

60. Practice Direction No 4 of 2009 - Expert Reports

1. This practice direction applies to all expert reports prepared after the date hereof in respect of a matter in the Court's civil jurisdiction (except for reports to which O 33 applies), and applies in addition to, and to the extent that it is not inconsistent with, the requirements of O 44.
2. Unless otherwise ordered, a party who intends at trial to adduce the evidence of a person as an expert shall –
 - (a) as soon as practicable after the engagement of the expert and before the expert makes a report, provide the expert with a copy of the code of conduct for experts set out hereunder;
 - (b) not later than 6 weeks before the day fixed for trial serve on each other party a report by the expert in accordance with paragraph 3 and file a copy for use of the Court.
3. The report shall state the opinion of the expert and shall state, specify or provide –
 - (1) the name and address of the expert;
 - (2) an acknowledgement that the expert has read the code and agrees to be bound by it;
 - (3) the qualifications of the expert to prepare the report;
 - (4) the facts, matters and assumptions on which the opinion is based (a letter of instructions may be annexed);
 - (5) the reasons for, any literature or other materials utilised in support of, and a summary of the opinion;
 - (6) if applicable, that a particular question, issue or matter falls outside the expert's field of expertise;
 - (7) any examinations, tests, or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (8) details of any other expert reports read by the expert and the extent to which the expert agrees with those reports and, to the extent that there is disagreement, the reasons why;
 - (9) a declaration –
 - (a) that the expert has made all enquiries which the expert believes are desirable and appropriate; and

- (b) that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (10) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate; and
 - (11) whether an opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
4. If the expert provides to a party a supplementary report, including a report indicating that the expert has changed his or her opinion on a material matter expressed in an earlier report –
- (1) that party shall forthwith serve the supplementary report on all other parties; and
 - (2) in default of such service, the party and the any other party having a like interest shall not use the earlier report of the supplementary report at trial without the leave of the Court.
5. Any report provided by an expert pursuant to this practice direction –
- (1) shall be signed by the expert; and
 - (2) shall be accompanied by clear copies of any photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter to which the report refers.
6. Save with the leave of the Court or by consent of the parties affected, a party shall not except in cross examination, adduce any evidence from a person as an expert at the trial of a proceeding unless the substance of the evidence is contained within a report or reports which the party has served in accordance with this practice direction.
7. Unless otherwise ordered, a party may put in evidence a report served on that party by another party under this Practice Direction.

Expert Witness Code of Conduct

1. The expert witness code of conduct is as set out hereunder:
- (1) A person engaged as an expert witness has an overriding duty to assist the Court impartially on matters relevant to the area of expertise of the witness.
 - (2) An expert witness is not an advocate for a party.

(3) Every report prepared by an expert witness for the use of the Court shall state the opinion or opinions of the expert and shall state, specify or provide –

- (a) the name and address of the expert;
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it;
- (c) the qualifications of the expert to prepare the report;
- (d) the facts, matters and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);
- (e) the reasons for, any literature or other materials utilised in support of, and a summary of each such opinion;
- (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
- (h) a declaration that the expert has made all inquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
- (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
- (j) details of any other expert reports seen by the expert and the extent to which the expert agrees with those reports and, to the extent that there is disagreement, the reasons why; and
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.

2. Where an expert witness has provided to a party (or that party's legal representative) a report for the use of the Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the

information referred to in paragraphs (a) (d) (e) (g) (h) (i) and (j) of sub-clause 1(3) of this code and, if applicable, paragraph (f) of that clause.

3. If directed to do so by the Court, an expert witness shall –
 - (1) confer with any other expert witness; and
 - (2) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing.
4. Each expert witness shall exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement.

22 May 2009