SCHEDULE TO PART 31

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1. Introduction

Expert witnesses perform a vital role in civil litigation. It is essential that both those who instruct experts and experts themselves are given clear guidance as to what they are expected to do in civil proceedings. The purpose of this Protocol is to provide such guidance. It has been drafted by the Civil Justice Council and reflects the rules and practice directions current [in June 2005], replacing the Code of Guidance on Expert Evidence. The authors of the Protocol wish to acknowledge the valuable assistance they obtained by drawing on earlier documents produced by the Academy of Experts and the Expert Witness Institute, as well as suggestions made by the Clinical Dispute Forum. The Protocol has been approved by the Master of the Rolls.

2. Aims of Protocol

2.1 This Protocol offers guidance to experts and to those instructing them in the interpretation of and compliance with Part 35 of the Civil Procedure CPR 35) and its associated Practice Direction (PD 35) and to further the objectives of the Civil Procedure Rules in general. It is intended to assist in the interpretation of those provisions in the interests of good practice but it does not replace them. It sets out standards for the use of experts and the conduct of experts and those who instruct them. The existence of this Protocol does not remove the need for experts and those who instruct them to be familiar with CPR35 and PD35.

2.2 Experts and those who instruct them should also bear in mind para 1.4 of the Practice Direction on Protocols which contains the following objectives, namely to:

(a) encourage the exchange of early and full information about the expert issues involved in a prospective legal claim;

(b) enable the parties to avoid or reduce the scope of litigation by agreeing the whole or part of an expert issue before commencement of proceedings; and

(c) support the efficient management of proceedings where litigation cannot be avoided.

3. Application

3.1 This Protocol applies to any steps taken for the purpose of civil proceedings by experts or those who instruct them on or after 5th September 2005.

3.2 It applies to all experts who are, or who may be, governed by CPR Part 35 and to those who instruct them. Experts are governed by Part 35 if they are or have been instructed to give or prepare

evidence for the purpose of civil proceeding in a court in England and Wales (CPR 35.2).

3.3 Experts, and those instructing them, should be aware that some cases may be "specialist proceedings" (CPR 49) where there are modifications to the Civil Procedure Rules. Proceedings may also be governed by other Protocols Further, some courts have published their own Guides which supplement the Civil Procedure Rules for proceedings in those courts. They contain provisions affecting expert evidence. Expert witnesses and those instructing them should be familiar with them when they are relevant.

3.4 Courts may take into account any failure to comply with this Protocol when making orders in relation to costs, interest, time limits, the stay of proceedings and whether to order a party to pay a sum of money into court.

Limitation

3.5 If, as a result of complying with any part of this Protocol, claims would or might be time barred under any provision in the Limitation Act 1980, or any other legislation that imposes a time limit for the bringing an action, claimants may commence proceedings without complying with this Protocol. In such circumstances, claimants who commence proceedings without complying with all, or any part, of this Protocol must apply, giving notice to all other parties, to the court for directions as to the timetable and form of procedure to be adopted, at the same time as they request the court to issue proceedings. The court may consider whether to order a stay of the whole or part of the proceedings pending compliance with this Protocol and may make orders in relation to costs.

4. Duties of experts

4.1 Experts always owe a duty to exercise reasonable skill and care to those instructing them, and to comply with any relevant professional code of ethics. However when they are instructed to give or prepare evidence for the purpose of civil proceedings in England and Wales they have an overriding duty to help the court on matters within their expertise (CPR 35.3). This duty overrides any obligation to the person instructing or paying them. Experts must not serve the exclusive interest of those who retain them.

4.2 Experts should be aware of the overriding objective that courts deal with cases justly. This includes dealing with cases proportionately, expeditiously and fairly (CPR 1.1). Experts are under an obligation to assist the court so as to enable them to deal with cases in accordance with the overriding objective. However the overriding objective does not impose on experts any duty to act as mediators between the parties or require them to trespass on the role of the court in deciding facts.

4.3 Experts should provide opinions which are independent, regardless of the pressures of litigation. In this context, a useful test of 'independence' is that the expert would express the same opinion if given the same instructions by an opposing party. Experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates.

4.4 Experts should confine their opinions to matters which are material to the disputes between the parties and provide opinions only in relation to matters which lie within their expertise. Experts should indicate without delay where particular questions or issues fall outside their expertise.

