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STATUTORY INSTRUMENTS

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**2017 No. 1035**

**The Court of Protection Rules 2017**

**PART 15**

**EXPERTS**

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**References to expert**

**15.1.** A reference to an expert in this Part—

- (a) is to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings; but
- (b) does not include any person instructed to make a report under section 49 of the Act.

**Restriction on filing an expert's report**

**15.2.—(1)** No person may file expert evidence unless the court or a practice direction permits, or if it is filed with the application form and is evidence—

- (a) that P is a person who lacks capacity to make a decision or decisions in relation to the matter or matters to which the application relates;
- (b) as to P's best interests; or
- (c) that is required by any rule or practice direction to be filed with the application form.

(2) An applicant may only rely on any expert evidence so filed in support of the application form to the extent and for the purposes that the court allows.

(Rule 9.4(a) requires the applicant to file any evidence upon which the applicant wishes to rely with the application form.)

### **Duty to restrict expert evidence**

**15.3.**—(1) Expert evidence shall be restricted to that which is necessary to assist the court to resolve the issues in the proceedings.

(2) The court may give permission to file or adduce expert evidence as mentioned in rule 15.2(1) and 15.5(1) only if satisfied that the evidence—

- (a) is necessary to assist the court to resolve the issues in the proceedings; and
- (b) cannot otherwise be provided either—
  - (i) by a rule 1.2 representative; or
  - (ii) in a report under section 49 of the Act.

### **Experts – overriding duty to the court**

**15.4.**—(1) It is the duty of the expert to help the court on the matters within the expert's expertise.

(2) This duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

### **Court's power to restrict expert evidence**

**15.5.**—(1) Subject to rule 15.2, no party may file or adduce expert evidence unless the court or a practice direction permits.

(2) When a party applies for a direction under this rule, that party must—

- (a) identify the field in respect of which that party wishes to rely upon expert evidence, and the issues to which the expert evidence is to relate;
- (b) where practicable, identify the expert in that field upon whose evidence the party wishes to rely;
- (c) provide any other material information about the expert;
- (d) state whether the expert evidence could be obtained from a single joint expert;
- (e) provide any other information or documents required by a practice direction; and
- (f) provide a draft letter of instruction to the expert.

(3) When deciding whether to give permission as mentioned in paragraph (1), the court is to have regard in particular to—

- (a) the issues to which the expert evidence would relate;
- (b) the questions which the expert would answer;
- (c) the impact which giving permission would be likely to have on the timetable, duration and conduct of the proceedings;
- (d) any failure to comply with any direction of the court about expert evidence; and

- (e) the cost of the expert evidence.
- (4) Where a direction is given under this rule, the court shall specify—
  - (a) the field or fields in respect of which the expert evidence is to be provided;
  - (b) the questions which the expert is required to answer; and
  - (c) the date by which the expert is to provide the evidence.
- (5) The court may specify the person who is to provide the evidence referred to in paragraph (3).
- (6) Where a direction is given under this rule for a party to call an expert or put in evidence an expert's report, the court shall give directions for the service of the report on the parties and on such other persons as the court may direct.
- (7) The court may limit the amount of the expert's fees and expenses that the party who wishes to rely upon the expert may recover from any other party.

#### **General requirement for expert evidence to be given in a written report**

**15.6.** Expert evidence is to be given in a written report unless the court directs otherwise.

#### **Written questions to experts**

- 15.7.**—(1) A party may put written questions to—
- (a) an expert instructed by another party; or
  - (b) a single joint expert appointed under rule 15.12,
- about a report prepared by such a person.
- (2) Written questions under paragraph (1)—
    - (a) may be put once only;
    - (b) must be put within 28 days beginning with the date on which the expert's report was served;
    - (c) must be for the purpose only of clarification of the report; and
    - (d) must be copied and sent to the other parties at the same time as they are sent to the expert.
  - (3) Paragraph (2) does not apply in any case where—
    - (a) the court permits it to be done on a further occasion;
    - (b) the other party or parties agree; or
    - (c) any practice direction provides otherwise.
  - (4) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.
  - (5) Paragraph (6) applies where—
    - (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
    - (b) the expert does not answer that question.
  - (6) The court may make one or both of the following orders in relation to the party who instructed the expert—
    - (a) that the party may not rely upon the evidence of that expert; or
    - (b) that the party may not recover the fees and expenses of that expert, or part of them, from any other party.

(7) Unless the court directs otherwise, and subject to any final costs order that may be made, the instructing party is responsible for the payment of the expert's fees and expenses, including the expert's costs of answering questions put by any other party.

### **Contents of expert's report**

- 15.8.**—(1) The court may give directions as to the matters to be covered in an expert's report.
- (2) An expert's report must comply with the requirements set out in the relevant practice direction.
- (3) At the end of an expert's report there must be a statement that the expert—
- (a) understands his or her duty to the court; and
  - (b) has complied with that duty.
- (4) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.
- (5) The instructions to the expert shall not be privileged against disclosure.

### **Use by one party of expert's report disclosed by another**

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

### **Discussions between experts**

- 15.10.**—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—
- (a) identify and discuss the expert issues in the proceedings; and
  - (b) where possible, reach an agreed opinion on those issues.
- (2) The court may specify the issues which the experts must discuss.
- (3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing—
- (a) those issues on which they agree; and
  - (b) those issues on which they disagree and a summary of their reasons for disagreeing.
- (4) Unless the court directs otherwise, the content of the discussions between experts may be referred to at any hearing or at any stage in the proceedings.

### **Expert's right to ask court for directions**

- 15.11.**—(1) An expert may file a written request for directions to assist in carrying out the expert's functions as an expert.
- (2) An expert must, unless the court directs otherwise, provide a copy of any proposed request for directions under paragraph (1)—
- (a) to the party instructing the expert, at least 7 days before filing the request; and
  - (b) to all other parties, at least 4 days before filing it.
- (3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

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

**15.12.**—(1) 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 one expert only.

(2) The parties wishing to submit the expert evidence are called “the instructing parties”.

(3) Where the instructing parties cannot agree who should be the expert, the court may—

(a) select the expert from a list prepared or identified by the instructing parties; or

(b) direct the manner by which the expert is to be selected.

### **Instructions to a single joint expert**

**15.13.**—(1) Where the court gives a direction under rule 15.12 for a single joint expert to be used, the instructions are to be contained in a jointly agreed letter unless the court directs otherwise.

(2) Where the instructions are to be contained in a jointly agreed letter, in default of agreement the instructions may be determined by the court on the written request of any instructing party copied to the other instructing parties.

(3) Where the court permits the instructing parties to give separate instructions to a single joint expert, unless the court directs otherwise, when an instructing party gives instructions to the expert, that party must at the same time send a copy of the instructions to the other instructing party or parties.

(4) The court may give directions about—

(a) the payment of the expert's fees and expenses; and

(b) any inspection, examination or experiments which the expert wishes to carry out.

(5) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expense to the expert.

(6) Unless the court directs otherwise, and subject to any final costs order that may be made, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.