

Expert Witnesses: Code of Practice

The University recognises that due to the standing that the individual has in his/her academic or professional field members of staff may on occasion be approached to carry out expert witness work.

In order to best support individuals in performing this role, whilst managing associated risks which might arise, the University has agreed this Code of Practice.

Approval for Work as Expert Witness

There is currently a policy in place in respect of external engagement and this Code of Practice should therefore be read alongside the “University Procedure in relation to Work for Outside Bodies including Consultancies” which provides guidelines setting out how the arrangements for such work should be approached.

However, the following process applies in addition.

Head of Department Approval

For the avoidance of doubt, prior to accepting any engagement, the member of staff must receive the approval of Head of Department (HoD) (or Dean in the case of the HoD acting as the expert witness), as is the case for all external activity.

The HoD must be provided with sufficient details of the proposed engagement to enable an informed decision to be made. This should include as a minimum the following information:

Details of what will be provided to the Client (i.e. report, court appearance, patent assistance, etc.)

A statement as to the reason why the member of staff considers they are able to fulfil the engagement

A statement on professional misconduct confirming whether any actual or alleged complaints, or claims have been made, or prosecution brought against the member of staff, in the previous 10 years for professional misconduct, negligence, error or any other wrongful acts or omissions.

Research and Knowledge Exchange Services role

The University’s department of Research and Knowledge Exchange Services (RKES) must also be contacted to ensure appropriate contractual provisions are put in place prior to any work being undertaken.

Training

As a matter of policy, it is recognised that expert witness work is a potentially valuable activity for staff to engage in. However, in order to best support individuals in performing the role of expert witness, whilst at the same time managing the potential risks to the University of the activity, it has been agreed that all staff **MUST** undertake the training offered by the University **BEFORE** formally accepting or undertaking the role of expert witness.

1. When is expert evidence admissible?

The opinion of a witness who possesses particular skill or expertise in the subject under investigation is admissible where evidence is required to assist the tribunal of fact to interpret matters of a technical or scientific nature which are outwith the tribunal's knowledge and experience. The evidence of such witnesses is often referred to as 'expert evidence' or 'evidence of skilled witnesses'.

On those occasions where the court is able to reach its own conclusions without such assistance – that is, where the matter is within its own experience and knowledge – the evidence of a skilled or expert witness is inadmissible. But in areas which cannot be properly understood without special knowledge or experience (such as unfamiliar kinds of phenomena, machinery, or documents, or an inquiry into a person's medical condition), evidence is admissible of opinions formed by witnesses who possess such knowledge or experience.

Where conflicting expert evidence has been provided, it is for the tribunal of fact to decide which evidence, if any, it will prefer.

Expert evidence is not admissible merely because it might be useful to a jury.

2. Who can be an expert witness?

There are no detailed rules as to who may testify as an expert. The question of whether a witness is sufficiently qualified to testify is for the judge to decide. Appropriate study or practical experience of the subject under examination is normally essential, and the witness's qualifications and experience are matters upon which he may be cross-examined. The courts require of expert witnesses the highest standards of accuracy and objectivity.

3. What are the duties of expert witnesses?

The job of the expert witness is not simply to articulate their client's position, but is rather to assist the decision maker (a court, tribunal or other similar body) with such information about the specialist area as is necessary before a decision can be made. An expert witness is no more entitled than an ordinary witness to state an opinion on the facts at issue in a case.

1. Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation
2. An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise
3. An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion
4. An expert witness should make it clear when a particular question or issue falls outside his expertise.
5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one.
6. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) 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

4. Summary of key principles

The key principles to be borne in mind and which allow an 'expert' to be considered as credible and reliable 'expert witness' are therefore that:

- the expert witness's primary obligation is to the court (in whatever form it may take);
- the expert witness needs to be independent, impartial and objective, and this requires the expert witness not to be selective in the materials drawn upon to support the conclusions reached but rather to take into account any matters which might be contrary to that conclusion;
- the expert witness should do nothing to compromise his integrity;
- an expert witness is entitled to, and probably should, charge a proper professional fee for their services;
- the fee should not be dependant upon the outcome of the dispute, nor should the expert witness seek or accept any other benefit over and above their normal fee and expenses;
- the expert witness should avoid a conflict of interest [*link to University COI details*];
- the expert witness's work should be properly informed and done to a proper standard, having regard to all appropriate codes of conduct, codes of practice and guidelines;
- the expert witness should therefore have a high standard of technical knowledge and practical experience;
- and the expert witness should keep themselves up to date through work experience and appropriate continuing professional development and training.