

## **Changes to rules on expert evidence October 2009**

Amendments have been made to the Civil Procedure Rules which include changes to the rules regarding expert evidence. The main changes are as follows:

### **Changes to the statements to be made in expert's reports**

Changes have been made to the statements to be made in expert reports and as such you may wish to consider making amendments to any precedents that you use. There remains the requirement that expert reports must contain statements that they understand their duty to the court and have complied, and will continue to comply, with that duty. However, there is also a new requirement (contained in paragraph 13.5 of the Protocol for the Instruction of Experts to give Evidence in Civil Claims (the "Protocol") and Practice Direction 35.3.2(9) of the CPR) for expert reports to contain statements that the expert is aware of the requirement of CPR 35, Practice Direction 35, the Protocol and the Practice Direction on Pre-action Conduct.

Experts report must now also be verified by the following new statement of truth:

"I confirm that I have made clear which facts and matters referred to in this report are within my 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."

You should amend the standard paragraphs in your reports accordingly.

### **Discussions between experts**

There is a new Practice Direction 35.9 which deals with discussions between experts. This codifies and expands on existing practice and points made in CPR 35 and at paragraph 18.3 of the Protocol. The provisions are as follows:

- Paragraph 9.1 states that unless directed by the court discussions between experts are not mandatory. Parties must consider, with their experts, at an early stage, whether there is likely to be any useful purpose in holding an experts' discussion and if so when.
- Paragraph 9.2 states that the purpose of discussions between experts is not for experts to settle cases but to agree and narrow issues and in particular to identify:
  - (i) the extent of the agreement between them;
  - (ii) the points of and short reasons for any disagreement;
  - (iii) action, if any, which may be taken to resolve any outstanding points of disagreement; and
  - (iv) any further material issues not raised and the extent to which these issues are agreed.
- Paragraph 9.3 states that where the experts are to meet, the parties must discuss and if possible agree whether an agenda is necessary, and if so attempt to agree one that helps the experts to focus on the issues which need to be discussed. The agenda must not be in the form of leading questions or hostile in tone.
- Paragraph 9.4 states that unless ordered by the court, or agreed by all parties, and the experts, neither the parties nor their legal representatives may attend experts discussions.
- Paragraph 9.5 states that if the legal representatives do attend –

Beale and Company Solicitors LLP

London: Garrick House · 27-32 King Street · Covent Garden · London · WC2E 8JB · T: +44 (0)20 7240 3474

Bristol: Venturers House · King Street · Bristol · BS1 4PB · T: 0117 915 4021

Dublin: Dublin: Hamilton House · 28 Fitzwilliam Place · Dublin 2 · T: +353 (0) 1 775 9505

- (i) they should not normally intervene in the discussion, except to answer questions put to them by the experts or to advise on the law; and
- (ii) the experts may if they so wish hold part of their discussions in the absence of the legal representatives.

- Paragraph 9.6 states that a statement must be prepared by the experts dealing with paragraphs 9.2(i) - (iv) above. Individual copies of the statements must be signed by the experts at the conclusion of the discussion, or as soon thereafter as practicable, and in any event within 7 days. Copies of the statements must be provided to the parties no later than 14 days after signing.
- Paragraph 9.7 states that experts must give their own opinions to assist the court and do not require the authority of the parties to sign a joint statement.
- Paragraph 9.8 states that if an expert significantly alters an opinion, the joint statement must include a note or addendum by that expert explaining the change of opinion.

### **Other changes**

Other changes to the rules include the criteria for and use of single joint experts. There is also a new requirement for questions put to an expert to be proportionate and a requirement that when written questions are sent to an expert they must now be sent to the other parties at the same time. The new Part 35 rules can be found using the link below.

[http://www.justice.gov.uk/civil/procrules\\_fin/contents/parts/part35.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part35.htm)

If you have any further queries in relation to the new rules please contact Antony Smith on 020 7420 8704 or [a.smith@beale-law.com](mailto:a.smith@beale-law.com).