

What are we covering?

1. Purpose of expert evidence - single or joint, qualification/status of expert
2. Questions to expert and impact of not raising/questioning any particular issue
3. Use of expert in response/status of internal 'expert'
4. Evidence at trial
5. **Questions**

Some particular issues with expert evidence

**Assumptions/
Leaps of faith**

**Information
before the
expert**

**Landlord
response (or lack
of)**



Purpose of expert evidence

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What is an expert?

Cresswell J

*National Justice
Compania Naviera
SA v Prudential
Assurance
Company Limited*
[1993] 2 Lloyds Rep
68

- Expert evidence should be the independent produce of the expert, uninfluenced as to form or content by the exigencies of litigation
- Providing independent assistance to the court by way of an objective unbiased opinion in relation to matters within his expertise
- State the facts or assumptions upon which the opinion is based
- Makes clear when issues are outside competence
- Adequately researched.

Need for medical evidence

Fancourt J

Cohen & Ors v Co-operative Group Ltd & Ors [2025] EWHC 526 (Ch)

paragraph 35

*“The court is under a duty to limit expert evidence to that which is admissible and reasonably required to resolve the proceedings. Even if the evidence is not necessary to resolve an issue, it may still be admitted if it will be of assistance in determining that issue and so is reasonably required. **The decision to permit or refuse expert evidence is an evaluative judgment taking into account all relevant circumstances and proportionality**, see British Airways plc v Spencer [2015] Pens LR 519 and Re RBS Rights Issue Litigation [2015] EWHC 3433 (Ch).”*

What is the expert evidence addressing

Disability
s.6, EA

**Arising in
consequence**
s.6, EA

**Treatment and
Prognosis**

What is the expert is **not** addressing

**Reasonableness
or
proportionality**

**Whether the
conduct
occurred or EA
has been
breached**

**Alternative
Remedies**

Confirming disability, s.6, EA

01

Impairment

- physical
- Mental
- Automatic disability (MS, cancer, HIV)

02

Adverse Effects

- Arising from impairment
- must be substantial

03

Long-term

- Temporary disability

04

Scope of Adverse Effects

- Substantial
- Normal day-to-day activities

Arising in consequence

01

Excluded Conditions

- alcohol
- drugs
- Voyerism
- EA 2010 (Disability)
Regulations 2010, reg 4

02

Nexus between disability and conduct

03

Legitimate v illegitimate

- Governing Body of X
Endowed School v SENDIST
[2009] EWHC 1842 (Admin)
- Havering LBC v Eales,
September 2018

Treatment & Prognosis

Recovery?

Proportionality

**Willingness to
engage**



Questions to the expert

Andy Lane



Common areas of questioning

01

The protected characteristic

- Section 4
- Nine
- Esp. disability

02

The particular disadvantage

- May be admitted
- Assumes linkage to acts
- Real issue may be proportionality

03

The connection with acts complained of

- Any relevance?
- Impact of drugs/alcohol?

04

Reasonable adjustments

- Realistic?
- Opinion on attempts

Civil Procedure Rules

Part 35

35.6

- Right to put written questions to expert
- For purpose of clarification
- Answers treated as part of the expert's report
- If no answer court may not allow reliance on report or may refuse recovery of expert's fees and expenses of that expert from any other party.

PD35.6

6.1 Where a party sends a written question or questions under rule 35.6 direct to an expert, a copy of the questions must, at the same time, be sent to the other party or parties.

6.2 The party or parties instructing the expert must pay any fees charged by that expert for answering questions put under rule 35.6. This does not affect any decision of the court as to the party who is ultimately to bear the expert's fees.

The importance of questions

Mutch v Allen

[2001] EWCA Civ 76; [2001] C.P. Rep. 77

“This new regime is designed to ensure that experts no longer serve the exclusive interest of those who retain them, but rather contribute to a just disposal of disputes by making their expertise available to all. The overriding objective requires that the court be provided with all relevant matter in the most cost effective and expeditious way. This policy is exemplified by provisions such as rule 35.11 which allows one party to use an expert's report disclosed by the other party even if that other party has decided not to rely on it himself.”

[Lord Justice Simon Brown, para. 24]

Griffiths v TUI UK Ltd

[2023] UKSC 48; [2023] 3 W.L.R. 1204

A defendant can ask focused CPR r 35.6 questions which articulate clearly the challenge or challenges which the defendant wishes to make and give the expert the opportunity to explain his or her evidence in response to those challenges, thereby obviating the need to seek the expert's attendance for cross-examination.

[Lord Hodge DPSC, para. 81]

Mustard v Flower [2019] EWHC 2623 (QB)

"But none of this changes the plain facts that the questions (i) are wholly disproportionate, (ii) are overwhelmingly not for the purposes of clarification and (iii) amount to cross-examination."

Master Davison at 36

- Omissions in the experts' reports were best addressed by supplementary reports or joint statements
- It was undesirable that experts were forced to make value judgments about the appropriateness or proportionality of questions before choosing whether to answer
- The overriding duty of an expert is to assist the court on matters within their expertise and this displaces any duty to their instructing solicitors.



