



Communicating your Knowledge

Spring Conference 2009

Beaumont House,
Old Windsor

Friday 24 April 2009

The Committee of Management of the Society of Expert Witnesses welcomes you to the Society's 22nd conference.

The Society of Expert Witnesses prides itself in being the only independent, representative, non-commercial body run entirely by experts for experts. One of its most important functions is to act as a voice for the expert witness community, ensuring that all those who influence the role of the expert witness hear our views. The overall aim of the Society is to establish and maintain a level of excellence amongst its members – 'each towards excellence striving'.

We hope that you will find the varied programme of this conference interesting, inspirational and enjoyable. The Committee of Management looks forward to meeting you and hopes that you will use this ideal opportunity to forge new contacts and to get to know your Society colleagues.

This Conference Pack contains the following:

- the **programme of events** and other useful information
- a **list of participants, speakers and guests**
- brief **biographies**, and support materials provided by our speakers
- a **Feedback Form** (yellow)
- a **Society Dinner** menu (green)
- a **badge**
- an **attendance certificate**.

WHAT TO DO NOW

- The **Feedback Form** (yellow) is a great opportunity for you to comment on this conference and to mould the structure of future meetings. To date, we have found that the Feedback Forms have helped us develop our conference policy to reflect the needs and desires of our members.

Timetable for the day

Friday 24 April	
09.30	Registration and Coffee
10.00–10.05	Welcome and Introduction
10.05–10.15	The expert under pressure <i>Tom Magner</i> , SEW Press Officer & Forensic Engineer
10.15	Session 1: Communication and Credibility – Philip Evans
	Barrister, <i>Philip Evans</i> , leads this session which assesses the impact and consequences of failing to communicate expert evidence clearly, how and why it can go wrong, and ways in which it can threaten credibility.
11.15–11.45	Coffee
11.45	Session 2: The Importance of Being Simple David Corke, Graham Doughty and Roland Barber
11.45–12.00	Civil Engineer, <i>David Corke</i> , headlines the fundamental principles of communicating complex ideas in simple steps.
12.00–13.00	Road Traffic Accident Investigator, <i>Graham Doughty</i> , made legal history in overturning a magistrates' court's decision that he was not an expert. With the help of fellow investigator, <i>Roland Barber</i> , he illustrates the importance and the influence of good communication skills, whatever the field of expertise.
13.00–14.15	Lunch
14.15	Session 3: Making Words Count – Cindy Buxton
14.15–14.50	Legal presentation consultant and former television documentary producer, <i>Cindy Buxton</i> , shows how visualising complex issues can help get simple ideas across to the court.
14.55	Session 4: Law Commission Consultation – Dr Chris Pamplin
14.55–15.30	Editor of the <i>UK Register of Expert Witnesses</i> , <i>Dr Chris Pamplin</i> , introduces the Law Commission's Consultation on creating a pre-trial test of the reliability of expert evidence.
15.30–16.00	Tea
16.00	Session 5: Society Debate
16.00–17.30	The speakers join forces to draw together the themes of the day. They will offer more detailed advice and debate, in a <i>Question Time</i> format, the balance between clear communication and overselling the expert's opinion.
17.30	Closing remarks
19.30	Drinks reception – Beaumont Lounge Bar
20.00	Society Dinner – Restaurant Section 2

Useful information for delegates

VENUE AND CONFERENCE FACILITIES

The *Society's* Spring Conference will be held in the Beaumont Suite at Beaumont House, Burfield Road, Old Windsor, Berkshire, SL4 2JJ. (Tel: 01753 640 000; Fax: 01753 640 100).

Beaumont House is set in 40 acres of landscaped ground. Dating back to the 17th century, it has been extensively refurbished. Beaumont also has a health and fitness centre, and the facilities include a heated swimming pool, a gymnasium and tennis and squash courts.

TODAY'S ORGANISERS

Our Registration Desk will be staffed today by **Teresa Baron**. If you have any problems, please seek out Teresa and she will be pleased to help.

PARKING

Free on-site parking.

LUNCH

A hot and cold buffet lunch will be served in the restaurant. If you have already informed us of a special dietary requirement or food allergy, your food will be served separately. In such cases, please make yourself known to the catering staff as soon as you arrive at the lunch venue.

ACCOMMODATION

The bedrooms are spacious, luxuriously furnished and well equipped, offering tea/coffee-making facilities, trouser press, iron and ironing board, hair dryer, TV, high-speed internet access and luxury bedding.

MOBILITY

Beaumont House is wheelchair friendly.

RECEPTION AND DINNER

Friday 24 April 2009

The reception will be held in the Beaumont Lounge Bar at 7.30pm. Our *Society* Dinner will be served at 8.00pm in the restaurant, Section 2.

Dress: Lounge suits.

