

EXPERT WITNESS TRAINING SEMINAR - KEYNOTE

26 February 2026

(1) Introduction

1. It is a pleasure to have been asked to speak to you this morning. The importance of expert witnesses to the delivery of justice cannot be underestimated. As the newly appointed Chancellor of the High Court put it recently, experts are '*vital participants*' in the civil justice system.¹ And the reason? As Lord Mansfield put it when approving the use of expert witnesses in the 1780s , '*in matters of science the reasoning of men of science can only be answered by men of science*'.² Or, in other words, it simply is not the case that judges have or can be expected to have '*knowledge of every branch of science, of every art and of the mysteries of every profession*.'³
2. Given that limitation, where justice requires the court to consider evidence of fact that only an expert could give, such as an explanation of a technical subject or scientific facts that only an expert could observe and describe, or expert opinion evidence, it requires that evidence to be given by a suitably qualified expert. It is not for the judge to simply rely on whatever they may have learnt at school or to try to educate themselves. Nor is it for the parties to adduce such evidence from just anyone. Expert evidence is under court control. The need for it calls for

¹ Sir Colin Birss, *Expert Witnesses - Vital Participants in Civil Justice*, (June 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/06/Lord-Justice-Birss-speech-to-Expert-Witness-Institute-Annual-Conference-2025-speaking-notes.pdf>>.

² *Folkes v Chadd* (1782) 3 Doug 157.

³ J. A. Jolowicz, *On Civil Procedure*, (CUP, 2009) at 225.

witnesses to have suitable expertise in the area in question. It also, crucially, calls for the proposed expert to understand their role, its limitations, and the duties the court process imposes on them.

3. In this morning's address I want to focus on the expert's role – what it is and what it is not, the nature of those duties and what can go wrong when there is non-compliance. And there is a lot that can unintentionally go wrong. Education is, of course, key to avoiding such mishaps. I also want to look at one fundamental future challenge for experts and that is the artificial intelligence challenge.
4. Before turning to these issues, it is worth reminding ourselves that we do not have court-appointed experts in England and Wales, although there arguably remains a power for the court to appoint its own expert.⁴ The instruction of expert witnesses essentially remains a matter for the parties, although that is subject to a degree of court control. That this is the case has often been said to pose a problem; a significant one. It is that experts appointed by parties, to borrow from Mark Twain, can be viewed as some sort of hired gun – as '*some guy from out of town*' brought in to secure victory for whichever side was paying their bills.⁵
5. This is not an uncommon view. It was well-established even before he was writing. In a case decided when Twain was no more than eight years old, Lord Campbell took such an approach. Giving judgment in a case that turned on handwriting evidence he started off by saying he would say nothing that would cast a poor light on Sir Frederick Madden, a handwriting expert witness.

⁴ *Henson v Ashby* [1896] 2 Ch. 1 at 26.

⁵ Sir Robin Jacob, *Court-Appointed Experts v Party Experts: Which is Better?*, (2004) CJC (23) 400 at 401.

Without pausing for breath he then went on to do so. Madden's evidence simply could not be trusted. The reason? Because, in Lord Campbell's view, if he had been instructed in a different case to give evidence as to the provenance of the handwriting before the court, he would undoubtedly have given a '*totally different account*.'⁶ In other words, Madden would inevitably tailor his evidence to the needs of the party instructing him. And for Lord Campbell what went for Madden went for all experts. They were not to be relied on because they were simply part of the claimants and defendants' teams. They were partisan.

6. This highlights a tension at the heart of the common law's approach to expert evidence. Experts are an essential part of the court process. They provide evidence that no one else could give. Without them, no court could properly determine a case on its merits where specialist technical or scientific knowledge was needed whether that arose as a matter of fact or opinion. That they are party-appointed and instructed, however, leaves them open to the charge of bias, whether that is a form of conscious or unconscious partisan bias and they tailor their evidence to support the party appointing them or structural bias, which arises because they are appointed because they hold a view, for properly justified reasons, that supports the party instructing them.
7. How do we resolve this tension? The answer lies in the common law's approach to ensuring that whoever appoints and instructs experts understands, and that experts themselves understand, that they are appointed to serve justice. With this in mind I want to turn to how we strive to achieve this.