Responding to expert evidence

Victoria Osler



Points at which response is necessary

Pre-Issue

**Post-issue/
pre-trial**

Trial



Pre-Issue



- Expert evidence/medical reports in response to notice
 - o Pre-action protocol, paragraph 3
- How to respond -
 - Medical advisers?
 - Own expert?
 - Recording notes
- Justification
- Rolling reconsideration – s.15, s.19, PSED



Expert evidence received post-issue

01

Permission to
rely?

02

Accept as SJE
and Questions

03

Appoint new SJE

04

Obtain own
expert evidence

Post-questions –
consideration of own
expert and relevant
application



Expert evidence at trial

Andy Lane



Lets remind ourselves...relevant defences

01

Disability Discrimination (s15)

- In consequence of
- Proportionality

02

Indirect Discrimination (s19)

- Put at particular disadvantage
- Proportionality

03

Public sector equality duty (s.149)

- Remove/minimise disadvantage
- Taking steps to meet need
- Impact of homelessness

What was expert told by party?

Fancourt J

Aviva Insurance Ltd v
Nadeem & Anor
[2024] EWHC 3445
(KB)

DHCJ HHJ Tindal

paragraph 7

“He has so many discrepancies in what he told the doctor as against what he put in his witness statement and, indeed, what was in the CFA [I think that must mean CNF] and what he said today, but I will just mention a few but it is clear what he told the doctor is a tissue of lies. He told the doctor, for example, and I should say at this point the report was on 16 August 2019 which is some considerable time after the accident, alleged accident I should say, that he was a rear passenger. He said today that is a mistake. He was a front passenger. He said he had head restraints. He said today that there weren’t any head restraints and seemed not to understand what a head restraint was, which is a bit strange for someone that runs a garage. He told the doctor there was a second impact with a third vehicle. He said that that is not true, there was no second impact...”

Broad topics of questions to expert

1. Experience – including experience of particular matter at issue.
2. Worked for “both sides”?
3. Any reported assistance in cases?
4. Understanding of role as witness/Duty to the Court?
5. Practical experience of subject issue?
6. Any “leaps too far”/without evidence?
7. Evidence of pre-disposition?

Reading Borough Council v Tina Holland

[2023] EWHC 1902 (Ch)

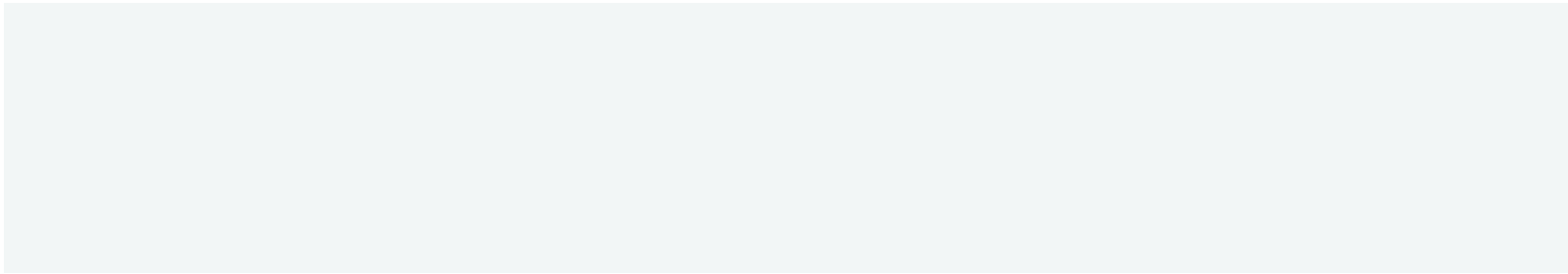
**ASB
Multi-agency
EIA**

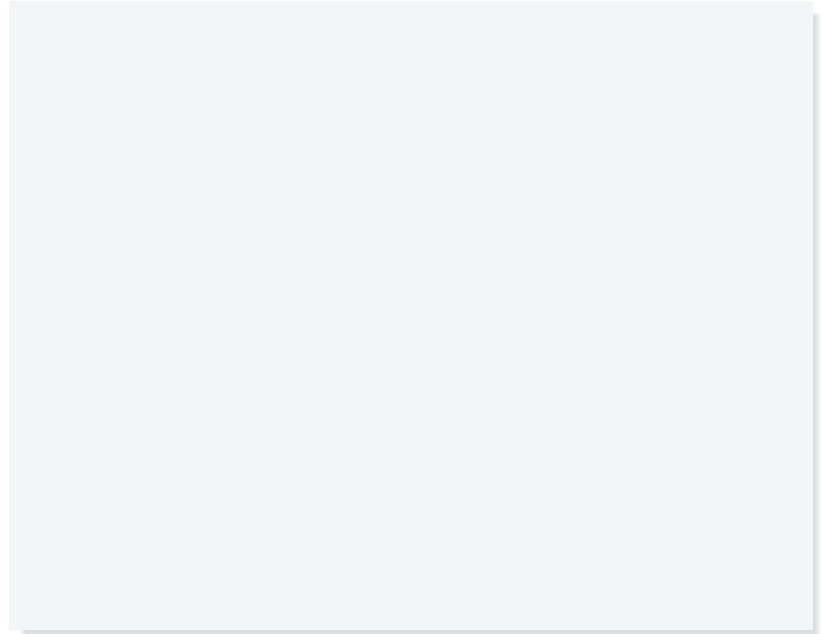
**Joint expert
(forensic
psychiatry)**

**No need for
additional
medical
evidence on
impact of
eviction**















01

02



