

# Position Paper - Preparing To Start as an Expert Witness

Presented by Jenny Cotton

*Business development/ marketing consultant, Academic and Marketing sub-committee member of the Expert Witness Institute.*

## Initial questions - What is an Expert Witness? Do I have what it takes?

1. How you answer these two questions will influence your whole approach to this opportunity to apply your specialist expertise. You may know your answers in advance of your first enquiry and Instructions or you may be approached before you have considered them. In either case you will want to give a confident reply and you should be aware that you would be asked to express an opinion on the facts of the case, facts which may be determined by someone else or by your own personal assessment of the details of the case.
2. For some it may be that a colleague is or has been a successful Witness. On the basis of your observation and open discussion, you wish to offer your specialist expertise to the Courts. Alternatively it may be that the Courts have authorised Solicitors to instruct in a particular specialist expertise and they are searching for an appropriate Expert individual. They have found and have approached you.
3. Some specialisms are in more demand than others. Any quick check of a directory of Expert Witnesses will show that there are many medical, accounting and engineering specialists but very few in some other areas, for example, marketing and business development.
4. **Be prepared** In the first case, you know the answers and are suitably prepared. You are likely to have taken the time to make certain checks, done some background reading, perhaps gone on a relevant course or attended a seminar as an observer. You have decided, in advance of any approach, that on the basis of information you have gathered, that you believe that you have what is needed in experience, skills and contacts. This will include the relevant specialist experience and qualifications, an awareness of the needs of the Court and the clients for reviewing, reporting and appearing in Court.
5. You will need to have the capacity to fit into the timetable agreed with the Courts, at the time of receiving and agreeing instructions, as well as the capabilities briefed. You have thought it through and you believe confidently that you can offer a mutual benefit of good service at a reasonable fee. If this is the case, you are ready to start on the Instructions received or to approach marketing yourself as a potential Expert Witness.
6. **Be recognised by others** However it maybe that the Solicitors, at whatever notice, are looking for an individual with the required specialism, the ability to review and write a report, to appear in Court, if required and at their timescale, which is already in place.
7. You receive an enquiry that you had not expected. Your name has been suggested or your organisation has been approached and colleagues have nominated you. Your name may have been selected from a directory of your specialism or over the "grapevine."
8. In these circumstances, you are pleased to be approached but you had no notice and are requested to consider becoming an Expert Witness, perhaps immediately, without necessarily understanding what is required and expected. If this is the case, phone a suitable friend and find out quickly. This friend may be a colleague,

who you know to be an Expert Witness or may be an individual within your own Professional Body with Expert Witness responsibilities or may be an individual from your own specialism within the EWI - Expert Witness Institute.

9. You are not necessarily “unready” but you are unprepared and will do well to check up what is required. If you are confident in your specialism, qualified and experienced over time, have the administrative and public speaking experience, the instructing Solicitors are likely to have confidence in you. You would not have been approached or recommended by colleagues unless you were known to be a potentially suitable expert. You can become prepared quickly with the help of experienced mentors and with reference to relevant Codes of Practice and guidelines.

10. **Own specialism competences and experience** These are what the Court believes it lacks and wishes to have provided, to ensure that the case in question is appropriately understood. In providing these in a clear, concise and cost effective manner on time you are fulfilling the Courts’ and clients’ needs.

11. Checking that it is indeed your own and not another’s specialism that is really required is your own responsibility. The importance of asking yourself this question can hardly be over stressed. Be proud of the number of enquiries which you reject as well as those which you accept. List them as part of your own copy of your EW CV. Do not accept Instructions that you believe to be outside your training, knowledge and experience. For example, is a market research expert required to check techniques and method ie the statistics and/or psychological issues? Or is a marketing practitioner required who can check the appropriateness of the research brief to the marketing issue, check the methodology in outline and concentrate on the impact of the outcome by experience of that type of research applied in a similar manner, especially if in a similar market?