⁶ *The Tracy Peerage* (1843) 10 Cl. & F 154; 8 English Reports 700 at 715.

(2) Independence, Impartiality and Integrity

8. The starting point in that respect is that the common law and CPR have developed a robust approach to maximising the prospect that experts act in the interests of justice. That approach can be summed up as the '3 Is': Independence, Impartiality and Integrity.
9. First, independence. The CPR, as you all know, imposes on all experts an overriding duty to the court. That duty overrides any contractual duty they may owe to the party instructing them.⁷ Equally, it is intended to override any partisan or structural biases that may arise, not least through the expert working closely with their instructing party's lawyers and through the fact that payment is received for the giving of their evidence.
10. Flesh is given to this statutory duty by the common law's emphasis on the need for experts to approach their task with an independent mind. Expert evidence must be the '*independent product of the expert uninfluenced as to form or content by the exigencies of litigation*' as Lord Wilberforce put it in *Whitehouse v Jordan* (1981). They must provide '*independent assistance to the court*'.⁸ Assistance is key here because, as was emphasised in *Armstrong v First York*, '*We do not have trial by expert . . . ; we have trial by judge.*'⁹ And here it should also be noted that independent assistance also requires experts to avoid conflicts of interest, and where they arise or one exists it requires them to bring the conflict to the court's attention, and as a necessary corollary albeit before alerting the court, to the attention of the party instructing them. Conflicts

⁷ CPR r.35.3(1) and (2). And see the summary of the common law position in *The Ikarian Reefer* [1994] 2 Lloyd's Rep 68 at 81.

⁸ *Polivitte Ltd v Commercial Union Assurance Co. Plc.* [1987] 1 Lloyd's Rep. 379 at 386.

⁹ *Armstrong v First York* [2005] EWCA 227 at [28].

can and do undermine an expert's independence and their ability to assist the court effectively. They should be avoided.

11. Independence inevitably leads to Impartiality and helps secure it. Providing independent assistance to the court requires experts to provide '*objective unbiased evidence*'.¹⁰ They must act with an absence of bias whether that be a positive bias in favour of the party instructing them or a negative one against the other side. And hence, again they must avoid conflicts of interest that could give rise to such biases – as such conflicts, by calling into question their independence, also call into question their ability to provide objective unbiased evidence. Experts must also not therefore be advocates for or against any particular side in litigation.¹¹

12. Impartiality also means that experts should look to co-operate with each other; a point particularly important where an expert holds a joint meeting with another party's expert and where an experts' joint statement is prepared further to CPR r.35.12.¹² As the High Court emphasised in *Aderounmu v Colvin* (2021) joint statements are not meant to be '*a proving ground*' for advancing each parties' cases.¹³

13. And, of course, where an expert draws on information, such as photographs or reports, in formulating their own report, impartiality requires them to be provided to the other party when

¹⁰ Ibid.

¹¹ *The Ikarian Reefer* [1994] 2 Lloyd's Rep 68 at 81.

¹² On which see A. Zuckerman, *Zuckerman on Civil Procedure*, (Sweet & Maxwell, 2025) at 21.22; and see *Imperial Chemical Industries Ltd v Merit Merrell Technology Ltd (No.2 Quantum)* [2018] EWHC 1577 (TCC), [2018] T.C.L.R. 6 at [237].

¹³ *Aderounmu v Colvin* [2021] EWHC 2293 (QB), (2022) 188 B.M.L.R. 105 at [77].

expert reports are exchanged.¹⁴ And where expert reports are concerned it is also important to bear in mind that they should be '*succinct, focused and analytical*', with analysis and opinion rather than factual narrative forming the majority of the report. It is all too easy for the essential points to get lost or missed, and for reports to not fully assist the court, where a report is too long or too focused on narrative rather than analysis and opinion.¹⁵

14. And finally then we have Integrity. That requires experts to ensure that they pay more than lip service to their duties of independence and impartiality. They must be committed to them and give effect to them. It also requires experts to be transparent. Where they base their evidence on assumptions, they must state them. Where an issue is outside their expertise they must say so. Experts are there to give expert evidence on matters of their expertise and that alone. Where their evidence should be subject to qualification because, for instance, data is lacking or there is a range of valid views, experts should say so. Where they change their mind on an issue on which they are giving evidence, they should say so.¹⁶

(3) Implementing the Duties

15. All of these elements of the expert's duty are well known. None are new. Where the introduction of the overriding duty to the court is concerned, it was understood as long ago as 2004 to have played a key role in helping to improve the quality of expert evidence.¹⁷

¹⁴ *The Ikarian Reefer* [1994] 2 Lloyd's Rep 68 at 81.