4.5 Experts should take into account all material facts before them at the time that they give their opinion. Their reports should set out those facts and any literature or any other material on which they have relied in forming their opinions. They should indicate if an opinion is provisional, or qualified, or where they consider that further information is required or if, for any other reason, they are not satisfied that an opinion can be expressed finally and without qualification.

4.6 Experts should inform those instructing them without delay of any change in their opinions on any material matter and the reason for it.

4.7 Experts should be aware that any failure by them to comply with the Civil Procedure Rules or court orders or any excessive delay for which they are responsible may result in the parties who instructed them being penalised in costs and even, in extreme cases, being debarred from placing the experts' evidence before the court. In Phillips v Symes1 Peter Smith J held that courts may also make orders for costs (under section 51 of the Supreme Court Act 1981) directly against expert witnesses who by their evidence cause significant expense to be incurred, and do so in flagrant and reckless disregard of their duties to the Court.

5. Conduct of Experts instructed only to advise

5.1 Part 35 only applies where experts are instructed to give opinions which are relied on for the purposes of court proceedings. Advice which the parties do not intend to adduce in litigation is likely to be confidential; the Protocol does not apply in these circumstances2 3.

5.2 The same applies where, after the commencement of proceedings, experts are instructed only to advise (e.g. to comment upon a single joint expert's report) and not to give or prepare evidence for use in the proceedings.

5.3 However this Protocol does apply if experts who were formerly instructed only to advise are later instructed to give or prepare evidence for the purpose of civil proceedings.

6. The Need for Experts

6.1 Those intending to instruct experts to give or prepare evidence for the purpose of civil proceedings should consider whether expert evidence is appropriate, taking account of the principles set out in CPR Parts 1 and 35, and in particular whether:

(a) it is relevant to a matter which is in dispute between the parties.

(b) it is reasonably required to resolve the proceedings (CPR 35.1);

(c) the expert has expertise relevant to the issue on which an opinion is sought;

(d) the expert has the experience, expertise and training appropriate to the value, complexity and importance of the case; and whether

(e) these objects can be achieved by the appointment of a single joint expert (see section 17 below).

6.2 Although the court's permission is not generally required to instruct an expert, the court's permission is required before experts can be called to give evidence or their evidence can be put in (CPR 35.4).

7. The appointment of experts

7.1 Before experts are formally instructed or the court's permission to appoint named experts is sought, the following should be established:

(a) that they have the appropriate expertise and experience;

(b) that they are familiar with the general duties of an expert;

(c) that they can produce a report, deal with questions and have discussions with other experts within a reasonable time and at a cost proportionate to the matters in issue;

(d) a description of the work required;

(e) whether they are available to attend the trial, if attendance is required; and

(f) there is no potential conflict of interest.

7.2 Terms of appointment should be agreed at the outset and should normally include:

(a) the capacity in which the expert is to be appointed (e.g. party appointed expert, single joint expert or expert advisor);

(b) the services required of the expert (e.g. provision of expert's report, answering questions in writing, attendance at meetings and attendance at court);

(c) time for delivery of the report;

(d) the basis of the expert's charges (either daily or hourly rates and an estimate of the time likely to be required, or a total fee for the services);

(e) travelling expenses and disbursements;

(f) cancellation charges;

(g) any fees for attending court;

(h) time for making the payment; and

(i) whether fees are to be paid by a third party.

(j) if a party is publicly funded, whether or not the expert's charges will be subject to assessment by a costs officer.

7.3 As to the appointment of single joint experts, see section 17 below.

7.4 When necessary, arrangements should be made for dealing with questions to experts and discussions between experts, including any directions given by the court, and provision should be made for the cost of this work.

7.5 Experts should be informed regularly about deadlines for all matters concerning them. Those instructing experts should promptly send them copies of all court orders and directions which may affect the preparation of their reports or any other matters concerning their obligations.

Conditional and Contingency Fees

7.6 Payments contingent upon the nature of the expert evidence given in legal proceedings, or upon the outcome of a case, must not be offered or accepted. To do so would contravene experts' overriding duty to the court and compromise their duty of independence.

7.7 Agreement to delay payment of experts' fees until after the conclusion of cases is permissible as long as the amount of the fee does not depend on the outcome of the case.

