

BOOK REVIEW

THE EXPERT IN LITIGATION AND ARBITRATION

By D Mark Cato

Published by LLP 1999. Price £195

As society is becoming ever more litigious it is perhaps no great surprise that the role of the expert witness is attracting ever more attention. For example, in the May 1998 BILA Journal Sir Christopher Staughton headed his 12 page article: "Too many experts!" Interestingly, an exclamation and not a question mark.

More recently the Court of Appeal in *Field v Leeds City Council* (18 January 2000) looked at whether an expert witness should be disqualified because of his employment status.

We now have this weighty tome of just over 1,000 pages which deals, through individual contributions by a group of authors, with all aspects of expert witness work.

The editor is a chartered surveyor who is now a full-time arbitrator and in the introduction we are presented with a series of brief contributions on the role of the expert based on "seminal articles" which the authors have updated. Of great value is a summary of the points which an expert witness needs to consider when he is initially appointed.

We are given an early reference to *The Ikarian Reefer* case ([1995] 1 Lloyd's Rep 455) which confirmed that an expert witness is obliged to give independent and unbiased evidence and that, if he lacks experience in any area, he should say so. Likewise, Rule 35 of the Civil Procedure Rules is introduced to us. This provides that an expert has an overriding duty to the court, is obliged to help the court on matters within his expertise and is now under an obligation to execute a statement of truth in the prescribed format.

One of the great strengths of the book is that the authors are not afraid to hammer home those basic aspects of an expert witness's work which are crucial to his contribution to the proceedings concerned.

There is a strong international flavour to the work, a characteristic which, bearing in mind the increase in cross-border disputes of all kinds, has great practical benefits. Even in the introduction we are given a brief overview of the law relating to expert witnesses in France, Germany, Italy, the USA, Australia, China and Hong Kong.

As the importance of expert witness work has grown, so has the need for a formalised approach and the Academy of Experts has, over the past ten years or so, played a significant role in educating and leading. Its Chairman Emeritus, Michael Cohen, gives an overview of its work, what it has achieved and what it has to offer to the expert or budding expert.

Having given us a wide-ranging introduction Mr Cato presents us next with a series of in-depth discussions of the role of the expert witness in various fields. For instance, Nigel Harris, an orthopaedic surgeon, covers medical malpractice and personal injury litigation. He highlights the dilemma for lawyers representing both claimant and defendant: who is a medical expert in the particular discipline concerned? In seeking an answer to this question he states:

“If proper standards are to be achieved and maintained, diligence and honesty of potential expert witnesses are required combined with a lawyer having knowledge of how the differing medical disciplines function.”

There then follow a section on expert witnesses in criminal cases. We are also given a very useful sample report from a construction dispute. Suspended ceilings really are crucial in some people's lives!

We then come to the section which is probably of greatest interest to insurance and reinsurance lawyers: Philippa Rowe's look at expert witness work in those two fields. Her approach is structured around, firstly, claims under insurance policies, and secondly, disputes about how insurance and reinsurance policies work. She gives the reader two very helpful and well-presented case studies. The first one is in the professional indemnity field, the second one deals with the construction of a reinsurance agreement. There are two model reports, an approach which will be of great practical value, especially to people who are relatively new to expert witness work, and there is very useful discussion of the two reports and how and why they were prepared in the way presented.

Mark Cato himself contributes an in-depth analysis of interlocutory and hearing problems. He discusses the seven principal responsibilities of an expert witness as detailed by Cresswell J in *The Ikarian Reefer*. It is no surprise that number 1 reads: “Expert evidence presented at court should be and should be seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation”. He also deals with the situation which now prevails under the CPR. This is an extensive section, but one which contains some essential reading.

This excellently presented and very stimulating work finishes with various appendices. There is an extract from the Woolf Report followed by the reproduction of the Civil Procedure Rules as relevant to the role of the expert witness. Also of great practical value is the appendix which covers the model terms of engagement for experts published by the Academy of Experts and that body's model form for an expert report.

What we have is, therefore, a weighty reference work in which the basics are put very clearly and succinctly. It should find its way on to the bookshelves of both lawyers and experts alike and will, I feel, prove to be a most useful volume to which reference

can be made time and again. It is not, perhaps unfortunately, in loose-leaf format, but, having said that, the overall presentation and the way in which it is broken down into its various sections and sub-sections make the job of finding some particular point very easy.

Gordon Cornish