¹⁵ *Harman (A Child) v East Kent Hospitals NHS Foundation Trust* [2015] EWHC 1662 (QB) at [31]-[41].

¹⁶ *The Ikarian Reefer* [1994] 2 Lloyd's Rep 68 at 81. Also see CPR PD35 para. 3.2.

¹⁷ Sir Robin Jacob (2004) at 404.

16. And yet, in 2021 Mr Justice Fraser noted that that may not really be the case. On the contrary, as he put it, there was *‘a worrying trend generally which seems to be developing in terms of failures by experts generally in litigation complying with their duties.’*¹⁸ It is possible to see this trend in a range of areas.
17. We could start with *R v Pabon* from 2018.¹⁹ In that case the Court of Appeal (Criminal Division) had to consider the extent to which an expert had complied with the duties imposed on him in the most fundamental of ways. It did so on an appeal from conviction for an alleged conspiracy to dishonestly rig LIBOR – the London Inter-Bank Offer Rate. The expert was instructed by the Serious Fraud Office. Questions had arisen during the course of the proceedings, including a retrial, concerning the expert’s approach to the overriding duty to the court. Quite properly, as those instructing you as experts should do, the SFO had drawn his attention to the expert’s duty to the court and other relevant provisions in the Criminal Procedure Rules.
18. The problem turned out to be, as came out during cross-examination at the retrial that it could not properly be said that he had paid attention to them. On the contrary, he admitted he did not think he’d read the material provided to him properly – at best he was sure *‘he’d glanced at something.’*²⁰ That that was the case might have gone some way to lead to the Court of Appeal’s conclusion that he *‘signally failed to comply with his basic duties as an expert.’*²¹ It might also have explained why the expert evidence he gave was not all his own evidence and why perhaps he had taken the time during an overnight adjournment while he was giving evidence to speak

¹⁸ *Beattie Passive Norse Ltd v Canham Consulting Ltd (No. 2 Costs)* [2021] EWHC 1414 (TCC) at [38].

¹⁹ *R v Pabon* [2018] EWCA Crim 420; [2018] Lloyd’s Rep. F.C. 258 (CACD).

²⁰ *R v Pabon* [2018] EWCA Crim 420; [2018] Lloyd’s Rep. F.C. 258 (CACD) at [50].

²¹ *R v Pabon* [2018] EWCA Crim 420; [2018] Lloyd’s Rep. F.C. 258 (CACD) at [58].

to someone who knew the answers to the questions he had been asked. In a sense, he had phoned a friend to help him learn his evidence. As the Court of Appeal put it, he was no real expert but rather an '*enthusiastic amateur*.'²² That that was the case played a part in a wrongful conviction. If it had occurred in civil proceedings it could have led to a judge reaching the wrong decision on liability or quantum. It could have undermined the proper administration of justice.

19. The problems in that case all flowed from the individual instructed failing to pay proper attention to their duties, and particularly their overriding duty to the court and the requirement that they provide independent assistance to the court and to do so with integrity. All problems that could have been avoided if due care and attention had been taken to the duties and to guidance on how they apply. Such problems could also have been avoided if the individual had taken steps to ensure that they had obtained effective training in how to provide expert evidence and when it was appropriate to do so.

