

PRACTICE DIRECTION NO. 1 OF 2015

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEENS BENCH DIVISION (COMMERCIAL)

EXPERT EVIDENCE

Introduction

1. This Practice Direction applies to all proceedings in the Commercial List with effect from 1 June 2015. On that date Practice Direction No 6 of 2002 “Commercial List Practice Direction: Expert Evidence” shall cease to have effect.

2. When an expert has been instructed to give or prepare evidence for the purposes of court proceedings the expert owes a duty to assist the court on matters within his or her expertise and this duty overrides any obligation to the party from whom the expert has received instruction or by whom the expert is to be paid. A statement of the expert’s duties, known as the Ikarian Reefer Rules, is set out in Appendix 1.

3. Expert witnesses should follow the best practice set out in the Code of Practice for Experts issued by the Academy of Experts and the Expert Witnesses Institute and attached as Appendix 2.

4. Experts should sign the Experts Declaration as contained Practice Direction No. 7 of 2014 and attached as Appendix 3.

5. Experts should be mindful of the overriding objective of the Rules of Court which is to enable the court to deal with cases justly, which includes, so far as is practicable –

- (a) Ensuring that the parties are on an equal footing.
- (b) Saving expense.

- (c) Dealing with the case in ways which are proportionate to -
 - (i) the amount of money involved.
 - (ii) the importance of the case.
 - (iii) the complexity of the issues.
 - (iv) financial position of each party.
- (d) Ensuring that it is dealt with expeditiously and fairly.
- (e) Allocating to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

6. Experts should have regard to the objectives of the Pre-Action Protocol for Commercial Actions -

- (a) To encourage exchange of early and full information about the prospective legal claim.
- (b) To enable parties to avoid litigation by agreeing a settlement of the claim before commencement of proceedings.
- (c) To support the efficient management of proceedings where litigation cannot be avoided.

7. Ordinarily, the court will expect an expert witness to have obtained a form of accreditation as an expert witness.

8. Experts should be aware that any failure to comply with the Rules of Court or the directions of the court or this Practice Direction, or any excessive delay for which they are responsible, may result in the parties who instructed them being penalised in costs, or debarred from relying upon the expert evidence. In addition the expert may be held responsible for wasted costs and may have some or all fees and expenses disallowed.

9. Advice from an expert before proceedings are started which the parties do not intend to rely upon in litigation is likely to be confidential and this Practice Direction does not apply to that advice. Similarly this Practice Direction does not apply where, after the commencement of proceedings, experts are instructed only to advise (e.g. to comment upon a single joint expert's report) and not to prepare evidence for the proceedings. The expert's role then is that of an expert advisor.

10. However this Practice Direction does apply if experts who were formerly instructed only to advise are later instructed as an expert witness to prepare or give evidence in the proceedings.

11. Model Forms of Experts Reports have been produced by The Academy of Experts (www.academy-experts.org) and the Expert Witness Institute (www.ewi.org.uk). A Model Form of Expert Witness CV has been produced by the Academy of Experts.

12. Some professional bodies have produced guidance for members acting as expert witnesses, for example the Royal Institution of Chartered Surveyors RICS Practice Statement and Guidance Note 'Surveyors acting as Expert Witnesses' (<http://www.rics.org/uk/>).

The need for an expert witness

13. Those intending to instruct an expert to give or prepare evidence for the purpose of civil proceedings should consider whether expert evidence is necessary.

14. Any party intending to call an expert witness or witnesses, or to serve reports from experts, should notify this intention at the earliest opportunity at review before the Commercial Judge. Any party should be prepared to explain the justification for retaining an expert and the relevance of his/her expertise. Note the limited need to engage expert witnesses in legal negligence actions and if in doubt an application may be made to the court.

15. Active consideration should always be given to the appointment of a single joint expert for the purposes of the litigation or for the purposes of dealing with any one or more separate issues. Any party should be prepared to provide the Commercial Judge with the reason that a single joint expert should not be appointed.

16. When the parties are unable to agree on the identity of the single joint expert the court may, after hearing the parties, identify the single joint expert.

17. The parties should bear in mind that there may well be cost implications for the use of unnecessary expert evidence and, in appropriate cases, for the unjustifiable refusal to agree to the appointment of a single joint expert.

Costs Budgets for Expert Witnesses

18. The court may require a party instructing an expert to produce a costs budget setting out the projected costs of engaging the expert to produce a report and to attend as a witness and for any other purpose in the proceedings.

