

Expert Witness

We want to have a helpful chat to someone about the specialist area of expert witnesses relating to property problems. We are more than happy to talk you through our experiences, what expertise we can offer and what is referred to by solicitors as CPR Part 35, or Civil Procedures Rules Part 35, to give it its full title. If you would like further advice on any then please phone 0800 298 5424 for a friendly chat.

Sometimes disputes cannot be avoided

If you are a company/business, and you are in dispute, read this section first.

Over the years we have worked for many companies and they tend to talk about their property problems rather than their property opportunities! This is because most companies are in business, primarily, to run their business and understand their business. A property is something they have to have to run their business from and they generally find it can bring with it all sorts of problems if they are leasing the property and haven't had a schedule of conditions carried out when they first moved in and then had a schedule of dilapidations served upon them, or some other lease issue, and they are finding they have repairs that they didn't envisage or a building project that has taken a lot longer than was anticipated.

Simply put, it is where there is difference in opinion, which simply can't be resolved by the parties involved. When clients bring a third party in that you both trust is enough to resolve such a situation, sometimes a step back from both parties and coming at the problem afresh can be all that is needed where at times there seems no way forwards other than to appoint solicitors and get involved with a legal case; though sometimes this is the only way forwards.

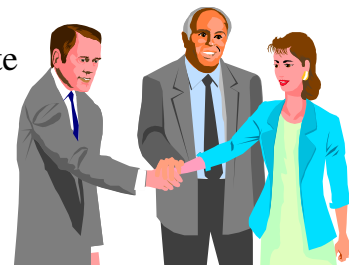
Now read the Alternative Dispute Resolution (ADR)

If you are an individual with a problem please read this section first

Where disputes arise between two individuals there can often be a quite personal battle of wits, even a matter of pride. We generally find that both parties are reasonable when discussing the problem individually, it is just when they get in the same room that things become very different. Over the years we have dealt with many cases where individuals have been in dispute and it can be a very costly process if it goes to court, usually far exceeding the cost of sort out the problem. We saw a few years ago where a house extension had been built, allegedly, on next door's land and the bill for going to court was £300,000 and remember this was some years ago! For this reason we suggest you read the Alternative Dispute Resolutions section next, as it is far cheaper than going to court.

Alternative dispute resolution (ADR)

There are some formal ways of resolving a dispute without going to court. This is known collectively as alternative dispute resolutions, or ADR, which can mean a range of things:



- Mediation
- Arbitration
- Technical expert
- Independent expert determination
- Civil Procedures Rules (CPR)

Mediation

This is a flexible approach to solving the problem, with a consenting agreement or carrying on to court. If you live next to the person, or do business regularly with the company, this can be the way forward as it is quick and cheap (some cases have been known to take one day). It is kept out of the public arena and you can move on. However, it is important to remember that both parties need to consent to the agreement.

An example of “out of box” thinking is the case where a shop owner had agreed to carry out repairs to the first and second floor but never had. This was duly pointed out by the landlord and he had served a Schedule of Dilapidations and a disagreement had come about because of this. A mediator was brought in and the agreement was that the shop would carry

on trading on the ground floor only and give up the rights to the first and second floor, whilst still paying the same rent, and that the landlord would take over the first and second floor and carry out the work and rent them out as flats.

Arbitration

Arbitration is a more formal method of mediation. The advantages are speed, cost and privacy. A jointly agreed single arbitration with appropriate knowledge is appointed. They make a common sense judgement about the point in question. They would not go “outside the box”, as with mediation.

Technical expert

In this version, both parties provide evidence and the technical expert decides from this evidence the Award that should be given. There is, however, a right of appeal.

Independent expert determination

This is as above, but with a subtle difference in that there isn't a right of appeal, so it does mean you get a solution without going to court, albeit that it may not be the solution you want.

Civil Procedures Rules (CPR)

The introduction of the Civil Procedure Rules and Protocol has meant that with any dispute you have to show that you have made every effort to resolve it before going to court and the above methods are some of the routes. There has said to be a drop in cases going to court, due to the CPR and also an alarming drop in solicitors and barristers fee income!

If, however, the case does get to court then the Civil Procedures Rules have set out some rules and protocol relating to this. This is where the term expert witness comes from.

Expert witness

Some of the expert witness rules

There are various rules and requirements for those wishing to act as expert witnesses. The first is they should be (and this sounds very obvious) expert in the area that they are giving advice on and if your case is important to you, you will need the best expert that money can buy to play a vital role in civil litigation, ensure there is clarity in how the system works, the Civil Justice Council to give advice for the Protocol to be used and give an interpretation of Civil Procedure Rules (CPR) 35, and associated Practice Directions (PD) 35, those instructing experts (we have to add the usual caveats that you should still read and understand the Civil Procedure Rules and the Practice Directions.



The basics of instructing an expert

You should give clear guidance to the expert as to what you are instructing them to do. This in turn will allow them to identify if they are an expert in that area.

The broad aims to the Protocol

These are:

1. To give general guidance on CPR 35 and PD 35.
2. Understand the importance of early exchange of full information about the issues involved in the prospective claim.
3. Understand that the parties can, and should, be encouraged to reduce the scope of their litigation by agreeing part or whole elements of issues with the experts before commencement of the proceedings.
4. To aid the effective and efficient management of the process where litigation cannot be avoided.

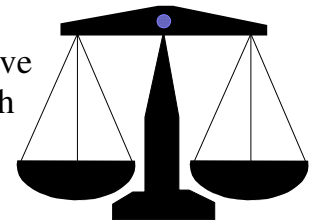
Duties of the experts

1. They owe a duty to exercise reasonable skill and care to those instructing them.
2. The expert should be aware and understand that the courts wish to deal with the cases proportionally, expeditiously and fairly and the experts owe the courts their overriding objective.
3. The expert's opinion should be independent. It is argued that the experts should give the same opinion regardless of which party they are instructed by, if they are truly independent and not support the party's side they are engaged by.
4. Experts should only offer opinion with matters that lie within their expertise and advise where matters fall outside their areas of expertise.
5. Experts should take into consideration all material facts made available to them. They should also advise if they feel that information is lacking so they cannot give a full opinion and where they can't give a full opinion give a qualified opinion.
6. If the experts change their minds they should advise the parties involved and the reason for it immediately.
7. Experts should be aware that they have to comply with the Civil Procedure Rules and/or court orders. Any delay that they are responsible for may result in penalties and costs being incurred against their party.



CPR Part 35

Part 35 applies only to where experts are instructed to give opinions or views in court proceedings. Advice for which the parties do not intend to use in litigation do not apply to these requirements.



The appointment of experts

If you truly do want an independent expert opinion from a chartered surveyor, or a chartered builder, with regard to Civil Procedure Rules, Practice Directions, or any other property matters please contact 0800 298 5424 for a chartered surveyor to give you a call back.

You may also want to go to our website www.1stAssociated.co.uk. If you have a commercial property, be it leasehold or freehold, then you may wish to look at our Dilapidations Website at www.DilapsHelp.com.

We hope you found the article of use and if you have any experiences that you feel should be added to this article that would benefit others, or you feel that some of the information that we have put is wrong then please do not hesitate to contact us (we are only human).

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