20. We can also see the trend in the case of *Pal v Damen* from 2022.²³ That case concerned a claim for medical negligence arising from cosmetic surgery carried out in Belgium. The particular issue was whether the English and Welsh courts had jurisdiction. Expert evidence was sought on the point. The court, however, held that it could not rely on the evidence of one of the two experts. Specifically, it could place no weight on his evidence. And here, quite starkly is the outcome that can flow from any expert's failure to act with independence, impartiality and integrity as required by their duties. The evidence they provide simply does not assist the party instructing them. And in some circumstances that could lead to the expert being the subject of a negligence

²² *R v Pabon* [2018] EWCA Crim 420; [2018] Lloyd's Rep. F.C. 258 (CACD) at [58].

²³ *Pal v Damen* [2022] EWHC 4697 (QB).

claim pursued by that very party,²⁴ or of a wasted costs order,²⁵ of, again, of referral to their professional body for possible sanction.²⁶

21. The problem in this case? As the judge put it, the expert's '*. . . report failed to comply with practically every requirement [of CPR PD 35 para. 3.2].*' It thus failed to comply with requirements, confirmation of which is designed to ensure that the expert has met their duties and provided evidence consistently with them.

22. It was perhaps this failure that also led the expert to, again as the judge put it, give evidence in such a way that it was clear he was: first, 'acting as an advocate' for the party instructing him; secondly, not considering the available evidence in reaching his conclusions; and, finally, not providing a balanced opinion that set out the range of views on the issue on which he had been asked to give evidence.²⁷ All of which could have been avoided if proper attention was paid to the 3 Is.

23. That is not the only case where the courts have commented critically on an expert acting as an advocate for the party that instructed them. It is unfortunately perhaps too common an occurrence, which suggests that both experts and those instructing them need to pay much close attention to the 3 Is and particularly the expert's overriding duty to the court.

²⁴ *Jones v Kaney* [2011] 2 W.L.R. 823.

²⁵ *Phillips v Symes* [2005] 1 W.L.R. 2043.

²⁶ *Pearce v Ove Arup* [2001] EWHC Ch 481 at [60] – [61]; *Meadow v General Medical Council* [2007] Q.B. 462.

²⁷ *Pal v Damen* [2022] EWHC 4697 (QB) at [56].

24. A particular example of a failure to give effect to Independence is that of *EXP v Barker* from (2017).²⁸ In that case there was a substantial connection between a medical expert instructed to act for the defendant and the defendant himself. Neither drew the connection between them to the defendant's lawyers' attention. And, in fact the connection did not come out into the open until the expert was being cross-examined, at which point it became clear that they had known each other for many years; that the defendant had trained the expert and recommended him as the expert to act for him; and, that they had collaborated on various academic works together.

25. While the trial judge did not exclude the expert's evidence in its entirety, which he came very close to doing, he placed no weight on it. The failure to disclose the connection and hence the lack of independence and impartiality resulted in the defendant having no real or practical benefit from the expert evidence. What both the defendant and the expert ought to have done was to make clear to the defendant's solicitors at the earliest possible opportunity the connection between them so that proper consideration of the expert's suitability (or rather lack of suitability) as an expert could have been dealt with then – and another expert could have been instructed.

(4) Improving Standards – Professionalism and Regulation

26. Examples of the trend identified by Fraser J can be multiplied. You will find the most recent examples in the materials for today's training. What they all highlight though is that there are many ways in which the 3 Is can be breached and expert evidence fall short. What they also

²⁸ *EXP v Barker* [2015] EWHC 1289 (QB) and *EXP v Barker* [2017] EWCA Civ 63.

suggest is that the approach taken to promoting compliance with the duties may need bolstering: the traditional approach taken by the courts to promoting rule compliance: the carrot of knowing you have played a key role in furthering justice by complying with your duties, and the stick of various sanctions for non-compliance may not be enough.

27. Over the last twenty years different approaches have been suggested to improve compliance.

For some the complete withdrawal of the protection provided to communications between lawyers and experts by legal professional privilege is the way forward. In this way it is suggested, exposing an expert's instructions and previous versions of expert reports will expose anything that could promote too adversarial an approach by an expert.²⁹ In other words, letting the light in could reduce the possibility that an expert's independence and impartiality might be compromised by the promotion of bias. That's the theory. No one has yet taken up the suggestion and I very much doubt they will as it would undermine the ability of parties to seek the advice of experts effectively.