19. The costs budget shall set out the projected costs in such manner as may be directed by the court.

20. The court will be concerned to establish that the engagement of the expert will be in conformity with the overriding objective (set out at paragraph 5 above) and in particular that the experts costs are proportionate.

21. Where the court directs a costs budget, the report of and the oral evidence of the expert will not be admitted by the court unless the costs budget has been approved by the court.

22. The failure to produce a costs budget when directed by the court may result in the report of and the oral evidence of the expert being declared inadmissible.

23. The costs charged by the expert must not exceed the costs budget without the prior approval of the court.

24. The court may approve an increase or a decrease in the costs budget.

Duties and obligations of experts

25. Experts always owe a duty to exercise reasonable skill and care to those instructing them, and to comply with any relevant professional code. However when they are instructed to give or prepare evidence for civil proceedings they have an overriding duty to help the court on matters within their expertise. This duty overrides any obligation to the person instructing or paying them. Experts must not serve the exclusive interest of those who retain them.

26. Experts must provide opinions that are independent, regardless of the pressures of litigation. A useful test of 'independence' is that the expert would express the same opinion if given the same instructions by another party. Experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates or mediators.

27. Experts should confine their opinions to matters which are material to the disputes and provide opinions only in relation to matters which lie within their expertise. Experts should indicate without delay where particular questions or issues fall outside their expertise.

28. Experts should take into account all material facts before them. Their reports should set out those facts and any literature or material on which they have relied in forming their opinions. They should indicate if an opinion is provisional, or qualified, or where they consider that further information is required or if, for any other reason, they are not satisfied that an opinion can be expressed finally and without qualification.

29. Experts should inform those instructing them without delay of any change in their opinions on any material matter and the reasons for this.

The appointment of experts

30. Before experts are instructed or the court's permission to appoint named experts is sought, it should be established whether the experts:

- a. have the appropriate expertise and experience for the particular instruction;
- b. are familiar with the general duties of an expert;

- c. can produce a report, deal with questions and have discussions with other experts within a reasonable time, and at a cost proportionate to the matters in issue;
- d. are available to attend the trial, if attendance is required; and
- e. have no potential conflict of interest

31. Terms of appointment should be agreed at the outset and should normally include:

- a. the capacity in which the expert is to be appointed (e.g. party appointed expert or single joint expert);
- b. the services required of the expert (e.g. provision of an expert's report, answering questions in writing, attendance at meetings and attendance at court);
- c. time for delivery of the report;
- d. the contractual basis on which the expert's fees and expenses will be charged and paid (e.g. daily or hourly rates and an estimate of the time likely to be required, or a fixed fee for the services), which contractual basis should not conflict with the duties and responsibilities of the expert;
- e. travelling expenses and disbursements;
- f. cancellation charges;
- g. any fees for attending court;
- h. time for making the payment;
- i. whether fees are to be paid by a third party;
- j. if a party is publicly funded, whether the expert's charges will be subject to assessment; and
- k. guidance that the expert's fees and expenses may be limited by the court.

32. When necessary, arrangements should be made for dealing with questions to experts and discussions between experts, including any directions given by the court.

33. Experts should be kept informed about deadlines for all matters concerning them. Those instructing experts should send them promptly copies of all court orders and directions that may affect the preparation of their reports or any other matters concerning their obligations.

Instructions to experts

34. Those instructing experts should ensure that they give clear written instructions (and attach relevant documents), including the following:

- a. basic information, such as names, postal and email addresses, telephone numbers and any relevant claim reference numbers;
- b. the nature of the expertise required;
- c. the purpose of the advice or report, a description of the matter(s) to be investigated, the issues to be addressed and the identity of all parties;
- d. the pre-action protocol correspondence, the pleadings, those documents which form part of disclosure and witness statements and expert reports that are relevant to the advice or report, making clear which have been served and which are drafts and when the latter are likely to be served;
- e. where proceedings have not been started, whether they are contemplated and, if so, whether the expert is being asked only for advice;
- f. an outline programme, consistent with good case management and the expert's availability, for the completion and delivery of each stage of the expert's work; and
- g. the dates of any negotiations, mediation, court hearings (including any reviews) as appropriate, any requirements for the attendance of experts at or the production of information

by experts for any negotiations, mediation, court hearing (including any review), the dates fixed by the court or agreed between the parties for the exchange of experts' reports and any other relevant deadlines to be adhered to;

- h. bringing to the attention of the expert this Practice Direction.