8. Instructions

8.1 Those instructing experts should ensure that they give clear instructions, including the following:

(a) basic information, such as names, addresses, telephone numbers, dates of birth and dates of incidents;

(b) the nature and extent of the expertise which is called for;

(c) the purpose of requesting the advice or report, a description of the matter(s) to be investigated, the principal known issues and the identity of all parties;

(d) the statement(s) of case (if any), those documents which form part of standard disclosure and witness statements which are relevant to the advice or report;

(e) where proceedings have not been started, whether proceedings are being contemplated and, if so, whether the expert is asked only for advice;

(f) an outline programme, consistent with good case management and the expert's availability, for the completion and delivery of each stage of the expert's work; and

(g) where proceedings have been started, the dates of any hearings (including any Case Management Conferences and/or Pre-Trial Reviews), the name of the court, the claim number and the track to which the claim has been allocated.

8.2 Experts who do not receive clear instructions should request clarification and may indicate that they are not prepared to act unless and until such clear instructions are received.

8.3 As to the instruction of single joint experts, see section 17 below.

9. Experts' Acceptance of Instructions

9.1 Experts should confirm without delay whether or not they accept instructions. They should also inform those instructing them (whether on initial instruction or at any later stage) without delay if:

(a) instructions are not acceptable because, for example, they require work that falls outside their expertise, impose unrealistic deadlines, or are insufficiently clear;

(b) they consider that instructions are or have become insufficient to complete the work;

(c) they become aware that they may not be able to fulfil any of the terms of appointment;

(d) the instructions and/or work have, for any reason, placed them in conflict with their duties as an expert; or

(e) they are not satisfied that they can comply with any orders that have been made.

9.2 Experts must neither express an opinion outside the scope of their field of expertise, nor accept any instructions to do so.

10. Withdrawal

Where experts’ instructions remain incompatible with their duties, whether through incompleteness, a conflict between their duty to the court and their instructions, or for any other substantial and significant reason, they may consider withdrawing from the case. However, experts should not withdraw without first discussing the position fully with those who instruct them and considering carefully whether it would be more appropriate to make a written request for directions from the court. If experts do withdraw, they must give formal written notice to those instructing them.

11. Experts' Right to ask Court for Directions

11.1 Experts may request directions from the court to assist them in carrying out their functions as experts. Experts should normally discuss such matters with those who instruct them before making any such request. Unless the court otherwise orders, any proposed request for directions should be copied to the party instructing the expert at least seven days before filing any request to the court, and to all other parties at least four days before filing it. (CPR 35.14).

11.2 Requests to the court for directions should be made by letter, containing—

(a) the title of the claim;

(b) the claim number of the case;

(c) the name of the expert;

(d) full details of why directions are sought; and

(e) copies of any relevant documentation.

12. Power of the Court to Direct a Party to Provide Information

12.1 If experts consider that those instructing them have not provided information which they require, they may, after discussion with those instructing them and giving notice, write to the court to seek directions (CPR 35.14).

12.2 Experts and those who instruct them should also be aware of CPR 35.9. This provides that where one party has access to information which is not readily available to the other party, the court may direct the party who has access to the information to prepare, file and copy to the other party a document recording the information. If experts require such information which has not been disclosed, they should discuss the position with those instructing them without delay, so that a request for the information can be made, and, if not forthcoming, an application can be made to the court. Unless a document appears to be essential, experts should assess the cost and time involved in the production of a document and whether its provision would be proportionate in the context of the case.

13. Contents of Experts' Reports

13.1 The content and extent of experts’ reports should be governed by the scope of their instructions and general obligations, the contents of CPR 35 and PD35 and their overriding duty to the court.

13.2 In preparing reports, experts should maintain professional objectivity and impartiality at all times.

13.3 PD 35, para 2 provides that experts’ reports should be addressed to the court and gives detailed directions about the form and content of such reports. All experts and those who instruct them should ensure that they are familiar with these requirements.

13.4 Model forms of Experts’ Reports are available from bodies such as the Academy of Experts or the Expert Witness Institute.

13.5 Experts’ reports must contain statements that they understand their duty to the court and have complied and will continue to comply with that duty (PD35 para 2.2(9)). They must also be verified by a statement of truth. The form of the statement of truth is as follows:

“I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.” This wording is mandatory and must not be modified.

Qualifications

13.6 The details of experts' qualifications to be given in reports should be commensurate with the nature and complexity of the case. It may be sufficient merely to state academic and professional qualifications. However, where highly specialized expertise is called for, experts should include the detail of particular training and/or experience that qualifies them to provide that highly specialised evidence.

Tests

13.7 Where tests of a scientific or technical nature have been carried out, experts should state:

(a) the methodology used; and

(b) by whom the tests were undertaken and under whose supervision,

summarizing their respective qualifications and experience.