28. More importantly, it is doubtful at best that it would combat the '*subtle pressures to join the team*'³⁰ that underpin many of the problems that lead to non-compliance with expert's duties. And those are pressures that arise from experts being, as Lord Woolf put it, '*initially recruited as part of the team that investigates and advances a party's contentions. . .*'³¹

²⁹ See, for instance, D. Dwyer, *The Effective Management of Bias in Civil Expert Evidence*, (2007) CJC (26) 57.

³⁰ J. Langbein, *German Advantage in Civil Procedure*, (1985) 52 University of Chicago LR 823 at 835.

³¹ Lord Woolf, *Access to Justice – Interim Report*, (1995), Chap. 23.5. The same point was made by Sir George Jessel MR in *Lord Abinger v Ashton* (1873) 17 LR Eq 358 at 373-374.

29. Those subtle pressures are well-known and are not found in an expert's instructions. They have been identified as ranging from the psychological pressure that comes from not wanting to disappoint those who instruct you, from the unconscious sense of belonging that comes from working with people, to that which comes from the fact that experts are paid. With the growth of businesses whose main focus is the provision of expert reports, that financial pressure – the one that seeks to secure repeat business – is perhaps only being exacerbated, which in turn may, as John Langbein put it as long ago as the mid-1980s, increase the propensity for expert opinions to '*shade . . . views, to conceal doubts, to downplay weak aspects of the case that [they] have been hired to bolster*'.³²

30. There is also, of course, the problem of quality control that stems from the financial incentive, where expert reports are the result of a production line approach, such as that noted in *Liverpool Victoria Insurance Company Ltd v Zafar* (2019). In that case it was stated that an expert produced their medico-legal reports at the rate of one every fifteen minutes.³³ Or there is the concern, expressed for instance by HHJ Dight recently in *LMN v Swansea Bay University Health Board* (2025)³⁴ that experts who are too closely connected to law firms may not necessarily be sufficiently independent or objective. In that case an expert described their main area of work as working full-time for a solicitors' firm managing its Medical Negligence Triage Team, working on marketing and business development and assisting fee-earners, as well as working for another law firm.³⁵ As the judge put it,

³² Ibid.

³³ *Liverpool Victoria Insurance Company Ltd v Zafar (Rev 1)* [2019] EWCA Civ 392; [2019] 1 W.L.R. 3833 at [3].

³⁴ *LMN v Swansea Bay University Health Board* [2025] EWHC 3402 (KB).

³⁵ *LMN v Swansea Bay University Health Board* [2025] EWHC 3402 (KB) at [85]

*' . . . Her curriculum vitae and evidence disclosed that she is heavily involved in the business of litigation, with her medical work taking very much a secondary role. That caused me to pause in evaluating the objectivity of the expert opinion evidence which she gave, which was, to my mind, uncompromisingly critical of the defendant. . . '*³⁶

In other words: partisan and, as a consequence, more in the form of advocacy than expert evidence, which called into question the evidence's credibility.

31. And then there is the pressure that comes from operating in an adversarial environment. We often see in negotiations the phenomenon of what is sometimes called the conflict spiral. One party makes a point that is construed as attacking the other side's position, who then responds with an attack of their own. Neither side benefits from this as it simply leads to further entrenchment of positions.
32. Providing and giving evidence, particularly under cross-examination, can also lead to what might be called the partisan spiral. Adversarial questioning can – not always – but can lead to individuals becoming more certain in their views than perhaps a more considered, objective view, warrants. It may equally lead to greater identification with the party instructing them through defence of the evidence set out in an expert's report. In the extreme, it may well lead to the problem of expert as advocate rather than the provider of impartial, independent assistance to the court.

³⁶ Ibid. at [23].