35. Opposing parties instructing different experts should seek to agree, where practicable, the instructions for the experts, and that they receive the same factual material. Solicitors should ensure that the expert has access to all relevant information held by the parties, and that the same information has been disclosed to each expert in the same discipline.

Acceptance of instructions by experts

36. Experts should confirm without delay whether they accept their instructions.

37. They should also inform those instructing them (whether on initial instruction or at any later stage) without delay if:

- a. instructions are not acceptable because, for example, they require work that falls outside their expertise, impose unrealistic deadlines, or are insufficiently clear. Experts who do not receive clear instructions should request clarification and may indicate that they are not prepared to act unless and until such clear instructions are received;
- b. they consider that instructions are insufficient to complete the work;
- c. they become aware that they may not be able to fulfill any of the terms of appointment;
- d. the instructions and/or work have, for any reason, placed them in conflict with their duties as an expert. Where an expert advisor is approached to act as an expert witness they will need to consider carefully whether they can accept a role as expert witness; or

- e. they are not satisfied that they can comply with any directions of the court that have been made.

38. Experts must neither express an opinion outside the scope of their field of expertise, nor accept any instructions to do so.

39. Where an expert identifies that the basis of his instruction differs from that of another expert, he should inform those instructing him.

40. Experts should agree the terms on which they are to be paid with those instructing them.

Instructions to single joint experts

41. The parties should try to agree joint instructions to single joint experts, but in default of agreement, each party may give instructions. In particular, all parties should try to agree what documents should be included with instructions and what assumptions single joint experts should make.

42. Where the parties fail to agree joint instructions, they should try to agree where the areas of disagreement lie and their instructions should make this clear. If separate instructions are given, they should be copied to their other instructing parties.

43. Where experts are instructed by two or more parties, the terms of the appointment should, unless the court has directed otherwise, or the parties have agreed otherwise, include a statement that all the instructing parties are jointly and severally liable to pay the experts' fees and, accordingly, that experts' invoices should be sent simultaneously to all instructing parties or their solicitors (as appropriate).

44. Where instructions have not been received by the expert from one or more of the instructing parties, the expert should give notice (normally at least 7 days) of a deadline for their receipt, after which period the expert may, if practicable, begin work with or without the delayed instructions. If instructions are received after the deadline or further instructions are received after beginning work on the report the expert should consider whether it is practicable to complete the report without adversely affecting the timetable for delivery of the report and without greatly increasing the costs. An expert who decides to issue a report without taking into account

instructions received after the deadline must inform the parties, who may apply to the court for directions. In either event the report must show clearly that the expert did not receive instructions within the deadline or received further instructions, as the case may be.

Conduct of the single joint expert

45. Single joint experts should keep all instructing parties informed of any material steps that they may be taking by, for example, copying all correspondence to those instructing them.

46. Single joint experts have an overriding duty to the court. They are the parties' appointed experts and the duties owed to the parties are owed to all parties equally. The experts should maintain independence, impartiality and transparency at all times.

47. Single joint experts should not attend a meeting or conference that is not a joint one, unless all the parties have agreed in writing or the court has directed that such a meeting may be held. There also needs to be agreement about who is to pay the experts' fees for the meeting.

48. Single joint experts should serve their reports simultaneously on all instructing parties. They should provide a single report even though they may have received instructions that contain conflicts. If conflicting instructions lead to different opinions (for example, because the instructions require the expert to make different assumptions of fact), reports may need to contain more than one set of opinions on any issue. It is for the court to determine the facts.

Cross-examination of the single joint expert

49. Single joint experts may give oral evidence at trial. All parties may ask questions. In general, written questions should be put to single joint experts before requests are made for them to attend court for the purpose of cross-examination.

Experts Requests for Directions

50. Experts should normally raise any need for further directions with those by whom they are instructed but in appropriate circumstances they may ask the court for directions. Unless the court otherwise orders any such request shall be furnished to the instructing party at least 7 days

before any application to the court. Any such application to the court should be by letter to the Commercial Office including therein, inter alia, the title of the case, the case number, the name of the expert, copies of any relevant documents and/or correspondence and full details of the request for instructions.

Experts' access to information held by the parties

51. Experts should try to ensure that they have access to all relevant information held by the parties, and that the same information has been disclosed to each expert in the same discipline. Experts should seek to confirm this soon after accepting instructions, notifying instructing solicitors of any omissions.

52. If experts require information which has not been disclosed, they should discuss the position with those instructing them without delay, so that a request for the information can be made and, if not forthcoming, an application can be made to the court.

