

Professional Conduct Procedure

PR11 - Protocol on Expert Evidence

Instructing an expert

A copy of this Protocol must be provided to any expert instructed. In their report to the Professional Conduct Panel, the expert must confirm that they have read and understood this Protocol and that their responsibility is to the Panel.

Admission of expert evidence

In line with paragraph 4.10 of the Professional Conduct Procedure (PCP), the Panel will decide if expert evidence is required based on the following:

- whether not including expert evidence would have a material impact on the fairness of proceedings
- whether the expert evidence relates to a significant and substantial element of the complaint which may affect the outcome of the hearing
- whether the Panel will be able to make a decision without the expert evidence
- the cost of the expert evidence

If a party to the complaint files an expert report without the permission of the Panel, the Panel must decide how much weight (if any) to give to that report.

Role of the expert

The expert's responsibility is to the Panel and not to the party instructing the expert. Experts should maintain professional objectivity and impartiality at all times in preparing their report and when responding to questions or giving evidence.

The expert must be independent of all parties and must decline to give evidence if there is a conflict of interest.

The expert must possess the skills, knowledge or expertise relevant to the issue on which the expert evidence is required.

The expert must only report on the issues being disputed relating to their expertise and only in relation to their particular field of expertise. If the expert is asked a question by the Panel which is outside their knowledge, they must let the Panel know.

Experts must let the Panel know immediately if their opinion has changed on something significant in their report and provide the reasons why.

The Expert's Report

The expert's report must include the following:

- details of who instructed them and what they were asked to do;
- the facts of the complaint or specific issue that they have been asked to provide an opinion on;
- a declaration that they have received the Protocol of Expert Evidence and that they understand what the Protocol requires of them;
- details of their expertise, qualifications and experience;
- The following 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.”; and
- citations for any literature, opinions, articles or other material used in the report.

Care should be taken to ensure that the report is accurate. Where a material inaccuracy is found, it must be immediately raised with the Clerk.

An expert's report cannot be amended without the permission of the Panel. A request to amend the report must include a statement exemplifying the reason for the request. The Panel may give a deadline to amend the report. An amended report must meet the requirements of the Protocol of Expert Evidence. The amendment must include a statement of truth attesting to its accuracy.

Costs

Where an expert is instructed directly by the Panel to prepare a report, the Association will bear the costs of that expert report.

Where an expert is instructed by a party to the complaint to prepare a report, that party will bear the costs of that expert report.