TOURIST INFORMATION

Old Windsor was the oldest Saxon town in Berkshire, originally the site of an important palace of the Saxon kings, and the seat of Edward the Confessor. It continued in importance up until about 1100, when it was gradually overshadowed by the building of Windsor Castle 2 miles upstream.

Old Windsor was popular with the monarch because of its convenient location – near the river for transport and Windsor Forest for hunting. Old Windsor was also an early minster location and market, probably associated with a lock (hence the need for a winch) and important riverside mill complex. The Saxon palace was eventually superseded by the Norman castle – Windsor Castle – at 'New' Windsor. However, the Medieval manor house became a popular royal hunting lodge at a time when the castle was a fortress, rather than a comfortable residence. 'Old' Windsor has this prefix due to the movement up the Thames to 'New' Windsor, originally because of a chickenpox epidemic.

There are numerous opportunities for fishing and boating and, although there is much modern housing development adjacent to the main roads, the towpath walks still retain their rural charm. The southeast of the parish adjoins the county of Surrey, where the road from Windsor to Staines leads to historic Runnymede. It was here on 15 June 1215 that King John sealed the Magna Carta.

Old Windsor is located just south of the town of Windsor and near to the villages of Englefield Green and Datchet. It sits on the River Thames and in the summer provides a pleasant walk along the river's edge to Old Windsor Lock.

Windsor Great Park is largely within the bounds of Old Windsor, including both the Royal and Cumberland Lodges.

Information on: 01753 743 900 or visit their web site at www.windsor.gov.uk

SOCIETY TIES

An official *Society of Expert Witnesses* tie can be purchased by Members from the Registration Desk. The pure silk ties, printed with the *Society* logo, are available in a choice of red or blue and cost £17.50 (including VAT). Please make cheques payable to the *Society of Expert Witnesses*.

FORTHCOMING CONFERENCES

The Autumn Conference and AGM 2009 will be held on Friday 16 October 2009 at Mottram Hall in Cheshire.

As always, we are open to ideas for locations and venues for our conferences. If you have a suggestion, simply drop us a line with relevant details.

List of conference delegates

As of 22 April 2009 the following were registered to attend this conference.

MODERATOR

Mr Tom Magner, SEW Press Officer & Consultant
Forensic Engineer

SPEAKERS AND WORKSHOP PRESENTERS

Mr Roland Barber, Road Traffic Accident
Investigator
Mr Mark Barrett, Accountant
Ms Cindy Buxton, Legal Presentation
Consultant
Mr David Corke, Geotechnical Consultant
Mr Richard Cory-Pearce, SEW Secretary,
Consultant Surgeon
Mr Graham Doughty, Road Traffic Accident
Investigator
Mr Philip Evans, Barrister
Mr Frazer Imrie, SEW Chairman, Forensic
Biologist
Dr Chris Pamplin, Editor, UK Register of Expert
Witnesses

SOCIETY MEMBERS

Professor Raymond Arnold, Chartered
Electrical Engineer
Dr Malcolm Bailey, Forensic Engineer
Mr Ian Biles, Marine Consultant
Dr Gerrard Burnett, Dental Surgeon
Mr Terence Cain, Consultant Orthopaedic
Surgeon
Mr Eddie Chaloner, Consultant Vascular
Surgeon
Eur Ing Simon Clarke, Consultant Metallurgist
Mr Edward Compton, Consultant Orthopaedic
Surgeon
Mr Paul Croft, Road Crash Investigator
Mr Rick Cronk, Mechanical Engineer
Mr James Davies, Chartered Electrical
Engineer
Professor Robert Douglas, Respiratory
Physiologist
Mr James Eddy, Photogrammetrist & Photo
Interpreter
Dr Marta Elian, Neurologist
Mr Miles Emblin, Insurance Consultant
Dr R C Hanumara, Orthopaedic Surgeon
Mr Clive Haslock, Forensic Accountant

Dr Terry Henman, Cambridge Polymer
Consultants
Dr Peter Hewitt, Occupational & Environmental
Health & Safety Consultant
Mr Stephen Hiscock, Banker
Dr John Jackson, Occupational Physician
Mr Peter Jones, Health & Safety Consultant
Dr Eddie Josse, SEW Vice-Chairman, Clinical
Forensic Medicine Consultant
Mr Jim Kernohan, Consultant Orthopaedic
Surgeon
Dr Joanna Lindley, Medical Advisor
(Paediatrics)
Mr R S Maurice-Williams, Consultant
Neurosurgeon
Mr Alan Myers, Structural Engineer
Mr Graham Oakley, Accident Investigation
Consultant
Mr Marcus Ornstein, Consultant Surgeon
Mr Alfred Pare, Accountant
Mr David Price, Neurosurgeon
Dr Bashir Qureshi, Expert Witness in Cultural,
Religious & Ethnic Issues in Litigation
Professor David Reeves, Consultant Medical
Microbiologist
Dr Jeffrey Rosenberg, Consultant
Rheumatologist
Dr Tracey Ryan-Morgan, Consultant Clinical
Neuropsychologist
Dr Caroline Schuster-Cotterell, Chartered
Psychologist
Mr John Shaw, Consultant ENT Surgeon
Mr Roger Smart, Electrical Engineer
Mr John S S Stewart, Consultant General
Surgeon
Mr Adam Stronach, Chartered Accountant
Drs Rene Westbroek, Consultant Psychologist
Mr Richard White, Timber in Construction

