

Criminal Procedure Rules

Part 33

33.1: Reference to expert

A reference to an 'expert' in this Part is a reference to a person who is required to give or prepare expert evidence for the purpose of criminal proceedings, including evidence required to determine fitness to plead or for the purpose of sentencing.

[Note. Expert medical evidence may be required to determine fitness to plead under section 4 of the Criminal Procedure (Insanity) Act 1964(2). It may be required also under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(3), under Part III of the Mental Health Act 1983(4) or under Part 12 of the Criminal Justice Act 2003(5). Those Acts contain requirements about the qualification of medical experts.]

33.2: Expert's duty to the court

- (1) An expert must help the court to achieve the overriding objective by giving objective, unbiased opinion on matters within his expertise.
- (2) This duty overrides any obligation to the person from whom he receives instructions or by whom he is paid.
- (3) This duty includes an obligation to inform all parties and the court if the expert's opinion changes from that contained in a report served as evidence or given in a statement under Part 24 or Part 29.

33.3: Content of expert's report

- (1) An expert's report must –
 - (a) give details of the expert's qualifications, relevant experience and accreditation;
 - (b) give details of any literature or other information which the expert has relied on in making the report;
 - (c) contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;
 - (d) make clear which of the facts stated in the report are within the expert's own knowledge;
 - (e) say who carried out any examination, measurement, test or experiment which the expert has used for the report and –
 - (i) give the qualifications, relevant experience and accreditation of that person,
 - (ii) say whether or not the examination, measurement, test or experiment was carried out under the expert's supervision, and
 - (iii) summarise the findings on which the expert relies;
 - (f) where there is a range of opinion on the matters dealt with in the report –
 - (i) summarise the range of opinion, and
 - (ii) give reasons for his own opinion;
 - (g) if the expert is not able to give his opinion without qualification, state the qualification;
 - (h) contain a summary of the conclusions reached;
 - (i) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty; and
 - (j) contain the same declaration of truth as a witness statement.

(2) Only sub-paragraphs (i) and (j) of rule 33.3(1) apply to a summary by an expert of his conclusions served in advance of that expert's report.

[Note. Part 24 contains rules about the disclosure of the substance of expert evidence. Part 27 contains rules about witness statements. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(6) and section 5B of the Magistrates' Courts Act 1980(7). A party who accepts another party's expert's conclusions may admit them as facts under section 10 of the Criminal Justice Act 1967(8). Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the Criminal Justice Act 2003(9).]

33.4: Expert to be informed of service of report

A party who serves on another party or on the court a report by an expert must, at once, inform that expert of that fact.

33.5: Pre-hearing consideration of expert evidence

(1) This rule applies where more than one party wants to introduce expert evidence.

(2) The court may direct the experts to –

- (a) discuss the expert issues in the proceedings; and
- (b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.

(3) Except for that statement, the content of that discussion must not be referred to without the court's permission.

33.6: Failure to comply with directions

A party may not introduce expert evidence without the court's permission if the expert has not complied with a direction under rule 33.5.

[Note. At a pre-trial hearing a court may make binding rulings about the admissibility of evidence and about questions of law under section 7 of the Criminal Justice Act 1987(10); sections 31 and 40 of the Criminal Procedure and Investigations Act 1996(11); and section 45 of the Courts Act 2003(12).]

33.7: Court's power to direct that evidence is to be given by a single joint expert

(1) Where more than one defendant wants to introduce expert evidence on an issue at trial, the court may direct that the evidence on that issue is to be given by one expert only.

(2) Where the co-defendants cannot agree who should be the expert, the court may –

- (a) select the expert from a list prepared or identified by them; or
- (b) direct that the expert be selected in such other manner as the court may direct.

33.8 Instructions to a single joint expert

(1) Where the court gives a direction under rule 33.7 for a single joint expert to be used, each of the co-defendants may give instructions to the expert.

(2) When a co-defendant gives instructions to the expert he must, at the same time, send a copy of the instructions to the other co-defendant(s).

(3) The court may give directions about –

- (a) the payment of the expert's fees and expenses; and
 - (b) any examination, measurement, test or experiment which the expert wishes to carry out.
- (4) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

(5) Unless the court otherwise directs, the instructing co-defendants are jointly and severally liable for the payment of the expert's fees and expenses.