Reliance on the work of others

13.8 Where experts rely in their reports on literature or other material and cite the opinions of others without having verified them, they must give details of those opinions relied on. It is likely to assist the court if the qualifications of the originator(s) are also stated.

Facts

13.9 When addressing questions of fact and opinion, experts should keep the two separate and discrete.

13.10 Experts must state those facts (whether assumed or otherwise) upon which their opinions are based. They must distinguish clearly between those facts which experts know to be true and those facts which they assume.

13.11 Where there are material facts in dispute experts should express separate opinions on each hypothesis put forward. They should not express a view in favour of one or other disputed version of the facts unless, as a result of particular expertise and experience, they consider one set of facts as being improbable or less probable, in which case they may express that view, and should give reasons for holding it.

Range of opinion

13.12 If the mandatory summary of the range of opinion is based on published sources, experts

should explain those sources and, where appropriate, state the qualifications of the originator(s) of the opinions from which they differ, particularly if such opinions represent a well-established school of thought.

13.13 Where there is no available source for the range of opinion, experts may need to express opinions on what they believe to be the range which other experts would arrive at if asked. In those circumstances, experts should make it clear that the range that they summarise is based on their own judgement and explain the basis of that judgement.

Conclusions

13.14 A summary of conclusions is mandatory. The summary should be at the end of the report after all the reasoning. There may be cases, however, where the benefit to the court is heightened by placing a short summary at the beginning of the report whilst giving the full conclusions at the end. For example, it can assist with the comprehension of the analysis and with the absorption of the detailed facts if the court is told at the outset of the direction in which the report's logic will flow in cases involving highly complex matters which fall outside the general knowledge of the court.

Basis of report: material instructions

13.15 The mandatory statement of the substance of all material instructions should not be incomplete or otherwise tend to mislead. The imperative is transparency. The term "instructions" includes all material which solicitors place in front of experts in order to gain advice. The omission from the statement of 'off-the-record' oral instructions is not permitted. Courts may allow cross-examination about the instructions if there are reasonable grounds to consider that the statement may be inaccurate or incomplete.

14. After receipt of experts' reports

14.1 Following the receipt of experts' reports, those instructing them should advise the experts as soon as reasonably practicable whether, and if so when, the report will be disclosed to other parties; and, if so disclosed, the date of actual disclosure.

14.2 If experts' reports are to be relied upon, and if experts are to give oral evidence those instructing them should give the experts the opportunity to consider and comment upon other reports within their area of expertise and which deal with relevant issues at the earliest opportunity.

14.3 Those instructing experts should keep experts informed of the progress of cases, including amendments to statements of case relevant to experts' opinion.

14.4 If those instructing experts become aware of material changes in circumstances or that relevant information within their control was not previously provided to experts, they should without delay instruct experts to review, and if necessary, update the contents of their reports.

15. Amendment of reports

15.1 It may become necessary for experts to amend their reports:

(a) as a result of an exchange of questions and answers;

(b) following agreements reached at meetings between experts; or

(c) where further evidence or documentation is disclosed.

15.2 Experts should not be asked to, and should not, amend, expand or alter any parts of reports in a manner which distorts their true opinion, but may be invited to amend or expand reports to ensure accuracy, internal consistency, completeness and relevance to the issues and clarity. Although experts should generally follow the recommendations of solicitors with regard to the form of reports, they should form their own independent views as to the opinions and contents expressed in their reports and exclude any suggestions which do not accord with their views.

15.3 Where experts change their opinion following a meeting of experts, a simple signed and dated addendum or memorandum to that effect is generally sufficient. In some cases, however, the benefit to the court of having an amended report may justify the cost of making the amendment.

15.4 Where experts significantly alter their opinion, as a result of new evidence or because evidence on which they relied has become unreliable, or for any other reason, they should amend their reports to reflect that fact. Amended reports should include reasons for amendments. In such circumstances those instructing experts should inform other parties as soon as possible of any change of opinion.

15.5 When experts intend to amend their reports, they should inform those instructing them without delay and give reasons. They should provide the amended version (or an addendum or memorandum) clearly marked as such as quickly as possible.

(1) direct the Assessor to prepare a report for the Court on any matter at issue in the proceedings; and

(2) direct the Assessor to attend the whole or any part of the trial to advise the Court on any such matter.

16. Written Questions to Experts

16.1 The procedure for putting written questions to experts (CPR 35.6) is intended to facilitate the clarification of opinions and issues after experts' reports have been served. Experts have a duty to provide answers to questions properly put. Where they fail to do so, the court may impose sanctions against the party instructing the expert, and, if, there is continued non-compliance, debar a party from relying on the report. Experts should copy their answers to those instructing them.