33. Another approach to improve compliance with expert duties is that which was promoted by both Sir Anthony Clarke MR and the Jackson Costs Review:³⁷ the introduction of hot-tubbing or, rather, the concurrent evidence process for giving expert evidence in court.³⁸ That is the approach where experts all go into the witness box together and give their evidence concurrently.
34. One reason why this approach was promoted and adopted here, even if it is not used as much as it might be, was to help promote expert witness objectivity by increasing their sense that they are independent professionals rather than implicitly members of any particular party's team.³⁹ This is to be achieved by reframing expert evidence at trial as a form of expert symposium given amongst peers rather than an adversarial process that can entrench positions through the partisan spiral.
35. This approach only has the opportunity to work at trial and where a concurrent evidence process takes place. To the extent then that it can counteract the subtle pressures, it may do so too late in the process. Its underpinning though – the aim of focusing expert's attention more acutely on the idea that they are independent professionals – may lead us to a more effective response to the problem of non-compliance with expert duties: the creation of what might be called a community of independent experts.

³⁷ Sir Anthony Clarke MR, *The Role of the Expert After Woolf*, Clinical Risk (2008) (14) (No 3) 85; Sir Rupert Jackson, *Review of Civil Litigation Costs: Preliminary Report* (HMSO, May 2009) Vol. 2 at 592.

³⁸ CPR PD35 para. 11.1.

³⁹ P. Heerey, *Recent Australian Developments*, (2004) CJQ (23) 386 at 391.

36. At the present time there is no single professional community of expert witnesses. Both the Academy of Experts and the Expert Witness Institute have long played a role in developing such a community. Not least through the development of professional training and accreditation for experts. Individual professional bodies, such as the Royal Institute of Chartered Surveyors⁴⁰ have also developed such schemes. All aimed at improving standards and building a professional community. What there has not been, however, has been a real attempt over the last twenty years to create a single, professional community of expert witnesses. This is in contrast to the successful attempts to foster a professional community of mediators who act in family disputes and those who act in civil disputes. The Family Mediation Council and Civil Mediation Council go from strength to strength. Led by the profession, they help set standards, develop training and accreditation.

37. There seems to be no real reason why the expert witness community could not and should not now seek to establish and develop a similar approach. Why not an Expert Witness Council modelled on the approach taken by the mediators?

38. Such a Council could look to build on the approach taken by the existing expert bodies, but importantly go beyond them. The key would be for such a Council to set standards, promote effective training and accreditation and – most importantly – build that single, professional community, which is what the Mediation Councils have sought to do. It is that sense of professionalism, and one rooted in the expert as an independent assistant to the court, which

⁴⁰ See <<https://www.rics.org/dispute-resolution-service/panel-of-experts/expert-witness-accreditation-service>>. Also see the partnership approach to accreditation between The Academy of Experts and the ICAEW <<https://www.icaew.com/learning-and-development/academy/specialist-qualifications/forensic-accountant-accreditation/register-of-accredited-accountant-expert-witnesses>>.

could provide the basis for embedding at all stages of an expert's appointment the aim of the concurrent evidence process during a trial. There seems to me no reason why you as experts – as professionals – could not lead the way in this.

39. The need for something more than the current approach indicated by Mr Justice Fraser's concerns about non-compliance with expert duties is important not just because of the detrimental effect it can have on the court's ability to do justice, but also for an emerging reason. That is the likely impact that the availability and use of artificial intelligence is likely to have on expert evidence and the questions it poses for compliance with expert's duties.

(5) Future challenges to the Three Is – Artificial Intelligence

40. Turning to AI use, it may not be ubiquitous yet, but it cannot be long before it is. Lawyers have been using different types of AI tool for some time. Technology Assisted Review as part of the process for identifying which documents may need to be disclosed during the course of litigation has been used for quite some time. Its use was approved by the courts ten years ago now.⁴¹ Judges and lawyers are able to use assistive forms of AI in the form of Microsoft Co-Pilot etc. And they both have specific guidance on the safe use, and pitfalls of unsafe use, of such technology.⁴²

⁴¹ *Pyrrho Investments Ltd v MWB Property Ltd* [2016] EWHC 256 (Ch) at [33].

⁴² *Artificial Intelligence – Guide for Judicial Office Holders* (2025) <<https://www.judiciary.uk/wp-content/uploads/2025/10/Artificial-Intelligence-AI-Guidance-for-Judicial-Office-Holders-2.pdf>>; The Bar Council, *Considerations when using ChatGPT and generative artificial intelligence software based on large language models*, (November 2025) <<https://www.barcouncilethics.co.uk/wp-content/uploads/2024/01/Considerations-when-using-ChatGPT-and-generative-artificial-intelligence-Nov-2025.pdf>>.

