

Surveyors acting as expert witnesses

Client copy

Addendum 2009

Published by the Royal Institution of Chartered Surveyors (RICS)

Surveyor Court

Westwood Business Park

Coventry CV4 8JE

UK

www.ricsbooks.com

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Produced by the Dispute Resolution Professional Group of the Royal Institution of Chartered Surveyors.

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Typeset by Columns Design Ltd, Reading, Berks

Addendum to RICS practice statement Surveyors acting as expert witnesses (3rd edition) – client copy

The current 3rd edition RICS practice statement must be read with the following supplementary amendments (some, but not all, are directly consequential to the 50th Amendment to the *Civil Procedure Rules*). Page references are to *Surveyors acting as expert witnesses* (RICS practice statement 3rd edition) – client copy.

Effective date of Addendum: 16 November 2009.

1 References to the ‘Supreme Court’ should be read as referring to the Senior Courts of England and Wales, i.e.

(i) At PS 1.6 (p. 6):

‘The *Civil Procedure Rules* (CPR), together with associated Practice Directions, Forms, Protocols, and court guides, all apply to the procedure of the Senior Courts of England and Wales and the County Court in England and Wales; other rules and procedures may apply elsewhere...’

(ii) At the *Appendix: Definitions* (p. 14), under the definition of CPR:

‘**CPR:** The *Civil Procedure Rules* (known as CPR) can be found at www.justice.gov.uk/civil/procrules_fin/index.htm. This is the set of rules governing the procedure of the Senior Courts of England and Wales and the County Court in England and Wales...’

2 PS 5.1 (i) is now amended as follows:

‘Verify the report with a Statement of Truth. In cases where the CPR apply, the wording stipulated by the CPR for the Statement of Truth must always be used – see CPR Practice Direction 35 and the *Protocol for the Instruction of Experts to give Evidence in Civil Claims*. The form of wording to be used in relation to non-CPR cases must follow the rules or requirements of the particular tribunal concerned. Where no specific wording for a Statement of Truth is specified by a tribunal’s rules or requirements, the following default wording (that of the CPR’s Statement of Truth) must be used:

“I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.”

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3 PS 5.1 (j) (ii) is amended and now reads as follows:

‘The following declaration (PS 5.1 (j) (ii) A) must be used in relation to any proceedings to which the Civil Procedure Rules apply:

A – “I confirm that my duty to the court as an expert witness overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in giving my evidence impartially and objectively, and that I will continue to comply with that duty. I have read Part 35 of the Civil Procedure Rules and the accompanying practice direction including the *Protocol for the Instruction of Experts to give Evidence in Civil Claims* and I have complied with their requirements. I am aware of the Practice Direction Pre-Action Conduct”.

For non-CPR-related proceedings in England & Wales and in Northern Ireland, the following declaration (PS 5.1 (j) (ii) B) must be used:

B – “I confirm that my duty to [specify the tribunal*] as an expert witness overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in giving my evidence impartially and objectively, and that I will continue to comply with that duty.” (* The reference used may vary, as appropriate to the particular forum.)

The following declaration (PS 5.1 (j) (ii) C) must be used in relation to the proceedings of all tribunals in Scotland:

C – “I confirm that in preparing this report I have assumed the same duty which would apply to me when giving my expert opinions in a court of law under oath or affirmation. I confirm that this duty overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in giving my opinions impartially and objectively, and that I will continue to comply with that duty as required.”

4 PS 7.1 and 7.3 (c) have been expanded:

7.1 As an expert witness, you may be instructed by your client to communicate with the other party in an attempt to agree facts, and to clarify, narrow and resolve the differences between parties. You may in any event be ordered to do this by the tribunal (see paras 9.1–9.8 of Practice Direction 35 Experts and Assessors); you must follow any lawful order or direction of the tribunal, notwithstanding any directive by a client to the contrary.’

7.3 (c) preparing a statement for the tribunal showing:

- (i) those facts and issues which are agreed;
- (ii) those facts and issues which have not been agreed and the reasons for any disagreement on any issue;
- (iii) proposals for any actions that may resolve points of disagreement.’

This Addendum has been issued under the auspices of the RICS Dispute Resolution Professional Group.