16.2 Experts' answers to questions automatically become part of their reports. They are covered by

the statement of truth and form part of the expert evidence.

16.3 Where experts believe that questions put are not properly directed to the clarification of the report, or are disproportionate, or have been asked out of time, they should discuss the questions with those instructing them and, if appropriate, those asking the questions. Attempts should be made to resolve such problems without the need for an application to the court for directions.

Written requests for directions in relation to questions

16.4 If those instructing experts do not apply to the court in respect of questions, but experts still believe that questions are improper or out of time, experts may file written requests with the court for directions to assist in carrying out their functions as experts (CPR 35.14). See Section 11 above.

17. Single Joint Experts

17.1 CPR 35 and PD35 deal extensively with the instruction and use of joint experts by the parties and the powers of the court to order their use (see CPR 35.7 and 35.8, PD35, para 5).

17.2 The Civil Procedure Rules encourage the use of joint experts. Wherever possible a joint report should be obtained. Consideration should therefore be given by all parties to the appointment of single joint experts in all cases where a court might direct such an appointment. Single joint experts are the norm in cases allocated to the small claims track and the fast track.

17.3 Where, in the early stages of a dispute, examinations, investigations, tests, site inspections, experiments, preparation of photographs, plans or other similar preliminary expert tasks are necessary, consideration should be given to the instruction of a single joint expert, especially where such matters are not, at that stage, expected to be contentious as between the parties. The objective of such an appointment should be to agree or to narrow issues.

17.4 Experts who have previously advised a party (whether in the same case or otherwise) should only be proposed as single joint experts if other parties are given all relevant information about the previous involvement.

17.5 The appointment of a single joint expert does not prevent parties from instructing their own experts to advise (but the costs of such expert advisers may not be recoverable in the case).

Joint instructions

17.6 The parties should try to agree joint instructions to single joint experts, but, in default of agreement, each party may give instructions. In particular, all parties should try to agree what documents should be included with instructions and what assumptions single joint experts should make.

17.7 Where the parties fail to agree joint instructions, they should try to agree where the areas of disagreement lie and their instructions should make this clear. If separate instructions are given, they should be copied at the same time to the other instructing parties.

17.8 Where experts are instructed by two or more parties, the terms of appointment should, unless the court has directed otherwise, or the parties have agreed otherwise, include:

(a) a statement that all the instructing parties are jointly and severally liable to pay the experts' fees and, accordingly, that experts' invoices should be sent simultaneously to all instructing parties or their solicitors (as appropriate); and

(b) a statement as to whether any order has been made limiting the amount of experts' fees and expenses (CPR 35.8(4)(a)).

17.9 Where instructions have not been received by the expert from one or more of the instructing parties the expert should give notice (normally at least 7 days) of a deadline to all instructing parties for the receipt by the expert of such instructions. Unless the instructions are received within the deadline the expert may begin work. In the event that instructions are received after the deadline but before the signing off of the report the expert should consider whether it is practicable to comply with those instructions without adversely affecting the timetable set for delivery of the report and in such a manner as to comply with the proportionality principle. An expert who decides to issue a report without taking into account instructions received after the deadline should inform the parties who may apply to the court for directions. In either event the report must show clearly that the expert did not receive instructions within the deadline, or, as the case may be, at all.

Conduct of the single joint expert

17.10 Single joint experts should keep all instructing parties informed of any material steps that they may be taking by, for example, copying all correspondence to those instructing them.

17.11 Single joint experts are Part 35 experts and so have an overriding duty to the court. They are the parties' appointed experts and therefore owe an equal duty to all parties. They should maintain independence, impartiality and transparency at all times.

17.12 Single joint experts should not attend any meeting or conference which is not a joint one, unless all the parties have agreed in writing or the court has directed that such a meeting may be held4 and who is to pay the experts' fees for the meeting.

17.13 Single joint experts may request directions from the court — see Section 11 above.

17.14 Single joint experts should serve their reports simultaneously on all instructing parties. They should provide a single report even though they may have received instructions which contain areas of conflicting fact or allegation. If conflicting instructions lead to different opinions (for example, because the instructions require experts to make different assumptions of fact), reports may need to contain more than one set of opinions on any issue. It is for the court to determine the facts.

