



RESPONDENT INFORMATION FORM

For the Council's TARGETED CONSULTATION: on the Ordinary Procedure Rules.

Please note **this form must be completed** and returned with your response.

Are you responding as an individual or an organisation?

INDIVIDUAL

ORGANISATION

Your details:

Your full name or your organisation's name:

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Your views on the publication of your response

Please indicate your preferences with regard to the publication of your response:

Publish response with name

Publish response only (without name)

Do not publish response

Scottish Civil Justice Council

Targeted Consultation: Ordinary Procedure Rules

Response from the Expert Witness Institute

1 The Expert Witness Institute

The Expert Witness Institute (EWI) is the voice of the Expert Witness community, championing experts from all professional disciplines and the lawyers who use their services.

Our mission is to support the proper administration of justice and the early resolution of disputes through high-quality expert evidence from specialists.

Launched in 1996, the EWI is independent of outside commercial interests. A not-for-profit organisation limited by guarantee, it is run by an eminent Board of Governors that is democratic, transparent, and fully accountable to members.

We represent around 1000 Expert Witnesses of which 10% are based in Scotland/regularly work in the Scottish Courts.

We offer different levels of membership depending on experience for experts and associate membership for solicitors and barristers.

Our register of expert witnesses contains experts with a diverse range of expertise including medical, finance and accounting, business, construction, and forensic science from across the UK, Ireland and across the globe. Experts included on our directory (Find an Expert) have been fully vetted checking their professional credentials and ensuring the reports they have written are compliant with appropriate regulations and are of excellent quality; providing instructing parties with assurance that when they appoint one of our experts, they are appointing an expert with the appropriate skills and experience.

2 General comments

The EWI is pleased to take this opportunity to feed into the Scottish Civil Justice Council's targeted consultation on the Ordinary Procedure Rules. Having read the draft rules and the procedural narrative, we have focussed our comments on the rules concerning Expert Evidence.

3 Consultation Response

Please find below our responses to your questions.

3.1 Question 1 – Will the “look and feel” of these consolidated rules provide court users with the simplified, harmonised and user friendly procedure sought?

We have not commented on this as our Expert Witnesses would be focussing on the relevant section of the rules, wherever it is located.

3.2 Question 2 – Are there any individual rules you think users might find difficult to implement and comply with, and if so what would you do differently?

We have a concern in relation to:

62.—(1) Information provided by an expert witness in written form (in that person’s capacity as an expert witness) must include a declaration that the information is accurate.

Whilst we welcome the requirement to include a declaration, our experts have raised a concern with the term accuracy as this is frequently based on the information provided (for example from the pursuer and the notes provided). Accuracy is therefore contingent on this.

Instead, we would encourage the Council to consider setting a clear form of words which must be used by all Expert Witnesses to confirm that they have provided an unbiased opinion and complied with their duties to the court.

In our experience of regularly assessing and vetting expert reports, those who have signed a clear set of declarations as directed by the court provide better quality reports as this is a continual reminder of their duties, responsibilities, and the core things they must consider in writing their reports. Using a standard declaration can also help lawyers and the courts easily identify those who have complied with the latest rules.

3.3 Question 3 – Can you suggest any additional rules, or changes in layout, that would improve these consolidated rules?

We were surprised by the draft rules on Expert Evidence presented in these draft rules.

In your first report which set out the overarching principles, you had stated an intention to set out the duties of an Expert Witness. In the draft provision that was set out in that document, this had been included alongside provisions for parties to lodge questions, and concurrent presentation of Expert Evidence.

In the draft rules presented in this consultation, much of that draft has been removed and critically missing is any mention of the duties of an Expert Witness.

Given the concerning regularity of Expert Witnesses appearing in the legal press for not complying with their duties, we believe the inclusion of a high-level statement outlining the duties of an expert witness to be essential in ensuring the quality of expert evidence in the Courts.

In addition, we believe that the rules on expert evidence could be improved by considering the inclusion of:

- **A standard declaration to be used by all Expert Witness** – As mentioned above we have seen significant benefits in the quality of reports through inclusion of a standard

declaration which reminds the expert of their duties (such as remaining within their area of expertise) and key elements that should be included in the report (such as a range of opinion (where appropriate)).

- **Provision for lodging questions** – Also deleted from the new draft was the provision for each party to ask questions regarding the other party’s Expert. We are not sure whether this was a conscious omission? But we have seen in England & Wales how this can be used to great effect. Therefore, we would suggest that this is incorporated so that practitioners are clear what can be expected and any timescales that should be adhered to.
- **Encouragement to hold meetings of experts** - In England and Wales the practice of Experts’ Meetings and the creation of Joint Statements to narrow the issues still in contention is commonplace and, in civil cases, is another point at which one of the parties will settle. We are aware from our members that this practice is used occasionally. However, we believe that the Council should consider actively encouraging this practice since the production of the Joint Statement can be a helpful tool for the judge in narrowing the issues and in encouraging settlement before cases go to trial.
- **Single Joint Experts** – Whilst it is assumed that there is the possibility of the parties appointing a Single Joint Expert (given that point 62.4 starts) there is no specific provision for the use of Single Joint Experts in these rules and wonder whether this is a conscious omission. Whilst the use of Single Joint Experts may not be relevant for all types of case, they can be used to great effect in property/construction disputes saving costs and reducing time as once you get their opinion, both parties know where they stand and can rely on that opinion.

4 Further Information

Should you wish any further information or to discuss this further, please contact Simon Berney-Edwards, Chief Executive Officer of the Expert Witness Institute.

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