12. **Your own specialism** It is essential to check carefully that your specialism is relevant and that you are up to date on current qualifications, Codes of Practice and sector expectations. For some specialisms this is easier than others. For some forensic skills qualification is by experience eg lip reading. These specific skills acquired by experience are often linked to other skills which are defined by qualification and training. In some cases experience of specialisms in the past is relevant, eg medical issues resulting later in life from maternity and birth complications. Record keeping becomes an important issue. Different specialisms have different timescales recommended. Know what these are and keep relevant records.

13. **Your administration, review and report writing experience** This is likely to have been developed in the context of being a practitioner of your specialism. The reviewing procedures are likely to be similar but the reporting needs for Expert Witness reports are likely to be different. These *new to you* reporting requirements have been subject to change and guidelines are available, as is training. Some solicitors have their own styles and preferences, even to stating that they have a house style. Any conformance with style must not influence the independence of your report. Content is influenced by vocabulary, prominence within the report or any other device which you may find difficult. It must be your report.

14. **Your skills in meetings** Typically where there are reports prepared on behalf of both parties in a case, there will be a need to exchange the reports on the specialism. Witnesses are required to comment on the areas of agreement, disagreement and the extent of differences. There may in addition be a request to comment on specific issues addressed in either report. A joint report, signed by both Witnesses or all if there are several Witnesses, is the required outcome, usually to a stated deadline. It is not unknown for the reports to be written on different sets of Instructions

and reading materials supplied. The guidelines for reports indicate that both Instructions and materials reviewed should be listed in appendices. These meetings may be face to face and may be telephone conferences.

**15. Your Court appearance** In accepting instructions for Court reports a willingness and ability to appear is implied. By specialism the likelihood of attendance varies. Many Expert Witnesses have completed numbers of reports, over the years and yet not been required to attend. These cases tend to be where case law has established a precedent and your report is required to ensure that the claimant's case is within the earlier conditions. It is worth checking at the initial instructions stage if Court attendance is likely and if so to check your own availability.

**16.** Where a Witness is required to attend Court, case conferences in advance provide preparation in terms of likely content and in Court procedure. These are meetings with the Solicitor and the Counsel. Again a more complete introduction can be read from texts and specific training can be taken in advance. Basic Law for Experts courses are also available.

**17. Expert Witness reviews will impact on your practitioner projects** Given that for many, Instructions are received at relatively short notice, a few days or weeks in some cases, the issue of capacity to provide this service is

important. Especially as you develop your Expert Witness role, you will want to fulfil these responsibilities as well as your planned work load, without excessive overtime or stress. Typically expenses reimbursement and fee paying is on a solicitors' timescale, which may be different from your current specialism projects. Check cash flow issues with your accountant. Be sure to confirm verbal terms and agreements in writing.

18. Will your current contacts be influenced by your acceptance of or seeking of this new application of your specialism? For those familiar with the principles, it is most likely to be seen as an acknowledgement of your expertise and should have a positive response.

### **19. Expert Witness checklist**

- a) *Own specialist qualifications, Codes of Practice and relevant experience.*
- b) *Knowledge of the requirements for an Expert Witness, Codes of Practice, CPR 35/ Practice Direction, Expert's Protocol, a briefing in Basic Law*
- c) *Review, reporting, administration and presentation skills for meetings and the Courts*
- d) *Expert Witness colleague/ friend and mentor, Expert Witness Institute for reference, reading, seminars and mentors*
- e) *Assuming you have some checking to do, given the above, where can you find help? Contact relevant organisations such as the EWI, EW colleagues and friends.*

### ***Continuing and growing as an Expert Witness? Is this sustainable?***

Your specialism and practitioner experience have potential applications in parallel with that of being an Expert Witness for the Law Courts. Tribunals, such as a VAT Tribunal, require expert specialist input. For those with negotiating and mediation skills there are further applications. For those with language skills and knowledge of other markets and legal systems, work outside the UK may be considered.

Some individuals become mainly and wholly Expert Witness or Forensic specialists in their subject. Their practitioner role is kept up to date with CPD and training in that specialism, as in their earlier roles. Here an understanding of the volume of potential work and the frequency and size of Instructions is helpful to your forward workload planning and potential career prospects.