53. Any request for further information from the other party made by an expert should be in a letter to the expert's instructing party and should state why the information is necessary.

Experts' reports

54. The content of experts' reports should be governed by their instructions and general obligations, any court directions, and the experts' overriding duty to the court. The report should identify the individual who prepared the report and any individuals who contributed to its preparation.

55. In preparing reports, experts should maintain professional objectivity and impartiality at all times.

56. The details of experts' qualifications in reports should be commensurate with the nature and complexity of the case. It may be sufficient to state any academic and professional qualifications. However, where highly specialised expertise is called for the report should include the detail of particular training and/or experience that qualifies them to provide that specialised evidence.

57. Where tests of a scientific or technical nature have been carried out, experts should state:

- a. the dates the tests were undertaken and the methodology used; and
- b. by whom the tests were undertaken and under whose supervision, summarising their respective qualifications and experience.

58. When addressing questions of fact and opinion, experts should keep the two separate. Experts must state those facts (whether assumed or otherwise) upon which their opinions are based. Experts must distinguish clearly between those facts that they know to be true and those facts which they assume.

59. Where there are material facts in dispute experts should express separate opinions on each hypothesis put forward. They should not express a view in favour of one or other disputed version of the facts unless, as a result of particular expertise and experience, they consider one set of facts as being improbable or less probable, in which case they may express that view and should give reasons for holding that view.

Sequential exchange of experts' reports

60. Where there is to be sequential exchange of reports the defendant's expert's report usually will be produced in response to the plaintiff's. The defendant's report should then:

- a. confirm whether the background set out in the plaintiff's expert report is agreed, or identify those parts that in the defendant's expert's view require revision, setting out the necessary revisions. The defendant's expert need not repeat information that is adequately dealt with in the plaintiff's expert report;
- b. focus only on those material areas of difference with the plaintiff's expert's opinion. The defendant's report should identify those assumptions of the plaintiff's expert that they consider reasonable (and agree with) and those that they do not; and

- c. in particular where the experts are addressing the financial value of heads of claim (for example, loss of profits), the defendant's report should contain a reconciliation between the plaintiff's expert loss assessment and the defendant's, identifying for each assumption any different conclusion.

Written questions to experts

61. Any party may seek clarification of an experts report by directing written questions to the expert by forwarding the questions to the party instructing the expert within 28 days of receipt of the expert's report. Copies of the questions should be forwarded by the party to the expert and to all other parties who have received the experts report.

62. Written questions must only relate to the clarification of the experts report, must be proportionate and may only be issued on one occasion.

63. Experts should provide written answers to the party instructing the expert, to be forwarded to the party asking the question and all other parties who have received the experts report within 28 days of the party receiving the questions.

64. Experts have a duty to provide written answers to questions from parties seeking clarification of the experts report. Where they fail to do so within the time required or at all, the court may debar a party from relying on the report. The party and the expert may be responsible for wasted costs and may have some or all related fees disallowed.

65. Experts' answers to questions become part of their reports. They are covered by the statement of truth, and form part of the expert evidence.

66. Where experts believe that questions put are not properly directed to the clarification of the report they should discuss the questions with those instructing them and, if appropriate, those asking the questions. Attempts should be made to resolve such problems without the need for an application to the court for directions.

Experts' Withdrawal

67. Where experts' instructions are incompatible with their duties, through incompleteness, a conflict between their duty to the court and their instructions, or for any other reason, the experts may consider withdrawing from the case. However, experts should not do so without first discussing the position with those who instruct them and considering whether it would be more appropriate to make a written request for directions from the court. If experts do withdraw, they must give formal written notice to those instructing them.

Discussions between experts

68. The purpose of discussions between experts should be, wherever possible, to:

- a. identify and discuss the expert issues in the proceedings;
- b. reach agreed opinions on those issues, and, if that is not possible, narrow the issues;
- c. identify those issues on which they agree and disagree and summarise their reasons for disagreement on any issue; and
- d. identify what action, if any, may be taken to resolve any of the outstanding issues between the parties.

69. Arrangements for discussions between experts should be proportionate to the value of cases. In some cases telephone discussion or an exchange of letters may suffice.

70. Those instructing experts must not instruct experts to avoid reaching agreement (or to defer doing so) on any matter within the experts' competence. Experts are not permitted to accept such instructions.

71. At the conclusion of any discussion between experts a minute should be prepared setting out:

- a. issues that have been agreed and the basis of that agreement;
- b. issues that have not been agreed and the basis of the disagreement;

- c. any further issues that have arisen that were not included in the original agenda for discussion; and
- d. a record of further action, if any, to be taken or recommended, including if appropriate a further discussion between experts.

