

## Land Tribunal Practice Direction

04/01/05

### 14. Expert evidence

14.1 Introduction - Rule 42 of the Lands Tribunal Rules 1996 applies to expert witnesses and their evidence. The nature of the jurisdictions exercised by the Lands Tribunal means that the Tribunal will be called upon to hear and evaluate the evidence of experts in most cases. Expert witnesses are defined as those qualified by training and experience in a particular subject or subjects to express an opinion. Most frequently the expert witness before the Tribunal will be a surveyor or valuer, but this Part applies equally to any witness whom it is proposed to call to give expert evidence.

14.2 Duty of the expert witness - It is the duty of an expert to help the Tribunal on matters within his expertise. This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid. The evidence should be accurate and complete as to relevant fact, and should represent the honest and objective opinion of the witness. If a professional body has adopted a code of practice and professional conduct dealing with the giving of evidence, then the Tribunal will expect a Member of that body to comply with the provisions of the code in the preparation and presentation of his evidence.

14.3 Where more than one party intends to call expert evidence - Where more than one party is intending to call expert evidence in the same field, the experts should take steps before preparing or exchanging their reports to agree all matters of fact relevant to their reports, including the facts relating to any comparable transaction on which they propose to rely, any differences of fact, and any plans, documents or photographs on which they intend to rely in their reports.

14.4 Form and content of expert's report - An expert's report should be addressed to the Tribunal and not to the party from whom the expert has received his instructions. It should:

- (a) give details of the expert's qualifications;
- (b) give details of any literature or other material on which the expert has relied in making the report;
- (c) say who carried out any inspection or investigations which the expert has used for the report and whether or not the investigations have been carried out under the expert's supervision;
- (d) give the qualifications of the person who carried out any such inspection or investigations, and
- (e) 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;
- (f) contain a summary of the conclusions reached;
- (g) contain a statement that the expert understands his duty to the Tribunal and has complied with that duty and
- (h) contain a statement setting out the substance of all material instructions (whether written or oral). The statement should summarise the facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based.

14.5 The instructions referred to in sub-paragraph (h) above will not be privileged against disclosure but the Tribunal will not, in relation to those instructions -

- (i) order disclosure of any specific document; or
- (ii) permit any questioning in the Tribunal, other than by the party who instructed the expert,

unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under sub-paragraph (h) to be inaccurate or incomplete.

14.6 An expert's report should be verified by a statement of truth as well as the statements required by 14.4(g) and (h). Members of the Royal Institution of Chartered Surveyors should comply with the form of declaration contained in "Surveyors Acting as Expert Witnesses - Practice Statement" issued by the RICS. The form of the statement of truth is set out in para 13.1 above.

14.7 Lodging reports - The procedures of the Tribunal are designed to ensure that all cases are disposed of speedily, efficiently and fairly. The role of the expert witness in these procedures is of fundamental importance. The directions given by the Tribunal will normally require the lodging and exchange of experts' reports and valuations at an early stage prior to the hearing. It is incumbent on the expert witness to prepare and submit such a report together with any valuation and details of comparable properties or transactions relied upon, fully and promptly for the purpose of lodging and exchange. Subject to para 13.2 expert evidence given at the hearing will be confined to those matters disclosed in the expert's report. An expert who wishes to respond to the report of another expert should do so in a supplementary report, which will be treated as notice of additional evidence for the purposes of para 13.2. Experts' reports must not contain any reference to or details of negotiations "without prejudice" or offers of settlement.

14.8 Written questions to experts - The Tribunal encourages parties to adopt the following procedure. Where he thinks it necessary to do so, a party should put written questions about his report to an expert instructed by another party. Normally such questions should be put once only; should be put within 28 days of service of the expert's report; and should be only for the purposes of clarification of the report. Where a party sends a written question or questions direct to an expert and the other party is represented by solicitors, a copy of the questions should, at the same time, be sent to those solicitors. It is for the party or parties instructing the expert to pay any fees charged by that expert for answering questions put under this procedure. This does not affect any decision of the Tribunal as to which party is ultimately to bear the expert's costs. An expert's answers to questions put in accordance with this paragraph will be treated as part of the expert's report.

14.9 Where a party has put a written question to an expert instructed by another party in accordance with the above paragraph, the Tribunal or the Registrar may order that the question must be answered; and the Tribunal may also make such an order in relation to a question that has not been put in this way. If the question is not answered the Tribunal or the Registrar may make one or both of the following orders in relation to the party who instructed the expert -

- (i) that the party may not rely on the evidence of that expert; or
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

14.10 Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the hearing.

14.11 Discussions between experts - After the exchange of the experts' reports the Tribunal will normally require experts of like discipline to meet in order to reach agreement as to facts, to agree any relevant plans, photographs, etc, to identify the issues in the proceedings and, where possible, to reach agreement on an issue. The Tribunal may specify the issues which the experts must discuss. The Tribunal may also direct that following a discussion between the experts the parties must prepare a statement for the Tribunal showing those facts and issues on which the experts agree and those facts and issues on which they disagree and a summary of their reasons for disagreeing. The Tribunal will usually regard failure to co-operate in reaching agreement as to the facts and issues as incompatible with the expert's duty to the Tribunal and may reflect this in any order on costs that it may make.

14.12 The contents of the discussions between the experts are not to be referred to at the hearing unless the parties agree. Where experts reach agreement on an issue during their discussions, the agreement will not bind the parties unless the parties expressly agree to be bound by the agreement.

14.13 Computer-based valuations - Where valuers propose to rely on computer-based valuations it is of the utmost importance that they should agree to employ a common model which can be made available for use by the Tribunal in the preparation of its decision. Directions should be sought from the Tribunal at an early stage if there is difficulty in reaching agreement.