41. The potential pitfalls are becoming increasingly well-known; not least, the production of fake material by AI tools whether that is fake judgments or fake academic articles. I have had cited to me articles that I have never written on subjects I know nothing about because an AI tool had told someone I had written them. I have also wasted too much time chasing down references to articles, legislation and case law cited to me by AI tools that simply do not exist.
42. Where civil proceedings are concerned, the risks posed by AI are considerable. Fake judgments could not only undermine the development of the law if not properly checked. If not discovered they could undermine the integrity of the administration of justice. And the fact that time must be spent checking AI produced material, as has recently been pointed out in the US, diverts lawyers away from their core role, i.e., helping the court decide cases on their legal and factual merits, just as it impinges on the court's time and resources.⁴³
43. Similar risks arise where expert evidence is concerned. That is also apparent from recent developments in the United States. In what can only have been the deepest of ironies, an expert in the dangers posed by the use of AI and misinformation submitted an expert report in proceedings that contained two fake citations that had been generated through his use of ChatGPT.⁴⁴ While he was not criticised by the judge for using AI in the preparation of his report, the judge was at pains to stress that inclusion of such material put the expert at risk of a finding of perjury. Moreover, that such material was included rendered the expert's evidence such that

⁴³ *Ringo v Colquhoun Design Studio, LLC* (no. 1034; 3 December 2025) at 305 (Court of Appeals, Oregon, US) <<https://cases.justia.com/oregon/court-of-appeals/2025-a186670.pdf?ts=1764780757>>.

⁴⁴ *Kohls & Franson v Ellison & Larson* (Case No. 24-cv-3754 (LMP/DLM)) (United States District Court District of Minnesota) at 6-9 <<https://cases.justia.com/federal/district-courts/minnesota/mndce/0:2024cv03754/220348/46/0.pdf?ts=1736603554>>.

it could not be relied upon: its inclusion had, as the judge put, it shattered the expert's credibility. The same consequences, as well as the potential for steps to be taken on the basis that a false statement of truth might have been given by an expert where AI fake material had found its way into a report, should reasonably expect to follow from a similar situation here. And, as seriously, as the US judge put it,

*'... when ... experts abdicate their independent judgment and critical thinking skills in favor of ready-made, AI-generated answers, ... the Court's decisional process suffer(s).'*⁴⁵

Justice is not done. More generally, an expert who incorporates AI-generated fake material into their evidence ought to expect, at the least, to be exposed to the possibility of a wasted costs order and referral to their regulatory or professional body.

44. Yet, there is at present no authoritative guidance for experts on this issue, although the Civil Justice Council has recently issued an Interim Report and Consultation on the use of AI in Civil Litigation.⁴⁶ It specifically asks for views on whether the expert's statement of truth be amended to make reference to the use of AI. It raises the question whether experts should be required to explain what use of AI, if any, went into the preparation of any report. It also asks if experts should be required to disclose which AI tools they have used. The consultation was only issued last Friday and we await both responses to it and the CJC's considered view. In the absence of its recommendations on any potential reform and any specific guidance what steps might an

⁴⁵ Ibid at 9.

⁴⁶ Civil Justice Council, *Use of AI for Preparing Court Documents - Interim Report and Consultation*, (2026), which is available at: <https://www.judiciary.uk/wp-content/uploads/2026/02/Interim-Report-and-Consultation-Use-of-AI-for-Preparing-Court-Documents-2.pdf>.

expert take to try to ensure that their use of AI does not lead to non-compliance with their duties.

