

# CIVIL LEGAL EXPERT EXAMINATION IN ENGLAND AND WALES

(SUBJECT TO LEGAL OR JURISPRUDENTIAL DEVELOPMENTS)



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**Writers :** **Kay Linnell**  
EFCA, Chartered Arbitrator, MBA,  
Expert Forensic Accountant, CFE, CEDR Mediator, FEWII

**& Alexander Mackay**  
Architect Expert Witness  
Principal Consultant at BRE

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Questions	Answers	Observations
<b>0. Separate administrative order</b>	No	
<b>1. Procedures for launching an expertise</b>		In England and Wales in civil cases the burden of proof rests on the party seeking a Judgement in favour of their claim or occasionally the burden of proof falls on the party that wishes to be released from a covenant or other commitment. The judge's power to require or permit the submission of expert evidence is discretionary, except in circumstances where the law imposes the use of an expert, or there is some private agreement between the parties, or there is an application from a litigant (or adjoined party) on the basis that expert evidence is required to enable a claim to be made or a defence raised. In any event the Judge would need to approve the appointment of any expert and the admission of their evidence.
1.1. Initiative :	Judge and party (ies)	
1.2. Compulsory expertises	No	
1.3. Decision	Judge	
1.4. « In futurum » expertise possible ?	Yes	
<b>2. Appointing an expert (or experts)</b>		At the present time there is no legal register of approved or certified expert witnesses that can be used to select a Court approved expert. It is the position, at the moment, anyone who can convince the Court of their credentials can be accepted as an expert witness. There are published lists of experts and in some areas of expertise / disciplines may be listed to facilitate selection in particular areas of specific expertise, such as soft tissue injuries (whiplash). If a register of certified experts was to be set up, then experts would need to be listed according to their experience, competence, independence and current knowledge and their reputation in their specific known field of expertise. The expert may be an employee, an independent worker, a civil servant or work for a public institution, but all must provide an independent opinion and their primary and overriding responsibility is to the Court. Litigants and/or adjoined parties in any litigation case are entitled to comment on the selection and appointment an expert. If the litigants and/or adjoined parties agree, then, normally, the Judge will confirm the appointment of that expert. The judge retains the overall discretion concerning the expert's appointment. After the expert has been appointed by the Litigants and/or adjoined parties, his/her dismissal may only arise from reasons arising after his/her appointment. The expert who becomes aware of a reason or conflict or any other reason why he/she should stand down or might be dismissed, then the expert is required to notify the parties and the Court and possibly to withdraw, unless litigants and/or adjoined parties agree to keep him/her as the appointed expert.
2.1. List In case of a list : Identification, address, Internet address (URL)	No list	
2.2 Oath	Unspecified	
2.3. Choice of the expert	The parties alone	
2.4. Parties associated to the appointment ?	Yes	
2.5. Nationality	Irrelevant	
2.6. Objection by the parties	No	
2.7. Possibility to refuse to the mission	He must present objective proof	
2.8. Possibility to add an other expert	By the Court	
2.9. Possibility for the expert to use an assistant	Yes	
<b>3. Expert's mission definition</b>		Apart from the Judge appointed Court expert there are other assignments that are undertaken by experts. Experts can act as advisers, undertake consultancy, providing Expert Determinations, assist in mediations, or other forms of ADR (formal Alternative Dispute Resolution) and giving evidence in other Tribunals such as Arbitration, Employment or Tax Tribunals.
3.1. Who defines the mission ?	Judge	
3.2. Type of missions	All	
<b>4. Expert's mission progress</b>		Any disputes relating to the work of the expert that occur during the progress of the case, between the parties or between the parties and experts, including a demand for an expert's replacement and any claim relating to the extension of the timetable or the extension of the appointment, may be settled by the Judge If the Judge does not find the expert's report sufficiently clear, the Judge or Court may order additional input by the same expert or the appointment of another expert to deal with the lack of clarity or expand outside the area of expertise of the first appointed expert to provide other technical information to the Court.
4.1. Supervision by a judge	No (However, he does play a preventive role in limiting the conflicts that could arise during or following the expert mission)	
4.2. Presence of both parties	Not mandatory	

