expert's report should be put, in writing, to the expert not later than 28 days after service of the expert's report.<sup>3</sup>

14. Where a party sends a written question or questions direct to an expert, a copy of the questions should, at the same time, be sent to the other party or parties.

### **Orders**

15. Where an order requires an act to be done by an expert, or otherwise affects an expert, the party instructing that expert must serve a copy of the order on the expert instructed by him. In the case of a jointly instructed expert, the applicant must serve the order.

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<sup>3</sup> Rule 125.