

The Little Book on
**Getting Started as an
Expert Witness**

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**Getting Started as an
Expert Witness**

Chris Pamplin PhD and Susanne White PhD
UK Register of Expert Witnesses

2nd Edition

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What others say about the Little Books

'Dr Chris Pamplin's style is clear and as far as possible jargon free. Compared to the cost of a standard medico legal report [the Little Books] are reasonably priced indeed.'

www.univadis.co.uk

'These [Little Books] are nicely laid out and easy to follow [and] offer a solid overview to the beginner.'

Maria Ward

The Psychologist

'I followed through on the advice in the Fees book with a letter before action and got my fee within days.'

David Ellis

Chartered Clinical Psychologist

'... it can be confusing, frightening and (if ill prepared) uncomfortable in court! As a remedy, [this Little Book] is a wonderful book...'

Dr Kim Survarna

Consultant Histopathologist

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Preface

Following on from the success of the first two Little Books in the series, Dr Chris Pamplin (Editor of the UK Register of Expert Witnesses) has teamed up with Dr Susanne White (writer and copy editor) to present a practical guide to getting started as an expert witness. Each draws on over 20 years' experience of working within the expert witness arena. The authors bring to the task a practical no-nonsense approach aimed at translating sometimes quite technical concepts into readable digestible material.

If you're contemplating taking on the role of expert witness, or are just starting out, then this Little Book offers lots of practical advice about building a successful expert witness business.

The guide is written in a light, highly readable format, with lots of sidebar summaries offering a content overview. It will help you to analyse your motives, explore the different roles and duties of an expert witness and decide whether this really is a good career move for you. It contains lots of background information on expert witness work, plus hints and tips about getting ready for an instruction.

Good preparation is the first part of the equation. It includes establishing an appropriate office environment, presenting a professional image, planning for professional development, establishing rigorous work mechanisms and creating a marketable service.

Next there's your relationship-building abilities. Can you balance the provision of a professional expert witness service with the timely collection of your fee? You must foster respectful and productive work relationships that can also accommodate, when necessary, the hard-nosed businessman.

Get both right, and jobs will start to flow in from repeat work and personal recommendation. But there's much more you can do to increase your rate of instruction, and this book also offers lots of suggestions on that topic.

Chris Pamplin and Susanne White

Guide to abbreviations

ADR	alternative dispute resolution
CDPA	Copyright, Designs and Patents Act
CFA	conditional fee arrangements
CJC	Civil Justice Council
CPR	Civil Procedure Rules
CPS	Crown Prosecution Service
CrimPR	Criminal Procedure Rules
DPA	Data Protection Act
ENE	Early Neutral Evaluation
FPR	Family Procedure Rules
HMRC	Her Majesty's Revenue and Customs
LAA	Legal Aid Agency
MedCo	new government-run portal for low-value personal injury claims
MoJ	Ministry of Justice; formerly the Department for Constitutional Affairs, and before that the Lord Chancellor's Department
MRO	medical reporting organisation
SFO	Serious Fraud Office
SJE	single joint expert
VAT	value added tax

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What's it all about?

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Expert witness work can be rewarding, but it isn't risk-free

Although there's no doubt that the role of the expert witness can be both personally challenging and financially rewarding, it can also be career-threatening. If you do not prepare for the task properly, offer a good level of service and comply with all the rules and regulations, you could find yourself headline news, facing discreditation, subject to costs sanctions and hauled before your professional disciplinary body to answer some difficult questions. So it definitely pays to enter the expert witness arena with your eyes open and all the groundwork done... which is where this Little Book can help.

Are you right for this exacting role?

This first chapter offers a summary of the roles and duties required of an expert witness. We'll take a brief look at single joint experts (SJE) and expert advisors, the qualities required of an expert witness and the nature of expert evidence. By reviewing the essential requirements and matching them to your personal strengths and weaknesses, you'll be able to make an informed decision about what you need to do to prepare for the new role of expert witness.

Good preparation leads to success

In subsequent chapters you'll learn the steps you need to take to:

- **prepare for your first instruction**
- **complete your task** competently
- **improve your chances of getting paid** on time and in full – something of interest to all expert witnesses! – and
- **build your business** into a successful expert witness practice.