NON-MEMBERS

Ms Sally Cadec, Consultant/Director, Safeguard
Security Consultants Ltd
Dr Bernard Norman, Consultant Anaesthetist

REGISTRATION DESK

Teresa Baron, SEW Membership Liaison Officer
Mrs Janice Imrie, SEW Registration

The expert under pressure

10.05

Tom Magner BSc(Hons) Eurlng CEng MIMechE MIET MCIOJ
SEW Press Officer, Journalist & Consulting Engineer

BIOGRAPHY

The *Society's* Press Officer, Tom Magner, is a practising independent forensic scientist, established writer and broadcaster.

He is a Chartered Engineer with 27 years' national and international experience and expertise in the independent forensic investigation of mechanical and electrical accidents and incidents for the assistance of HM Coroners, Criminal, Civil and Commercial Courts.

As a journalist and broadcaster, Tom works across BBC and independent radio and television on topics ranging from science and technology to the investigation and reporting of consumer and social affairs issues. His production credits include BBC's *Watchdog* and *Rogue Traders*. He is also an independent film maker for output in the UK and abroad.

In addition to handling media enquiries, Tom writes and edits the newsroom section of the *Society's* current website.

OUTLINE

Despite confidence amongst expert witnesses to the contrary, the legal system is populated with examples of specialists being criticised for failing to communicate complex concepts in clear and simple terms. One judge said of the expert witnesses in a case that 'The reports prepared for the Court by the DNA experts should bear in mind that they are addressing lay people. The report should strive to interpret their analysis in clear language.'

It may not ultimately turn a trial verdict on its head, but, for a tribunal, lack of proper understanding or command of a technical issue can reduce the weight it places on the expert's

evidence. It may even open the door to an attack on the professional and personal credibility of the expert witness.

Clarity, brevity and an accurately expressed range of professional opinion are the keys to effective presentation in reports and in the witness box. From interpreting medical records to reporting the findings of fraud case accountancy, explaining the geological fundamentals of beach sand on the move to the inner psychology of balancing family values, getting complex technical messages and issues across to a lay audience is an art in itself.

Could you summarise your knowledge and expertise, with simplicity and accuracy, when put on the spot in a quick-fire test of knowledge? Could you explain the most complex issue in your specialist field in a sentence? Could you write the essentials of a case investigation and report in less than an A4 page?

The fear of letting go of the assumptions behind every professional opinion is listed by experts as the main difficulty they face when conveying complex information in simple terms in reports and in the witness box. Accusations of over-simplification and introducing inadvertent bias come a close second.

The conference sessions feature a range of speakers who will highlight, define and illustrate the fundamental principles of getting evidence across in reports and in person – tricks and tips about handling assumptions, methods of recognising the key points in an investigation and how to summarise complicated science and information.

NOTES

Communication and credibility

10.15

Philip Evans LLB MA

Barrister

BIOGRAPHY

Philip is recognised as one of the country's leading junior advocates with expertise in serious and complex crime. He has recently appeared for both the prosecution and the defence in some of the highest profile criminal matters that have been tried. In those cases he has acted both as leader and junior. He is currently involved in several complex matters waiting to come before the courts.

He has a strong practice in private corporate work, having recently been instructed on behalf of private companies and individuals who are not themselves defendants but require advice relating to matters such as fraud (civil and criminal), potential criminal liability arising from corporate activities, confiscation, compensation and related areas.

He has extensive experience appearing before regulatory tribunals such as police tribunals. There, he has represented numerous police officers, from first instance tribunal through to the Police Appeals Tribunal.

Philip has particular expertise in road traffic-related matters. He has acted privately for clients of some notoriety. They have included the managing director of a multi-national car manufacturer, the wife of the chairman of a high street bank, Premiership footballers and their families, along with a world-famous theatre producer. These cases have involved alcohol-related matters, speeding, avoidance of disqualification under the totting provisions and speeding-related offences, and matters of dangerous driving and death by dangerous driving.

His advocacy skills have also been utilised extensively in Council chambers across the south of England, where he has acted in a number of licensing matters.

OUTLINE

Barrister Philip Evans from QEB Hollis Whiteman Chambers assesses the impact and consequences of failing to deliver expert evidence clearly, how and why it can go wrong and ways in which it can threaten the individual's professional and personal credibility.

