

TAKING A SMALL CLAIMS ACTION IN THE COUNTY COURT

USING AN EXPERT



Welcome to this guide

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Using an Expert in the county Court

If you want to use an expert, you should say so in the  [Allocation Questionnaire](#). You must say what the expert's evidence will deal with and whether you would like the expert to give evidence in a written report, orally at the hearing, or both. If at all possible, both parties should use the same expert as this will save you costs.

Your Notice of Allocation will tell you if you have been given permission to use an expert. It will also tell you when you should send a copy of the expert's report to the court and to the other party involved in the dispute.

Once proceedings have been started (you have submitted your claim form):

- Any expert evidence that you then obtain may not be used in court without the permission of the court
- A party who instructs an expert without the permission of the court will not necessarily be able to recover the cost from another party

It is the duty of an expert to help the court on the matters within the expert's scope of expertise and this duty overrides any obligation to the person instructing or paying the expert.

The court is of the opinion that many matters can and should be resolved without the need for advice or evidence from an expert. If an expert is needed, the parties should consider how best to minimise the expense, for example, by agreeing to instruct a Single Joint Expert.

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Single Joint Expert

This is an expert engaged and paid jointly by the parties whether instructed jointly or separately.

Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert.

Where the parties cannot agree who should be the single joint expert, the court may

- select the expert from a list prepared or identified by the parties, or
- direct that the expert be selected in such other manner as the court may direct.
- any inspection, examination or experiments which the expert wishes to carry out.

Before an expert is instructed the court may

- limit the amount that can be paid by way of fees and expenses to the expert, and
- direct that some or all of the parties pay that amount into court.

The parties should try to agree joint instructions to single joint experts, but, if you cannot agree on joint instructions, each party may give instructions. When a party gives instructions to the expert that party must, at the same time, send a copy to the other party. All parties should try to agree what documents should be included with instructions, what assumptions single joint experts should make and the areas of disagreement between the parties. If separate instructions are given, they should be copied at the same time to the other instructing parties.

Where experts are instructed by two or more parties, the terms of 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); and
- a statement as to whether any order has been made limiting the amount of experts' fees and expenses



Agreed Expert

This is where the parties agree the identity of the expert but only one party instructs the expert and pays the expert's costs.

If the parties do not agree that the nomination of a single joint expert is appropriate, then the party seeking the expert evidence (the first party) should give the other party (the second party) a list of one or more experts in the relevant field of expertise whom the first party would like to instruct. Experts who have previously advised a party (whether in the same case or otherwise) should only be proposed as single joint experts if the other party are given all relevant information about the previous involvement.

Within 14 days of receipt of the list of experts, the second party may indicate in writing an objection to one or more of the experts listed. If there remain on the list one or more experts who are acceptable, then the first party should instruct an expert from the list.

If the second party objects to all the listed experts, the first party may then instruct an expert of the first party's own choice. Both parties should bear in mind that if proceedings are started the court will consider whether a party has acted reasonably when instructing (or rejecting) an expert.



Choosing an Expert

Before experts are formally instructed or the court's permission to appoint named experts is sought, the following should be established:

- that they have the appropriate expertise and experience
- that they are familiar with the general duties of an expert
- that they 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
- a description of the work required
- whether they are available to attend the trial, if attendance is required
- that there is no potential conflict of interest.

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

- the capacity in which the expert is to be appointed (e.g. party appointed expert, single joint expert or expert advisor)
- the services required of the expert (e.g. provision of expert's report, answering questions in writing, attendance at meetings and attendance at court)
- time for delivery of the report
- the basis of the expert's charges (either daily or hourly rates and an estimate of the time likely to be required, or a total fee for the services)
- travelling expenses and disbursements
- cancellation charges
- any fees for attending court
- time for making the payment
- whether fees are to be paid by a third party.



The Expert's Report

An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.

An expert's report must:

- give details of the expert's qualifications
- give details of any literature or other material which has been relied on in making the report
- contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based
- make clear which of the facts stated in the report are within the expert's own knowledge
- say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision
- where there is a range of opinion on the matters dealt with in the report
 - a. summarise the range of opinions, and
 - b. give reasons for the expert's own opinion
- contain a summary of the conclusions reached
- if the expert is not able to give an opinion without qualification, state the qualification
- contain a statement that the expert
 - a. understands their duty to the court, and has complied with that duty, and
 - b. is aware of the requirements of Part 35 of the Civil Procedure rules, Practice Direction 35 and the Protocol for Instruction of Experts to give Evidence in Civil Claims.

An expert's report must be verified by a statement of truth in the following form:

'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.'



Questions about the report

A party may put written questions about an expert's report (which must be proportionate) to an expert instructed by another party or a single joint expert. The party asking the questions must, at the same time, send a copy of those questions to the other party. Such questions:

- may be put once only
- must be put within 28 days of service of the expert's report
- must be for the purpose only of clarification of the report unless the court gives permission, or the other party agrees, to other questions being put.

An expert's answers to questions shall be treated as part of the expert's report.

Where a party has put a written question to an expert instructed by another party, but the expert does not answer that question, the court may make one or both of the following orders in relation to the party who instructed the expert:

- that the party may not rely on the evidence of that expert, or
- that the party may not recover the fees and expenses of that expert from any other party.

