

All rise...

...Becoming an expert witness does not automatically give you a season ticket at your local Court House. In fact around 95% of cases never reach the courts, however, when accepting instructions as an expert witness you always run the risk of having to appear before a judge to explain and defend your expert opinions. As **Kay Hudson** suggests, preparation is key.

Once a solicitor has instructed you, the first step will usually entail the production of a report. There are basically two types of report that can be commissioned. One is aimed solely at advising an instructing solicitor or client, the other being for use in a court of law. Although both should follow a certain kind of format, and are subject to the same legal requirements, only the report for use in Court is immune from reprisals over 'opinions' contained within.

The latter report is the most common form. It is generally there to assist those parties involved (including the judge) to make the right decision on the best settlement of the dispute. The reason for using an expert is to clarify or draw conclusions on matters that are outside the knowledge or experience of the layperson (and this would include lawyers, judges and jury members).

For this reason, one of the most important points to remember when writing the report is to make it easy to read. Try not to use technical terms or abbreviations unless strictly necessary, and when making reference to outside authorities or groups use their full names. In such instances it may be advisable to add appendices complete with detailed glossaries or footnotes to explain their meanings or jurisdiction.

Try to make the report 'flow' in terms of the processes you went through, your analysis of the evidence, and what your conclusions were (and how you reached them). Do also bear in mind that whilst it should be a comprehensive document, there is often huge amounts of documentation submitted for every case - of which your report will be but one part. It is vital, therefore, that an expert's report should be both clear and concise about its findings and conclusions.

In making the report concise, don't be tempted to omit anything that may be contrary to the conclusions that you draw by way of other evidence or results from any tests or inspections that were carried out. This sort of practice will inevitably undermine your position should it be raised by any party later on, and the client will have an even harder job building their argument if your opinions and conclusions no longer carry weight.

Your investigations and/or experience should help resolve any queries arising from contradictory evidence. The courts will inevitably look to the experts to shed light on what evidence is the most reliable or factual, and how much supporting evidence there is.

Court outweighs the client

It's your role to cover all the issues that fall within your expertise, and that you have been instructed to cover. This can become tricky if your report concludes in favour of the opposition party and not your client. Whether the dispute reaches the court or not, you should bear in mind that, if it did, your overall duty would be to the court and not your client.

Most solicitors will try to avoid such a situation by asking for the expert's opinion as to the strength of their case after an initial review of the documentation (and prior to commencing investigations or writing the report). Obviously, this should not be an issue in cases where you have been appointed as a single joint expert witness.

The report will inevitably be a point of reference, so it's vital that some form of numbering and indexing is used. Often, where either side appoints an expert there can be disagreements over the issues in one or either report, so it helps to be able to quote the relevant section through numbers rather than long-winded explanations on where to find them.

Similarly, the layout needs to be structured in such a way that it is easy to establish what is fact and what is opinion... and upon what facts, results or documentation the conclusions have been drawn.

Some solicitors prefer the expert witness to leave larger margins, or to produce reports in double-line spacing to allow them to make notes in their copies. Try not to issue reports in different formats as confusion may arise from discussion centred on items giving the page number as reference.

Structuring the witness report

To some extent the content of your report will dictate its structure. There's a standard way of doing things, with an introduction followed by the background and facts of the case, results and analysis and then your opinions/ conclusions. Appendices finalise the job

"In making the expert witness report concise, don't be tempted to omit anything that may be contrary to the conclusions that you draw by way of other evidence or results from any tests or inspections that were carried out"

The report should begin with a front cover or introductory page stating the title of the report (or the issue it covers), whom it was prepared by (name and contact details) and some evidence of who commissioned the document. If it is likely to be a lengthy report or to include a number of references and appendices, it may be wise to include a contents page at this point and an executive summary for a quick overview of the expert's report.

Following this tends to be the introduction in which you should endeavour to layout the instructions you received - or what it is you have been asked to comment on - and the issues central to the case as you see it.

After this should be a list of all the documentation or evidence you have had access to in preparation of the report. From here, it is natural to set out the facts of the case or background to the issues you are being asked to evaluate. This might be a brief description of procedures, layout or equipment or timings and patterns of events, and should appropriately aid readers to understand the relevance of the issues that require investigation.

In cases involving some testing of materials or circumstances, this section should lead on to a description of what experiments were carried out, how they were conducted and by whom. On occasion, it may also be useful to describe why it is that you carried out these tests and what you were hoping to show.

All results from any tests conducted should be included either in full, or - if deemed to be too over-whelming - a summary of your results cross-referenced with the relevant item in the full results contained within the appendices. Any observations from site visits or comparisons and analysis of evidential documentation should also be included. This section will be where the different parties involved (or the courts) will be reliant on your knowledge and experience to draw out the key points of evidence.

