

Expert Witnesses: Guidance Document

This guidance is intended to assist staff to ensure that they can effectively meet the requirements of a client in need of expert witness testimony (normally a solicitor).

This is intended to be of general application and there may be additional requirements relating to cases in specialised areas of law.

University Procedures (including approval for work as Expert Witness)

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.

It should be noted that there is already a policy in place in respect of external engagement and this guidance 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.

Acceptance of instructions

1. Experts should ensure that they receive clear instructions from the client (in writing unless this is not practical) specifying their requirements, which should cover:

- (a) Basic information such as names, addresses, telephone numbers, dates of birth, and dates of incidents;
- (b) The type of expertise which is called for;
- (c) The purpose for requesting the expertise, and a description of the matter to be investigated;
- (d) Questions to be addressed;
- (e) The history of the matter, identifying any factual matters that may be in dispute;
- (f) Details of any relevant documents;
- (g) Whether proceedings have been commenced or are contemplated, the identity of the parties, and whether the expert may be required to attend to give evidence;
- (h) Whether prior authority to incur the estimated fees needs to be obtained before the instructions can be confirmed;
- (i) In the case of medical reports: where the medical records are situated (including, where possible, the hospital record number); whether or not the consent of the client/patient to an examination and disclosure of records has been given; and whether or not the records are to be obtained and provided by the client;
- (j) In cases concerning children, a note that the paramountcy of the child’s welfare may override the legal professional privilege attached to the report and that disclosure might be required.

2. Instructions should be accepted only in matters where the expert:

- (a) Has the knowledge, experience, expertise, qualifications, or professional training appropriate for the assignment;
- (b) Has the resources to complete the matter within the timescales and to the standard required for the assignment.

3. A time limit for the production of the report should be agreed. When the agreed time limit cannot be met, notice of the delay should be communicated at the earliest opportunity.

4. Experts should make clear to solicitors what can and cannot be expected on completion of the assignment. In particular, as soon as possible after being instructed, they should identify any aspects of a commission with which they are unfamiliar, or not professionally qualified to deal, or on which they require or would like further information or guidance.

5. If any part of the assignment is to be undertaken by parties other than the individual instructed, then:

- (a) Prior agreement must be obtained from the client;
- (b) The names of the individuals to be engaged and details of their experience and qualifications must be given.

6. Where a firm has been instructed, the names of the individuals to be assigned to the project and details of their experience and qualifications must be given on request.

Professional conduct

7. Experts must comply with the Code of Conduct of any professional body of which he/she is a member.

Confidentiality

8. The identity of the client or any information about the client acquired in the course of the commission shall not be disclosed by the expert except where consent has been obtained from the client or where there is a legal duty to disclose. However, experts should note that legislation may apply in this area – for example, the Freedom of Information (Scotland) Act 2002 – and therefore any related request for information relating to the engagement should be discussed with the appropriate University staff.

Independence

9. Experts will bear in mind that when giving evidence at court, the role of a witness of fact, or an expert witness, is to assist the court and remain independent of the parties;

10. Experts will disclose to solicitors at the start of each project any personal or financial or other significant circumstances which might influence work for the client in any way not stated or implied in the instructions, in particular:

- (a) Any directorship or controlling interest in any business in competition with the client;
- (b) Any financial or other interest in goods or services (including software) under dispute;
- (c) Any personal relationship and/or professional relationship, and the nature thereof, with any individual involved in the matter;
- (d) The existence but not the name of any other client of the expert with competing interests;
- (e) Whether the expert has worked with the expert instructed by the opposing party (if known).

11. Any actual or potential conflict of interest must be reported to the solicitor as soon as it is raised or becomes apparent and the assignment must be terminated.

Investigation

12. Experts should consider whether there is a need to see the client, visit a site etc, and if so, agree the practical arrangements with the client in advance.

13. In the case of medical reports:

- (a) If the doctor has treated the patient before, ensure that the patient's consent has been obtained to the release of the information contained in the notes and that such consent is informed consent;
- (b) If the doctor has not treated the patient before, ensure that the patient's consent is obtained to the examination and to the disclosure of their records to the doctor; and, where practicable, consent of the other doctors involved in the care of the patient should be obtained before releasing information held by them.

Preparation of a report

14. The report should cover:

- (a) Basic information such as names and dates;
- (b) Purpose in presenting the report, and description of matter investigated;
- (c) The history of the matter;
- (d) Methodology used in investigation;
- (e) Details of any documents used;
- (f) Facts ascertained;
- (g) Inferences drawn from the facts, with reasoning;
- (h) Summary of the expert's qualifications and experience.

15. Plain English should be used and any technical terms explained.

16. Copies of any document or papers referred to in the report should be provided; any items referred to may be subject to recovery by commission in any court proceedings and experts should ascertain from instructing solicitors whether or not in view of that it is appropriate to refer to documents provided by the solicitor; it is unnecessary to copy widely and easily available documents.

17. The expert's final report should be dated and signed by the individual(s) who will if required give evidence in support of it.