The use of complex language in written reports and oral evidence can lead to justice being blinded by science and can run the risk of the Court coming to the wrong conclusion.

Examples include the cases of:

- a man accused of robbing a jewellery shop after police forensic evidence suggested that hair found at the scene matched his own. Later, an independent forensic expert employed by the man's solicitor was able to show that in fact the hair had come from a dog
- a mother was charged with killing her baby by dosing it with barbiturate drugs to try to make it go to sleep. Just before the trial started, the police forensic expert realised that, in the complicated statistical analysis, a decimal point had appeared in the wrong place in his report, multiplying the amount of the drug supposedly found in the baby's body by a factor of 10. The true level could not have killed the child. It had been a victim of cot death.

One judge said of expert witnesses in a case before the Family Courts that 'The reports prepared for the Court by the DNA experts should bear in mind that they are addressing lay people. The report should strive to interpret their analysis in clear language.'

Some legal analysts believe that, despite these and other high-profile examples of expert witnesses presenting evidence in a complicated way, many lawyers continue to regard expert evidence as difficult, if not impossible, to challenge. One of the chief causes is claimed to be the complexity of the jargon, making questioning the science, even with a party's own expert assistance, appear too difficult.

One of the hallmarks of an independent expert witness is believed by top lawyers to be someone who not only has the relevant and applicable technical knowledge and track record but also, more importantly, the ability to provide short answers that are directly on point. Experts who regularly provide longer-than-necessary answers are perceived to be more likely to get themselves and the case into trouble. Lawyers are encouraged to select witnesses who can explain their craft to the

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people who will serve on the jury. Most experts work primarily with highly educated and motivated peers and students who have the basic vocabulary and education necessary to be conversant in a specialised field of study.

These people are nothing like the jury. Before employing an expert, lawyers are encouraged to test the ability of the expert witness to explain difficult concepts quickly and in simple terms.

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The importance of being simple

11.45

David Corke

BSc CEng FICE

BIOGRAPHY

After a career of 35 years in the construction industry, as a consulting engineer and then for companies specialising in site investigation and foundations and underground construction, for the last 4 years David has been an independent consultant.

David now specialises in consultancy relating to construction underground, provides technical advice, and has advised in a number of disputes.

So far, all disputes have been settled by discussion, except for one, where at least the parties involved have not stopped talking!

Helping to bring a clear and easily understood view to all concerned is considered to be an essential for dispute resolution. Hence, 'The Importance of being Simple'.

OUTLINE

Civil engineer, David Corke, headlines the fundamental principles of communicating complex ideas in simple steps.

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In simple terms

12.00

Graham Doughty LCGI MCIT MILT MInstTA MIRTE MSOE
Road Traffic Accident Consultant

Roland Barber Btec MILT MInstTA
Road Traffic Accident Consultant

BIOGRAPHIES

Graham Doughty is a retired Metropolitan Police traffic patrol officer, advanced accident investigator and reconstruction officer.

In 1992 he passed courses on speed detection devices such as Police Pilot, Vascar, Truvelo and MuniQuip. In 1994 he also qualified in the use of the LTI 20:20 Laser Speed Detector.

Prior to joining the Metropolitan Police, he was in the Royal Engineers for 13 years, as a Grade 1 Combat Engineer, responsible for running a 10-man team organising explosives for demolition, mine clearance, road and bridge design, and water purification and supply. He served in the Falklands conflict.

Since 1999, Graham has been a Director of Transport Management Consultants Ltd, forensic transport investigators and tachograph analysts. In 2004, he passed his Masters Degree in Transport Law with distinction.

Roland Barber has extensive experience with transport operation. After a successful career with the police, he joined Transport Management Consultants Ltd to continue assisting operators with operational problems with drivers' hours and tachograph procedures.

OUTLINE

The way a journalist researches and writes up a story is similar to the way an expert witness should express, with clarity and simplicity, the subject of their report. Stories like all good expert witness reports should be firmly founded in reality.

In this session, two experts, Graham Doughty and Roland Barber, illustrate the principles of clear and accurate story-telling, featuring a fight for justice, not for a defendant in a criminal trial or a claimant in a civil trial, but for an experienced expert witness whose reputation was on the line.

Road traffic investigator, Graham Doughty, made legal history recently after successfully overturning the decision of a magistrates' court that he was not to be classified as an expert in speed camera procedures.

In this case, the story finds the expert on what should have been a routine assignment, giving evidence within his specialist knowledge and experience on a case before the Bench at Ely Magistrates' Court. Taking a leaf out of modern documentary production techniques, Graham and Roland tell the story in their own words.

Part 1: Getting the framework down on paper

1 Write a summary in the clearest, simplest language you can use

2 Define in layman's terms any complicated technology, issue or jargon

3 Think of simple, even basic, questions that you might be asked by an interested observer

4 Check with a colleague that the summary can be read without needing to ask any questions

Part 2: Writing the story

1 This is the hard part and it will not miraculously happen at the first time of asking. You have to craft this story in terms that your readers will understand, without making it so simple that other experts complain that you got it all wrong and want to change it back.