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Opinions and final conclusions

From these key points, you should be able to reach some conclusions on the issues you were originally asked to look at, and will formulate your opinion as to what happened, why it happened, whether or not what happened was acceptable practice and who or what might be responsible. Following your conclusion, it's vital to include what is often referred to as the Expert's Declaration. Generally speaking, this involves two signed and dated statements (namely 'The Statement of Duty' and 'The Statement of Truth'). Although the format and wording of The Statement of Duty may vary, The Statement of Truth is set out as: 'I believe that the facts stated in this report are true and that the opinions expressed are correct'.

For its part, the statement of Duty should be a few lines declaring that the expert has understood their duty to the court and complied with it. If you are in any doubt as to what wording to choose for your Expert Declaration, there is a standard form available from the expert witness institute at: www.ewi.org.uk/declaration.asp

It's normal practice to follow the Expert Declaration with some sort of CV or profile listing the qualifications and experience that entitle you to be referred to as an expert witness on the issues and circumstances surrounding the case.

If listed in full, there are various items within the report that would make it lengthy or technical, so it is often best to place them within the appendices and merely refer to the relevant sections. It's also a good place to provide a glossary of any jargon or abbreviations you have used, or any documents referenced.

As some courts like to see the instructions and information that you received before and during the drafting of the report, this would be the place to add such items.

The rules of disclosure

In most cases, the expert's report is required to provide clarification or evaluation of any issues that requires technical, scientific or specialist knowledge. Where the document has been commissioned for the purposes of litigation, the party commissioning the report is likely to want to refer to it in their negotiations or in court. In order to do so, they will need to first disclose the document to the other parties involved.

The aim of such rules is that by disclosing all the evidence that will be used to form the basis of either parties case, both sides will have the opportunity to either reassess their own position (and possibly seek an early settlement) or be properly prepared for any questions that might otherwise have been a surprise. If they fail to do so for one reason or another, the court may decide that they will not be entitled to refer to the report (or alternatively give orders that an exchange of information or disclosure occurs). In either case it will be up to the solicitors or parties instructing you to advise as to what material you will need to hand over and to whom.

It is vitally important that you be fully prepared – both mentally and physically - for the possibility that your case might go to court. There will be occasions where you might feel intimidated by a barrage of questions on statements contained within a report you may have produced many months before. It goes without saying that you should read through again and familiarise yourself with the main points beforehand.

Perhaps work with your solicitor to prepare a list of possible questions you might be asked. If you are not a naturally confident person or you're unsure how to conduct yourself in court there are a number of courses available from some of the expert witness organisations that could prove beneficial.

Rules of engagement

Your presentation skills might be key to whether the court decides to accept your expert opinion. Dress smartly and allow plenty of time to get there before proceedings begin. Arriving late and not a little flustered will not impress the judge one bit.

Make no mistake; there will definitely be some difficult questions coming your way.

Preparing the expert witness report: a checklist for security professionals

To be prepared for writing your report you should have:

- ▶ Developed a clear understanding of the issues on which your opinions are needed;
- ▶ Seen the details of the claim or understood the relevance of your evidence;
- ▶ Obtained all the documentation that is to be used as evidence by either party;
- ▶ Gained first hand knowledge of 'local factors' where necessary (e.g. equipment or procedures).

Your report should be in the following format:

- ▶ A brief statement of who you are, and what your job entails;
- ▶ A statement of the records you had access to when writing your report;
- ▶ Any relevant factors or disclaimers (such as items of evidence not available to you).
- ▶ The facts of the case;
- ▶ An analysis of the information provided and your findings;
- ▶ A clear conclusion summarising the main issues and your expert opinion on them;
- ▶ A signature sheet (with your name and date of issue).

Points to remember:

- ▶ Write in the first person singular;
- ▶ Avoid jargon and abbreviations;
- ▶ Try to organise the report in chronological order;
- ▶ Always include full details (such as dates, times and names);
- ▶ Try to remain factual at all times.

When coming under heavy cross-examination, you may feel that you weren't allowed to get your point across. In these situations don't be afraid to ask the judge whether you can elaborate on certain points. Don't be tempted to over-elaborate, as your pointers will be lost.

Despite all the protocol and the daunting prospect of appearing before judges and barristers, acting as an expert witness need not be as complicated a role as it initially appears. In fact there is a wealth of information readily available to help you prepare your report and ensure that, when you do take to the stand, it's not a case of 'Silence in Court'!

If you're looking for help or advice on becoming an expert witness take a look at the following web sites:

- ▶ The Academy of Experts - www.academy-expert.org
- ▶ The Expert Witness Institute - www.ewi.org.uk
- ▶ The Law Society - www.lawsociety.org
- ▶ The Expert Witnesses Directory - www.theexpertwitnessdirectory.co.uk

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