For more detailed information about working as an expert witness, additional Little Book guides are available from the publisher. These include *Expert Witness Practice in the Civil Arena*, *Expert Witness*

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Justice systems in England and Wales

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Justice system in England and Wales is split into civil (including family) and criminal

The legal system in England and Wales can be divided broadly into:

- the **criminal** justice system – involving cases where the State takes action against a party to determine whether it has committed a crime
- the **civil** justice system (which includes family proceedings) – in which a party takes action against another, usually with the aim of achieving financial compensation.

Which court will hear the case and which procedures will be followed will depend on a number of factors including the nature of the charge and the consequences of a guilty or liable verdict.

Parties argue their case before the court

At most court hearings two or more parties come before the court to request a ruling. Each party is usually represented by a lawyer who argues the case. At a hearing, the court needs to:

- **find out what happened**, i.e. establish the facts
- if necessary, **call for expert opinion** to inform the court's decision
- before making a ruling, **determine applicable law**, and
- **make a ruling**.

2.1 Evidence

There are three types of evidence

There are three categories of evidence, regardless of whether the trial is civil or criminal:

- **documentary** evidence – including photographs, video and audio recordings, photofits, documents (e.g. letters, memos, e-mails, hospital records), etc.

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Get the basics in place before offering your services

This chapter takes you briefly through many of the essentials that should be in place before you seek that first instruction. If you are already in business, then much of what follows may well have been addressed already. But it's worth a quick skim through to ensure you haven't missed anything.

Invest time now to help your business flourish

Before embarking on your first instruction it is vital that you **prepare your business environment**. Successful completion of a first instruction is most likely to be achieved if you have put in the groundwork to get the business basics right. The necessary preparations will take you a little time, but it is essential to put the effort in now if you wish your expert witness practice to grow and to generate an income in the years to come.

3.1 Office

Make sure your office set up gives the right impression

It's important that your office environment sets a **professional tone** in every respect, be it the decoration, the way your telephones are answered or the efficiency of your staff. You should examine every point of interaction between a client and your business, and then decide whether your business presentation is up to scratch.

3.1.1 Office building

Can you hold private meetings at your office?

Most of your clients will never meet you face to face; if they do, it will be at their offices or in a court building. On occasions, though, you may need to host a meeting.

- **Can you receive clients or hold expert discussions at your office?** If your office is not suitable for such confidential meetings, scout around the local area and pinpoint better premises for occasional hire. Try hotels, schools, universities and colleges, conference centres, and so on.

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Getting instructions and growing your business

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Find the right marketing mix to match your time and finances

Whether you're trying to gain a first instruction or to grow your business, this chapter will give you lots of ideas about how to proceed. There are several approaches worth trying, each with its own advantages and disadvantages. Some will require significant time and effort on your part, while others will make demands on your purse. Your task will be to **find the right marketing mix to match your financial and time constraints**.

Your reason for doing expert witness work will influence your strategy

Another point to consider is how you view your expert witness work. Is it something in which you want to dabble to fill the odd afternoon now and then? Or is it a new strand to your business that you are keen to strengthen and grow?

And finally, think about how your **competitors** market themselves. Do they all produce glossy brochures and have snazzy websites? If so, you'll need to seriously consider matching, if not exceeding, their efforts or risk being viewed as less professional. Remember, how you portray yourself is much more important at first contact than the expertise you possess.

Some of the approaches discussed below are more likely to lead to short-term gain but little long-term security. Others may take longer to produce results, but the quality of the contacts and the implications for your future success will be enhanced greatly.

Low cost, low effort

Balance financial costs with effort to select the best approach for you

- Register as an expert witness with your **professional bodies**
- Gain **word-of-mouth recommendations** from professional colleagues
- Talk to your **local law societies** and see if you can do something together of mutual benefit

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Most instructions follow a similar path

The deskwork associated with a case will vary little, regardless of whether the action is civil, criminal or family. All types of proceeding require expert witnesses:

- to **act according to similar rules of court and procedure**
- to **write well-structured reports**, based on clear and thorough thinking
- if required, to **answer questions of clarification** on their reports, and
- if required, to **take part in expert discussions** before the hearing to try to identify areas of agreement and narrow down areas of disagreement.

Always apply standard rules of business

As an expert witness, in all cases you should adhere to what should be considered standard rules of business.

- You **must not be biased** towards your instructing party. You should **remain wholly independent** at all times.
- You should **record accurately the time spent** on each case so that billing can be transparent, unambiguous and justifiable.
- You should **respond promptly to all enquiries** from instructing parties.
- You should **ensure those instructing you are kept informed** of progress.
- You must **ensure that your written contract is in place**, properly signed, before work commences on a case.
- You must **ensure the security of any case documents** in your care.