Cross-examination

17.15 Single joint experts do not normally give oral evidence at trial but if they do, all parties may cross-examine them. In general written questions (CPR 35.6) should be put to single joint experts

before requests are made for them to attend court for the purpose of cross-examination 5.

18. Discussions between Experts

18.1 The court has powers to direct discussions between experts for the purposes set out in the Rules (CPR 35.12). Parties may also agree that discussions take place between their experts.

18.2 Where single joint experts have been instructed but parties have, with the permission of the court, instructed their own additional Part 35 experts, there may, if the court so orders or the parties agree, be discussions between the single joint experts and the additional Part 35 experts. Such discussions should be confined to those matters within the remit of the additional Part 35 experts or as ordered by the court.

18.3 The purpose of discussions between experts should be, wherever possible, to:

(a) identify and discuss the expert issues in the proceedings;

(b) reach agreed opinions on those issues, and, if that is not possible, to narrow the issues in the case;

(c) identify those issues on which they agree and disagree and summarise their reasons for disagreement on any issue; and

(d) identify what action, if any, may be taken to resolve any of the outstanding issues between the parties.

Arrangements for discussions between experts

18.4 Arrangements for discussions between experts should be proportionate to the value of cases. In small claims and fast-track cases there should not normally be meetings between experts. Where discussion is justified in such cases, telephone discussion or an exchange of letters should, in the interests of proportionality, usually suffice. In multi-track cases, discussion may be face to face, but the practicalities or the proportionality principle may require discussions to be by telephone or video conference.

18.5 The parties, their lawyers and experts should co-operate to produce the agenda for any discussion between experts, although primary responsibility for preparation of the agenda should normally lie with the parties' solicitors.

18.6 The agenda should indicate what matters have been agreed and summarise concisely those which are in issue. It is often helpful for it to include questions to be answered by the experts. If agreement cannot be reached promptly or a party is unrepresented, the court may give directions for the drawing up of the agenda. The agenda should be circulated to experts and those instructing them to allow sufficient time for the experts to prepare for the discussion.

18.7 Those instructing experts must not instruct experts to avoid reaching agreement (or to defer doing so) on any matter within the experts' competence. Experts are not permitted to accept such

instructions.

18.8 The parties' lawyers may only be present at discussions between experts if all the parties agree or the court so orders. If lawyers do attend, they should not normally intervene except to answer questions put to them by the experts or to advise about the law6.

18.9 The content of discussions between experts should not be referred to at trial unless the parties agree (CPR 35.12(4)). It is good practice for any such agreement to be in writing.

18.10 At the conclusion of any discussion between experts, a statement should be prepared setting out:

(a) a list of issues that have been agreed, including, in each instance, the basis of agreement;

(b) a list of issues that have not been agreed, including, in each instance, the basis of disagreement;

(c) a list of any further issues that have arisen that were not included in the original agenda for discussion;

(d) a record of further action, if any, to be taken or recommended, including as appropriate the holding of further discussions between experts.

18.11 The statement should be agreed and signed by all the parties to the discussion as soon as may be practicable.

18.12 Agreements between experts during discussions do not bind the parties unless the parties expressly agree to be bound by the agreement (CPR 35.12(5)). However, in view of the overriding objective, parties should give careful consideration before refusing to be bound by such an agreement and be able to explain their refusal should it become relevant to the issue of costs.

19. Attendance of Experts at Court

19.1 Experts instructed in cases have an obligation to attend court if called upon to do so and accordingly should ensure that those instructing them are always aware of their dates to be avoided and take all reasonable steps to be available.

19.2 Those instructing experts should:

(a) ascertain the availability of experts before trial dates are fixed;

(b) keep experts updated with timetables (including the dates and times experts are to attend) and the location of the court;

(c) give consideration, where appropriate, to experts giving evidence using a video-link.

(d) inform experts immediately if trial dates are vacated.

19.3 Experts should normally attend court without the need for the service of witness summonses , but on occasion they may be served to require attendance (CPR 34). The use of witness summonses does not affect the contractual or other obligations of the parties to pay experts' fees.

1 Phillips v Symes [2004] EWHC 2330 (Ch)

2 Carlson v Townsend [2001] 1 WLR 2415

3 Jackson v Marley Davenport [2004] 1 WLR 2926

4 Peet v Mid Kent Area Healthcare NHS Trust [2002] 1 WLR 210

5 Daniels v Walker [2000] 1 WLR 1382

6 Hubbard v Lambeth, Southwark and Lewisham HA [2001] EWCA 1455