72. The minute should be agreed and signed by all the parties to the discussion at the conclusion of the meeting.

73. Agreements between experts during discussions do not bind the parties unless the parties expressly agree to be bound. However, parties should give careful consideration before refusing to be bound by such an agreement and be able to explain their refusal should it become relevant to the issue of costs.

Amendment of reports

74. Where experts change their opinion, whether following a meeting of experts or as a result of new evidence or for any other reason, they must inform those who instruct them by addendum to their report explaining the reasons. Those instructing experts should inform other parties as soon as possible of any change of opinion and forward the addendum to those who have received the report.

Attendance of experts at court

75. Those instructing experts should ascertain the availability of experts before trial dates are fixed; keep experts updated with timetables (including the dates and times experts are to attend), the location of the court and directions of the court; and inform experts immediately if trial dates are vacated or adjourned.

76. A party instructing an expert may apply to the court, on notice to all other parties, for leave to present expert evidence by video link.

77. Experts have an obligation to attend court and should ensure that those instructing them are aware of any dates to avoid and that they take all reasonable steps to be available.

78. Experts should normally attend court without the need for a witness

summons, but on occasion they may be served to require their attendance. The use of witness summonses does not affect the contractual or other obligations of the parties to pay experts' fees.

Concurrent evidence

79. The court may direct that experts of like disciplines give their evidence at trial concurrently. The experts will then be questioned together, firstly by the judge based upon disagreements recorded in the minute of the joint meeting of experts and then by the parties' advocates. Concurrent evidence can save time and costs, and assist the judge in assessing the difference of views between experts. Experts need to be aware that the court may order concurrent evidence.

Sanctions

80. The parties and solicitors and experts should be aware that sanctions might apply because of a failure to comply with the Rules of Court, this Practice Direction or the directions of the court.

81. Whether or not court proceedings have been commenced a professional instructing an expert, or an expert, may be subject to sanction for misconduct by their professional body or regulator.

82. If proceedings have been started the court may:

- a. impose cost penalties against those instructing the expert.
- b. direct that an expert's report or evidence be inadmissible.
- c. order that the expert be responsible for wasted costs.
- d. order that some or all of the experts fees and expenses be disallowed.

83. Experts should also be aware of other possible sanctions:

- a. In more extreme cases, if the court has been misled it may invoke general powers for contempt in the face of the court. The court would then have the power to fine or imprison the wrongdoer.

- b. If an expert commits perjury, criminal sanctions may follow.
- c. If an expert has been negligent there may be a claim on their professional indemnity insurance.

Mr Justice Weatherup

Judge of the Commercial Court

11th May 2015

APPENDIX 1

THE IKARIAN REEFER RULES

Mr Justice Cresswell set out the following rules for experts in National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer) [1993] 2 Lloyd's Rep. 68 at 81-82:

- 1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to the form or content by the exigencies of litigation (Whitehouse v Jordan[1981] 1 W.L.R. 246, HL, at 256, per Lord Wilberforce).**
- 2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within their expertise (see Pollivitte Ltd v Commercial Union Assurance Company Plc [1987] 1 Lloyd's Rep. 379 at 386, per Garland J., and Re J (1990) F.C.R. 193 , per Cazalet J. An expert witness in the High Court should never assume the role of an advocate.**
- 3. An expert witness should state the facts or assumption on which their opinion is based. They should not omit to consider material facts which could detract from their concluded opinion (Re J, above).**
- 4. An expert witness should make it clear when a particular question or issue falls outside their expertise.**

5. If an expert's opinion is not properly researched because they consider that insufficient data are available then this must be stated with an indication that the opinion is no more than a provisional one (Re J, above). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification that qualification should be stated in the report (Derby & Co Ltd v Weldon (No.9), *The Times*, November 9, 1990, CA, per Staughton L.J.

6. If, after exchange of reports, an expert witness changes their view on the material having read the other side's expert report or for any other reason, such change of view should be communicated (through legal representative) to the other side without delay and when appropriate to the court.

7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.