Questions	Answers	Observations
4.3. Attendance to the hearing	In complex cases and with the court's permission experts can be called to bear oral testimony at the trial.	In civil cases, the parties are required to cooperate in narrowing the issues by various means, including through pre-hearing meetings between the experts. Otherwise, the Judge may censure the experts for not reaching agreement where opinions are closely aligned. The expert is entitled to ask the Court for directions where his/her instructions are unclear or contradictory, but both parties must be informed in advance of seeking directions from the Court.
<b>5. Closing an expertise :</b>		
5.1. Does a conciliation end an expertise ?	Yes	The expert opinion is delivered by a final report, which is treated as evidence in chief for an oral hearing.
5.2. Compulsory form for the report	Written, barring particular exceptions	One the final report is signed and dated and the expert's opinion is delivered but within that report the expert will set out the evidence upon which the opinion is based, including witness statements, submissions, documents, tests, investigations and analysis. It should also contain a table or list of documents and notes submitted by the parties to the experts. If the expert should reproduce the documents to the extent necessary for the discussion and if they are not included elsewhere in the trial bundle prepared by instructing solicitors.
5.3. Does the report end the expert's mission ?	No	The expert may be asked to clarify his report by giving oral evidence at the hearing, and to submit to examination in chief, cross examination and re-examination by Counsel in Court supplemented by Judicial oral questions to clarify the expert evidence. The Judge is not bound by the opinion of the expert. The expert is simply there to explain to the Court any technical matter within the expert's knowledge.
5.4. Is there a compulsory structure for the report ?	No	
5.5. Is a pre-report compulsory ?	No	
5.6. Do the expert's conclusions tie the judge ?	No	
5.7. Possibility for a second opinion	Yes	
<b>6. Paying for the expertise :</b>		
6.1. Provision - deposit	The parties	The judge may determine the overall budget for the action, including the amount to be paid for expert opinions. There may also be directions as to the timing of the litigation including which litigants and/or adjoined parties should pay certain sums during the hearing.
6.2. Deposit determination	The parties	
6.3. Possibility for a complementary deposit	Yes	If the expert believes that the initial budget is not enough, he/she may ask the judge to allocate an additional provision or alter the extent of work required to align with the budget. Parties might pay more but suffer costs that are not recoverable from the other side even if that party wins their claim.
6.4. Determination of remuneration and charges	The expert's fees are paid by the party that sought his involvement, through the party's lawyer.	The Judge may decide that the costs of an action or parts of an action are unreasonable and refuse to direct that the other party should bear these costs. Disputes as to costs may be placed before a taxing master (specialist costs Judge).
6.5. Challenging possible ?	No	
<b>7. Expert's liability</b>		
7.1. Are there documents governing the expertise ?	Yes (Civil Procedure Rules and Civil Evidence Act 1972)	The expert is civilly liable in connection with the fulfillment of her/his mission. The criminal liability of the expert may be taken pursuant to offenses specifically applicable to experts including contempt of court such as cases of falsification of his written reports or the oral presentations or acceptance of direct payment by one party to the case, knowing it is not allowed.
7.2. Expert's liability	Unspecified	
7.3. Obligation for the expert to have an insurance		
<b>8. Statutes of the expert</b>		
8.1. Selection criterias (accreditation)	No	
8.2. Competencies classification	No	
8.3. Required qualifications	No	
8.4. Accreditation	No accreditation	The expert must be someone who is in good standing with their own professional body, have no criminal record and is trained and aware of the rules / requirements of the Court.
8.5. Possibility to accredit a legal entity	No	
8.6. Accreditation duration	No accreditation	
8.7. Ability periodic monitoring	No	
8.8. Activity monitoring	No	Any opinion evidence provided must include the appropriate declaration and a signed statement of truth in the correct approved format.
8.9. Activity reporting by the expert	No	
8.10. Ethics rules	Yes	
8.11. « Best practices »	Yes	
8.12. Possibility for sanctions	Yes	
8.13. Texts governing the expert's statutes	Yes	

## References

Civil Procedure Rules, Part 35 ; Practice Directions Part 35 ; Guidance for the instruction of experts in Civil Claims 2014