2 To start the drafting process, it is best to start simple and add layers of complexity, rather than to write very technically and then try to dumb it down for your audience.

3 Begin by writing the story as if you're preparing to address a class of sixth formers with no attention span, employing ways to keep them interested:

(i) **use good analogies** – Whenever possible, explain how something works by comparing it to something else that everyone understands. If you're writing about structural engineering, explain how building materials interact by comparing them with assembling a jigsaw puzzle or baking a cake.

(ii) **offer some examples** – It is one thing to tell the audience about a technology or a machine; it's quite another to show them how something works. The manufacturing process can actually be quite compelling once you break down the steps and show all that goes into making your product.

(iii) **find some decent quotes** – Instead of long, boring quotes from experts explaining how something works, experts need to make short, clear statements about why something works, and what makes it important.

Part 3: Would graphic aids help?

This is crucial. All stories need as much graphic help as we can give them, and the longer the story, the more it needs to be easy on the eyes. But technical stories are in a category all of their own. Report writers should look for ways to:

1 **include charts and graphics** – a visual demonstration of how something works can do wonders. Just make sure the graphic isn't more confusing than the text. Like your words, graphics have to explain a complicated subject in the simplest terms possible.

2 **present a glossary** – technical terms need definitions, and a glossary is a nice way to

package them. The glossary is there for those who need to use it, and it does not intrude on those who are a bit more techno-savvy.

3. **consider including headlined footnotes** – for readers who want to know more but do not want the stream of text cluttered.

Part 4: Fact checking/approval

1 No matter what your approval process, make sure you leave enough time to go over the report with a colleague.

2 Rather than waiting for the final document, it may be better to send him/her passages or sections as you go.

3 If you write a definition of a complicated term, e-mail it to your colleague for approval.

4 If you write a footnote about 'How it works', ask your colleague to give it a once over and suggest changes.

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Making words count

14.15

Cindy Buxton

Legal Presentation Consultant

BIOGRAPHY

Cindy Buxton, born and brought up in the UK, has spent most of her working life abroad. She is now in London from Colorado, operating the London office for Z-Axis.

Cindy joined Z-Axis in early 1997 after a successful career in the British television industry, where for 25 years she directed and filmed wildlife documentaries for the famous *Survival* series of Anglia Television. The films are distributed to more than 110 countries. She has won three major awards for her work, published two books, a scientific paper and written numerous articles in various natural history magazines.

One of her many talents is in thoroughly researching and working closely with lawyers, barristers and experts so that she fully understands a project or case that she is involved with which enables her to assist the producer with the necessary visual presentations. With 12 years as a producer under her belt, her new role as Z-Axis's UK consultant will prove very beneficial to her UK clients.

OUTLINE

Legal presentation consultant and former television documentary producer, Cindy Buxton, shows how visualising complex issues can help get simple ideas across to the court.

Avoiding wordiness

There are many ways of avoiding wordiness. A few basic guidelines are given in this section.

Cut the clutter

Good writers develop a concise style, which avoids redundant words. A good tip for editing a draft is to go through it and cross out any words that don't add to the meaning, while at the same time looking for more concise ways of saying the same thing.

Avoid circumlocutions

A 'circumlocution' is the use of many words when just a few will do – an easy trap to fall into when trying to make a point a little more forcefully! Here are some examples, together with simpler ways of expressing the same idea:

- *It is possible that*

May, might, could

- *There is no doubt that*

Doubtless

- *Used for... purposes*

Used

- *He is a man who...*

He

- *In a hasty manner*

Hastily

- *At this point in time*

Now/then

- *In the near future*

Soon

- *Prior to, in anticipation of, following on, at the same time as*

Before, after, as

- *Notwithstanding the fact that, despite the fact that*

Although

- *Concerning the matter of*

About

- *The reason for, owing to the reason that, on the grounds that*

Because, since, why

- *If it should transpire that, in the event that*

If

- *With regard to*

About

- *Owing to the fact that, due to the fact that, in view of the fact that*

Since, because

- *This is a subject which*

This subject

- *In a situation in which*

When

- *Is able to, has the capacity to*

Can

- *On the occasion of*

When

- *For the purpose of*

To

- *The question as to whether*

Whether

Avoid ‘padding’ words and tautologies

There are some other words of this type which are pure padding and can be omitted – for example, ‘basically’ or ‘current’ as in ‘the current chairman’ when you are not referring to past or future chairmen.

Tautologies are those words that mean the same thing: safe haven, future prospects, weather conditions, etc. Sometimes, tautologies are used for rhetorical effect, but at other times removing one unnecessary word will improve conciseness.