APPENDIX 2



Further copies of this Code can be obtained or downloaded from:

The Academy of Experts

3 Gray's Inn Square
London WC1R 5AH
Tel: 020 7430 0000
Fax: 020 7430 0666

www.academy-experts.org

Code of Practice for Experts

The Expert Witness Institute

1st Floor 7 Warwick Court
London WC1R 5DJ
Tel: 020 365 6367
Fax: 020 411 2470

www.ewi.org.uk

This Code was endorsed on 22nd June 2005

by

*Rt Hon Lord Phillips of Worth Matravers
Master of the Rolls & Chairman of the Civil Justice Council*

The Code of Practice for Experts

Preamble

This Code of Practice shows minimum standards of practice that should be maintained by all Experts.

It is recognised that there are different systems of law and many jurisdictions in Europe, any of which may impose additional duties and responsibilities which must be complied with by the Expert.

There are, in addition to the Code of Practice, General Professional Principles with which an Expert should comply.

These include the Expert:

- Being a 'fit and proper' person
- Having and maintaining a high standard of technical knowledge and practical experience in their professional field
- Keeping their knowledge up to date both in their expertise and as Experts and undertaking appropriate continuing professional developments and training.

The Code

1. Experts shall not do anything in the course of practising as an Expert, in any manner which compromises or impairs or is likely to compromise or impair any of the following:
 - a) the Expert's independence, impartiality, objectivity and integrity,
 - b) the Expert's duty to the Court or Tribunal,
 - c) the good repute of the Expert or of Experts generally,
 - d) the Expert's proper standard of work,
 - e) the Expert's duty to maintain confidentiality.
2. An Expert who is retained or employed in any contentious proceeding shall not enter into any arrangement which could compromise his impartiality nor make his fee dependent on the outcome of the case nor should he accept any benefits other than his fee and expenses.
3. An Expert should not accept instructions in any matter where there is an actual or potential conflict of interests. Notwithstanding this rule, if full disclosure is made to the judge or to those appointing him, the Expert may in appropriate cases accept instructions when those concerned specifically acknowledge the disclosure. Should an actual or potential conflict occur after instructions have been accepted, the Expert shall immediately notify all concerned and in appropriate cases resign his appointment.
4. An Expert shall for the protection of his client maintain with a reputable insurer proper insurance for an adequate indemnity.¹
5. Experts shall not publicise their practices in any manner which may reasonably be regarded as being in bad taste. Publicity must not be inaccurate or misleading in any way.
6. An Expert shall comply with all appropriate Codes of Practice and Guidelines.

¹The Academy of Experts has a prescribed minimum requirement for £500,000 for professional indemnity cover.



APPENDIX 3

PRACTICE DIRECTION NO. 7 OF 2014

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEENS BENCH DIVISION

QUEENS BENCH DIVISION (COMMERCIAL)

CHANCERY DIVISION

FAMILY DIVISION

EXPERT'S DECLARATION

Reports prepared on or after 1st January 2015

- (1) This Practice Direction sets out the wording of the Expert's Declaration and the Joint Statement Declaration (to be added to the minute of a meeting of experts) to be used in any expert's report or minute of meeting of experts prepared on or after **1ST JANUARY 2015**.
- (2) The report of an expert witness shall contain the Expert's Declaration set out in Annex A.
- (3) A minute of the meeting prepared after discussions between expert witnesses shall contain the Joint Statement Declaration set out in Annex B.
- (4) Declarations should be inserted between the end of the report or minute of meeting and the expert's signature.
- (5) The Expert's Declarations contained in Practice Direction 6/2002 (Commercial List) and Practice Direction 11/2003 (Queens Bench) shall not apply to expert's reports prepared on or after 1st January 2015.

Dated this 17th day of December 2014

The Right Honourable Sir Declan Morgan

Lord Chief Justice

ANNEX A

EXPERT'S DECLARATION

I [*Insert Full Name*] DECLARE THAT:

1. I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.

2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affects my answers to points 3 and 4 above.
6. I have shown the sources of all information I have used.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
10. I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.
11. I understand that -
 - a. my report will form the evidence to be given under oath or affirmation;
 - b. questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;
 - c. the Court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties;

- d. the Court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing;
- e. I may be required to attend Court to be cross-examined on my report; and
- f. I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.

STATEMENT OF TRUTH

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

Signature

.....

Date

.....

ANNEX B

JOINT STATEMENT DECLARATION

DISCUSSIONS BETWEEN EXPERTS

1. We, the undersigned experts, individually here restate the Expert's Declaration that we understand our overriding duties to the Court, have complied with them and will continue so to do.
2. We further confirm that we have neither jointly nor individually been instructed to, nor has it been suggested that we should, avoid or otherwise defer from reaching agreement on any matter within our competence.

Experts'

signatures

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Date

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