Ensure that a written signed contract is established

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Expert discussions and court work

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Move away from your desk and a new skill set is needed

Whenever you accept a case you must be prepared, if necessary, to take part in expert discussions and make an appearance in court. While in the vast majority of civil cases your opinion will be restricted to your expert report, in criminal and family proceedings you'll be expected to appear in court on a much more regular basis.

Such face-to-face encounters require a different skill set to that needed for report writing, and your powers of oral communication and self-control could be tested severely. Training is available to refine your courtroom skills and provide added confidence. For details of training providers, see §3.4.1 *Training on page 68*.

6.1 Expert discussions

All courts encourage pre-trial expert discussions

Expert discussions are encouraged in civil, criminal and family proceedings. The CPR, CrimPR and FPR all speak of discussions between experts rather than meetings, and clearly envisage contacts of a more informal nature. So discussions need not necessarily be face to face. They can take the form of:

Discussions can be face-to-face, over the 'phone or by letter/e-mail

- an **exchange of letters, e-mails or faxes**
- **video-linked meetings**, or
- **telephone conferencing**.

Expert discussions can take place at any time by arrangement between the parties. It is more often the case, though, that they are ordered by the court, i.e. after proceedings have been issued.

Constructive discussions identify areas of common ground

The majority of expert discussions are constructive and help to **identify substantial areas of common ground**. The general view of those who have taken part in one is that they are 'a good thing'. At the very least they serve to **establish the extent of**

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Fees and getting paid

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Payment problems abound, but lawyers are businessmen too

At every gathering of experts you'll hear tales of woe about unpaid invoices and bad debtors. Law firms will be named and individual lawyers noted. But since solicitors work in the law and are themselves businessmen, it can hardly be surprising that they will try to manipulate situations to their best advantage. If that means failing to remind you that you've still not managed to extricate a signed contract from them for a forthcoming assignment, then that's your problem, not theirs.

Look out for your own interests while complying with the rules of court

Now there are solicitors who will do their utmost to ensure you work well together and everything is transparent, but they are few and far between. It is your responsibility to make sure you comply with all the relevant rules and regulations governing your work as an expert witness, while at the same time ensuring you keep business matters like fees and payment in focus and upfront.

Remember that an expert witness is paid for the time it takes to:

- **form an opinion** and, where necessary,
- **support that opinion** during the course of litigation.

Experts are paid for the time it takes to form an opinion, not for the opinion

An expert witness is *not* paid for the opinion given, and still less for the assistance that opinion affords the client's case. This underlines the **independent** nature of the role of the expert witness; **you are not a hired gun**.

7.1 Types of fee

Different fee scales should apply to different categories of work

There are several different types of fee you will need to consider:

- **secretarial work** you can safely delegate, e.g. typing, chasing records, etc., charged at a lower rate

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Business matters

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Once your business is growing and instructions are starting to flow in you will find that most cases will follow a well-trodden and familiar path. You'll be able to prepare your reports and submit your invoices without any trouble. But as you become more experienced you will come across some issues that bear closer examination here.

8.1 VAT

Expert witness work is not exempt from VAT

Value added tax (VAT) is a tax on the final consumption of many goods and services in the UK. The supply of some goods and services is exempt from VAT. However, **expert witness services are not exempt** and are rated as standard (i.e. 20% in 2015).

Exceed the current turnover threshold and you will need to register

The goods and services upon which you are liable to pay VAT are called 'taxable supplies'. If your business turnover reaches the VAT registration threshold (£82,000 on 1 April 2015) in any 12 month period, it must be registered for VAT. The business must then charge VAT on all of its taxable supplies.

VAT registration threshold changes annually on 1 April

Historically the VAT registration threshold increases annually on 1 April. Visit Her Majesty's Revenue and Customs's (HMRC) website (www.gov.uk/government/organisations/hm-revenue-customs) for the currently applicable value.

It is your responsibility to add the tax. The amount you'll have to pay to HMRC is the difference between your **output tax** and your **input tax**.

Input tax arises on what you buy

Inputs are the goods and services that come 'in' to the business – the things that you buy. Inputs will include stationery, telephone services and other professional services. Any VAT you pay to your suppliers when they supply goods or services 'into' your business can be reclaimed from HMRC. This is your 'input tax'.

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