Avoid unnecessary determiners, qualifiers and modifiers

There are some words which appear to modify a noun but which merely clutter up the sentence.

Example

- Managers need some *[kind of]* extra help if they are to avoid getting bogged down with paperwork.
- It is *[basically]* in order to...
- The *[sort of]* person I would like to meet is...
- The software was implemented and tested on a cohort of level 2 students who had, *[in general]*, studied French for 8 years.
- *[To a certain extent]* women no longer lag behind men in terms of pay in certain areas.

Either omit these words or give specific details.

Avoid using noun formulations of verbs

There is an increasing tendency in the English language to use noun formations to replace a perfectly good verb.

Example

The articles should *de-mystique* the subject by explaining complicated concepts and offering definitions where appropriate.

should be

The articles should *demystify* the subject by explaining complicated concepts and offering definitions where appropriate.

The top example uses a noun formation from ‘mystique’, but the word ‘demystify’ means just the same thing and is more common parlance.

Change clauses into phrases and phrases into single words

Sometimes, phrasal constructions can be reduced to adjectives:

- *The employee with talent*

The talented employee

- *The economy with the best performance*

The best performing economy

Relative clauses can also sometimes be reworded:

- *The prisoner who had been recently released*

The recently-released prisoner

- *The IT system that met most of our requirements*

The most compatible IT system

Other clauses can be worded more simply, as in the following example in which two clauses are put together as one:

- *If citing a shortish extract, you can do this by just reproducing it within the article*

A short extract can be reproduced within the article

Try to avoid phrases like ‘It was’ and ‘There is’:

- *There is a tendency amongst managers of X company...*

Managers of X company tend to...

- *It was Kotler who said...*

Kotler said...

Some infinitive phrases (those that use verbs with ‘to’) can be turned into sentences with active verbs:

- *The responsibility of a leader is to motivate and inspire*

A leader should motivate and inspire

- *The product is considered to be sound*

The product is considered sound

Sometimes verbal phrases with gerunds (-ing words) can be turned into adjectives:

- *Because of the ground being rough*

Because of the rough ground

Avoid repetition or excessive detail

When you read through a draft, check you are not repeating things unnecessarily or putting in too much detail.

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Law Commission Consultation

14.55

Christopher Pamplin BSc PhD FGS
Editor, UK Register of Expert Witnesses

BIOGRAPHY

Dr Chris Pamplin is Editor of the *UK Register of Expert Witnesses* and has been so since its foundation in 1988. Prior to that, Chris attended Liverpool University where he obtained his BSc in Geology. He then moved on to the University of Southampton to study the structural geology of North Cornwall, which involved lots of cliff-top walking, sliding down scree slopes and eating Cornish ice creams.

He is now involved with expert witnesses on a daily basis offering advice on expert witness practice and procedure. He is the current Editor of *Your Witness*, a quarterly newsletter for expert witnesses, and has written books on expert witness fees, expert witness practice and starting out as an expert witness. He was also instrumental in bringing together interested expert witnesses to form the *Society of Expert Witnesses*.

Now, his expert opinion is called upon by journalists and lawyers to inform discussions, and by government bodies such as the Forensic Science Regulator, the Legal Services Commission and the Law Commission to help develop and contribute to consultations.

OUTLINE

Proposal 1: A gate-keeper role

The Law Commission's key proposal is that there should be an explicit 'gate-keeping' role for the trial judge with a clearly defined test for determining whether proffered expert evidence is sufficiently reliable to be admitted. The application of this test would determine whether the tendered evidence is *admissible* as a matter of law.

After first determining that the proposed expert evidence is logically relevant to the disputed matter, that it would provide the jury with substantial assistance and that the witness is truly expert and able to provide an impartial opinion, the judge would need to address the gate-keeping question. The question is whether the evidence is sufficiently reliable to be considered, and ultimately accepted, by a Crown Court jury.

The Law Commission provisionally proposes that there should be a statutory provision along the following lines:

(1) *The opinion evidence of an expert witness is admissible only if the court is satisfied that it is sufficiently reliable to be admitted.*

(2) *The opinion evidence of an expert witness is sufficiently reliable to be admitted if: –*

(a) *the evidence is predicated on sound principles, techniques and assumptions;*

(b) *those principles, techniques and assumptions have been properly applied to the facts of the case; and*

(c) *the evidence is supported by those principles, techniques and assumptions as applied to the facts of the case.*

(3) *It is for the party wishing to rely on the opinion evidence of an expert witness to show that it is sufficiently reliable to be admitted.*

Thus, the trial judge would not only consider the reliability of the expert's hypothesis, methodology and assumptions, but would also examine how the expert has applied them to the case and, if properly applied, whether the expert's conclusion is logically sustainable.

Such a test would put experts on notice that they will be expected to provide the trial judge with evidence about the basis of their expert opinion sufficient to enable the judge to conclude that their evidence would provide the jury with reliable information.