45. The starting point would seem to be to consider whether an AI tool may assist you in the preparation of your evidence. This should be done at an early stage. CPR r.35.4 requires a party that seeks to adduce expert evidence to estimate the cost of such evidence and the issues it will address. This should be done particularly before permission has been obtained for expert evidence to be adduced where an AI tool's use is likely to have a cost associated with it whether that is a cost of using the tool or the cost to you, and hence the party instructing you, of checking its results. Equally, and particularly where an AI tool is in the form of generative AI, it is likely that you ought to disclose where it assists with the substantive content of an expert report consistently with the requirement to disclose assistance; a point which takes us back to one of the breaches of the expert's duty in *R v Pabon*.⁴⁷

46. You should also take steps to ensure that use of any AI tool does not undermine the integrity of your evidence or the requirement that you be transparent. Is there a risk of bias in the data on which an AI tool used was trained? Any potential bias could adversely affect the former and could, of course, breach the duty to provide unbiased evidence.⁴⁸ It could also, just like a fake judgment, lead a court away from making a proper finding. Does the AI tool provide a readily understandable rationale for its results? Does it provide error rates, where those are relevant?

⁴⁷ *R v Pabon* [2018] EWCA Crim 420; [2018] Lloyd's Rep. F.C. 258 (CACD) at [52]. And see, Civil Procedure 2025 (Vol. 1) at 35.0.7.1.

⁴⁸ Civil Procedure 2025 (Vol. 1) at 35.0.7.1.

What is the breadth of the sources on which it draws its results? Can its results be validated independently or replicated?

47. If the answers to these questions are doubtful, if the AI tool's rationale and working is held within the well-known 'black box', if its evidence-base is sparse or skewed, if its product cannot be validated independently or replicated, there are going to be significant risks that it and its assistance will be problematic. It is difficult to see how such assistance could not call into question the integrity of any evidence based on it, just as it might call into question its objectivity.

48. Where an AI tool is used it would seem to be both reasonable to take steps to try to ensure such use is compliant with CPR PD35 para. 3.2(2): the requirement to provide details of any literature or other materials relied on in making an expert report. It would seem to be sensible to identify what AI tool has been used, how it was used, what its training data was, confidence levels in its use, and any relevant caveats on its results. It would also seem sensible to provide clear explanations and rationales for its results in so far as they are taken account of in any report, not least to enable the court to consider if it can properly rely on what the AI tool produced.⁴⁹

49. It also seems sensible to ensure that where there are any 'facts or matters referred to in' an expert's report that are outside the expert's own knowledge because they are the product of an AI tool that should be disclosed consistently with the requirements of CPR PD35 para. 3.3. Such disclosure would seem to be necessary to comply with the statement of truth provided for in

⁴⁹ Note, for instance, the emphasis in *R v T* [2010] EWCA Crim 2439; [2011] 1 Cr. App. Rep. 9 at [87] on the need for there to be sufficient data to provide a sure basis for an objective expert opinion.

that paragraph. And where in doubt having discussed matters with those instructing you, it may be that the sensible approach would be to seek the court's directions on an application for such assistance under CPR r.35.14.

50. It ought to be obvious from this alone that this is an area where authoritative guidance would be beneficial. This is all the more the case as AI's impact on litigation, and on expert evidence, is still in its infancy. It will not remain that way for long. Given the potential issues that it may give rise to, and which I have just touched on, it appears to be an area that may create a new and fertile ground for problems with compliance with the 3 Is.

51. Most significantly though, it has the potential to derail the litigation process and undermine the court's ability to decide cases properly on their merits. The best way then to avoid your potential use of AI forming part of any such problematic present or future trend is to take three general steps and a specific one.

52. First, ensure you are familiar with the duties the law imposes on experts, each of which is intended to maximise the prospect that your evidence is independent, is impartial and, crucially, has integrity.

53. Secondly, ensure that you comply with those duties and particularly your overriding duty to the court. You are appointed and instructed by parties. But you are part of the court's team where the delivery of justice is concerned.

54. Thirdly, keep up to date with legal and practical developments in the field of expert evidence. Training and guidance here are key. With that in mind, I wish you all the very best for today's seminar. There is no better place to build on your knowledge, hone your skills as an expert and ensure that you are, in fact, able to act with Independence, Impartiality, and Integrity.
55. And finally, take particular care with the use of AI tools, not least generative AI, to assist you in carrying out expert witness work. Think about how its use has an impact on your duties, what those duties require from you when you use it, when in doubt consult your instructing solicitor and, if still in real doubt, consider with them the need to seek the court's directions.
56. With those points in mind, I will leave you in the hands of those who are very much experts on how best to provide expert evidence. Thank you.

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