



Neutrality in expert evidence

a personal perspective



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“Neutrality”





“Taking neither side or view in a dispute, disagreement, or controversy.”

SOED 6th Edn





“Indifferent, impartial, dispassionate.”

SOED 6th Edn





Role of the Court











Expert's duties





Civil Rule 35.3

- (1) It is the duty of experts to help the court on matters within their expertise.
- (2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.





Court assessment





Does expert evidence assist the court in its task?





Does the person have the necessary knowledge or experience to give the necessary evidence?





Is there a reliable body of knowledge or experience that underpins the experts evidence?





Does the expert give an impartial presentation and assessment of the evidence?





“Tricks of the trade”





Acting as an advocate.





"... after the Claimant was promoted to production foreman, it would be my opinion that his direct 'hands on' contact during manufacture of the marine probes and hence exposure to the various hazardous substances used in the manufacture of the probes would have steadily reduced possibly to a minimal or negligible level because there were others who could do the work. As production foreman the job would have required him to undertake more management activities."





Giving misleading answers to questions asked of the expert.





"I was asked to prepare a report on behalf of the Defendants considering ... The relevant standards appropriate at the time."





“An MEL is the maximum concentration of an airborne substance averaged over a reference period to which employees could be exposed by inhalation under any circumstances.

An 8 hour time weighted average (TWA) long term limit should not normally have been exceeded. ...”





*"In the case of substances assigned an **MEL/ WEL** and to which exposure has to be reduced to as low a level as is reasonably practicable and in any event to below the MEL/ WEL.*

*I consider the most important **OEL** in this case is that for colophony/resin solder fume which is 0.05 mg/m^3 ($50 \text{ }\mu\text{g/m}^3$) as **an 8 hour time weighted average.**"*





Avoiding or hiding answers to the questions asked of the expert.





I was asked to prepare a report on behalf of the Defendants considering ... compliance with COSHH.





"I do not believe that such a method of work would have been acceptable and compliant with the requirements of COSHH (i.e. with regard to minimising exposure)."

On page 16 of 30 page report, but not in summary.





Using unreliable or non-informative information.





"I refer to "Fibrous Materials in the Environment: A Review of asbestos and manmade mineral fibres"; Medical Research Council & The Institute for Environment and Health (1997). ...

This document relates to exposures in non-occupational settings.





Omitting information needed to properly interpret the facts used by the expert





Cleaning of asbestos cement:

Dry brushing (wire)

Roofing

Vertical cladding

3 fbr/ml

5-8 fbr/ml





Asbestos Cement Sheets and Pipes

"These figures are the concentrations found when the processes are carefully carried out. Bad handling practices may result in higher concentrations."





Making (un)reliable estimates of exposure





<i>Asbestos stripping operations</i>	<i>fbr/ml</i>
<i>dry stripping, except crocidolite</i> HSE EH35 1989	<i>Greater than 20</i>
<i>Uncontrolled dry stripping of lagging</i> HSG 227 2004	<i>1-100</i>
<i>Stripping pipe or vessel lagging</i> <i>Partially wetted or dry areas present</i> HSG 247 2006	<i>Up to 100</i>
<i>Breathing zone concentrations during removal of pipe and machinery lagging</i> Harries 1971	<i>Mean = 94</i> <i>(2-490)</i> <i>(N=45)</i>





Robin, your turn ...