Acknowledge the distinction between scientific and experiential expertise

While much expert evidence is based in science, there is the whole area of expert evidence based on experience (e.g. forensic accountancy or experts in custom and practice for a particular trade). The Law Commission recognises this and proposes two distinct sets of guidelines to cover each type of expert evidence.

For scientific expert evidence it proposes the following:

In determining whether scientific (or purportedly scientific) expert evidence is sufficiently reliable to be admitted, the court shall consider the following factors and any other factors considered to be relevant:

(a) *whether the principles, techniques and assumptions relied on have been properly tested, and, if so, the extent to which the*

results of those tests demonstrate that they are sound;

- (b) the margin of error associated with the application of, and conclusions drawn from, the principles, techniques and assumptions;*
- (c) whether there is a body of specialised literature relating to the field;*
- (d) the extent to which the principles, techniques and assumptions have been considered by other scientists – for example in peer-reviewed publications – and, if so, the extent to which they are regarded as sound in the scientific community;*
- (e) the expert witness's relevant qualifications, experience and publications and his or her standing in the scientific community;*
- (f) the scientific validity of opposing views (if any) and the relevant qualifications and experience and professional standing in the scientific community of the scientists who hold those views; and*
- (g) whether there is evidence to suggest that the expert witness has failed to act in accordance with his or her overriding duty of impartiality.*

It would be for the trial judge to determine whether a field of expertise is to be classified as scientific and assessed in accordance with these guidelines. With regard to factor (a), the expert would need to show that the experimental or observational tests were conducted in an objective, scientifically valid way with appropriate comparators (e.g. control groups) and safeguards (e.g. measures to protect against contamination).

For experiential expert evidence it proposes the following guidance:

In determining whether experience-based expert evidence is sufficiently reliable to be admitted, the court shall consider the following factors (where applicable) and any other factors considered to be relevant:

- (a) the expert's qualifications, practical experience, training and publications and his or her standing in the professional or other expert community;*
- (b) the extent to which the basis and validity of the expert's opinion can be explained, with particular reference to:
 - (i) the extent to which the basis of the opinion (for example, any assumption relied upon) has been verified or discredited;*
 - (ii) the specific instances which support the claim to experience-based expertise;**

(iii) the bearing those instances have on the matter(s) in issue; and

- (iv) whether the expert's methodology or reasoning has previously resulted in a demonstrably valid or erroneous opinion;*
- (c) whether there is a body of specialised literature relating to the field of expertise and, if so:
 - (i) the extent to which it supports or undermines the expert's methodology and reasoning; and*
 - (ii) the extent to which the expert's methodology and reasoning are recognised as acceptable amongst his or her peers;**
- (d) whether there is evidence to suggest that the expert has failed to act in accordance with his or her overriding duty of impartiality.*

Based on this guidance, the reliability of expert testimony on forensic document examination would be determined on the basis of, amongst other things

- the witness's experience
- the number of standard points of comparison used and
- a detailed description of the process by which the expert reached the given opinion.

In the areas of professional, non-scientific expertise where there are well-accepted practices and methodologies, e.g. accountancy, it should be sufficient that the expert followed accepted practices and has provided a sufficient explanation of what was done.

Proposal 2: The onus of persuasion

The Law Commission proposes that any party to an action, or the judge, should be able to raise the question of evidential reliability as a preliminary issue. If raised:

- the judge could take 'judicial notice' of the evidentiary reliability of the proposed evidence if reliability has already been clearly established (and no new developments have arisen), or
- if the expert evidence is patently unreliable (e.g. a party wished to adduce expert evidence from an astrologer), the judge could hold that it is inadmissible without the need for detailed investigation, or
- the judge would investigate the evidentiary reliability of the proffered expert evidence in accordance with the three-stage test. The party tendering the evidence would need to demonstrate that the expert's hypothesis and methodology comprise a reliable basis for the expert testimony. In accordance with

the Criminal Procedure Rules, the expert would have a duty to provide details of research findings that undermine the validity of his hypothesis or reasoning

Importunately, at no stage of this inquiry into the reliability of the underpinning body of knowledge is it incumbent on the judge, the parties or the experts to show or determine if the opinion given by the expert is actually correct. The test is only whether the opinion is grounded in a body of knowledge that is itself deemed reliable.

Further issues

Court-appointed assessor

It would be for the trial judge to provide a reasoned decision on admissibility with reference to the criteria for assessing evidentiary reliability. Nevertheless, in determining whether expert scientific evidence is sufficiently reliable to be admitted, the Law Commission sees merit in an argument that the judge should exceptionally (that is, in cases where the evidence or field is particularly

difficult) be permitted to call upon an independent assessor to provide assistance and guidance.

Education

The Law Commission believes that judges (and criminal practitioners) should receive practical training on the methodology of science, the standards for determining the statistical significance of research findings and how to determine the reliability of experience-based expertise.

Accreditation

The Law Commission believes that if a system of non-compulsory accreditation of expert witnesses is encouraged, and the process of accreditation were to provide a further hallmark of reliability, there is no reason why the judge should not take into account, as an additional relevant consideration, the fact that an expert witness is or is not accredited when addressing the evidentiary reliability of his or her expert evidence.

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**Session 5: *Society* Debate
Does the perfect pitch mean justice?**

16.00

NOTES

Saturday morning workshops

Because of their popularity, numbers at these workshops are strictly limited. They offer members high-quality hands-on training run in small groups by senior expert witnesses.

Workshop 1: Terms of Appointment Wessex 7, 10.00–12.30

Richard Cory-Pearce

SEW Secretary & Consultant Surgeon

BIOGRAPHY

Richard Cory-Pearce is a Practising Surgeon actively engaged in expert witness work. He graduated in 1968 and followed a broad training in surgery, at the same time pursuing his established interest in organ transplantation and transplantation immunology.

After working as a Consultant Surgeon and University Lecturer in Cambridge, he entered whole-time private practice in Harley Street where his involvement in expert witness work became an increasingly important interest.

He is Immediate Past President of the Harveian Society of London, President-elect of the Hunterian Society and Editor of its annals, the *Transactions of the Hunterian Society*. He is a Fellow of the Medical Society of London and of the Royal Society of Medicine; he also represents the Royal College of Surgeons of

England at the National Heart Forum. He is a Member of the Chartered Institute of Arbitrators.

OUTLINE

The Civil Procedure Rules and the associated Practice Directions have for some time required experts and those instructing them to establish and agree clear and comprehensive terms governing each appointment. The directions are not only specific and prescriptive but also give an exhaustive list of aspects to be included.

This workshop covers all the requirements of the CPR, working through the rules and directions and explaining the technique of careful drafting of the relevant terms. A CD containing source material, typical terms and useful modifications is provided for all participating experts, who should each bring a laptop to work from the CD during the session.

Workshop 2: Oral Evidence

Wessex 10, 10.00–12.30

Frazer Imrie

SEW Chairman & Forensic Biologist

BIOGRAPHY

Frazer Imrie worked in the food industry for some 25 years, initially as a research scientist, eventually reaching divisional chief executive rank. After taking early retirement, Frazer became an independent full-time consultant, which he carries out through his own company called Imrie Consulting Ltd.

Frazer has been a food consultant for some 20 years. More recently he has become associated with CWA Consultants Ltd, where he manages the Food Technology Department. His main casework is the preparation of cases for litigation. He has appeared frequently in court and in arbitration tribunals.

Frazer has carried out project work for various international bodies such as FAO, UNDP and

UNESCO. He is on the consultants' list of the Institute of Biology and the Institute of Food Science & Technology.

OUTLINE

English law places great emphasis on the value of oral evidence. Indeed, in 2005 the Law Society pointed out that the process of giving oral evidence is much to be preferred over written evidence. This is especially true of expert evidence because oral examination gives the opportunity to question the credentials and credibility of an expert witness. This workshop deals with the process of giving oral evidence and offers some tips on minimising the very real stress occasioned by the process.

Workshop 3: Managing your Tax Affairs

Wessex 11, 10.00–12.30

Mark Barrett

Chartered Management Accountant

BIOGRAPHY

Having chosen to study as a Chartered Management Accountant to gain industry-based experience, Mark qualified as a Fellow of the Institute with full Practising Certificate at 27.

His first directorship was achieved at 26 in an engineering company, and attained an international company directorship at 27. By the age of 29, Mark had established his own Practice and the first project was to lead a listing on the Stock Exchange's 3rd market – a baptism of fire!

The Practice became internationally based, with offices in Manhattan and London, and the work was centred on the role as a problem fixer or company doctor. Having had many years in that role and with a client base that included many of the FTSE companies, the original practice was sold, and Mark moved to Wiltshire to work as a more traditional accountant.

The current practice is based in North Wiltshire, with 17 staff, most of whom are qualified in their roles, and they provide the full range of services to their clients who come from almost every walk of life.

Mark's primary role now is multi-faceted. He is still an accounts and tax specialist, handles business purchases and sales and is also an expert witness on quantum valuations.

OUTLINE

Tax is a cost like any other expense borne by a business. It needs to be planned, managed and controlled. This broad-based workshop will look at reducing tax liabilities through careful cost and structural management, compliance with the latest regulations, maintaining records that are capable of being relied upon, and what to do in the event of an enquiry by HMRC. Any major developments in the 2009 Budget will also be discussed.

NOTES

Thank you for supporting the Society of Expert Witnesses
and for attending our Spring Conference.

**See you on 16 October 2009
at Mottram Hall in Cheshire!**

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