



MEETING	Advisory Committee
DATE	25 September 2008
TITLE	GUIDANCE FOR VETERINARY SURGEONS AND VETERINARY NURSES GIVING EVIDENCE IN COURT
CLASSIFICATION	Unclassified
SUMMARY	The working party was set up to revise the guidance on giving evidence in court. Current guidance is contained in an annex to the Guide to Professional Conduct. Following the recommendations made by the working party, reported to Advisory Committee in January 2008, draft guidance is now submitted for Advisory Committee's consideration and approval.
DECISIONS REQUIRED	To approve the draft guidance to replace the current annex to the Guide to Professional Conduct
ATTACHMENTS	NONE
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GUIDANCE TO VETERINARY SURGEONS AND VETERINARY NURSES GIVING EVIDENCE IN COURT

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Value and position of witnesses

1. Witnesses are an essential part of the legal process, providing factual or opinion evidence. The aim of this guidance is to explain to veterinary surgeons and veterinary nurses the differences between factual and opinion evidence and the responsibilities associated with acting as either a factual, professional or expert witness. Veterinary surgeons and veterinary nurses may feel awkward about giving evidence 'against a colleague', but this is to misunderstand the essential role of a witness: to assist a court's determination of the facts and issues.

What is factual evidence?

2. The Court's powers to exercise legal sanctions and to apply legal rules depends on the proof of particular facts. The law establishes which facts have to be proven in any given case, by whom and to what standard of proof. These facts are proven by the evidence, usually by testimony evidence (calling witnesses to testify) but also by documentary evidence (evidence contained in a document) and real evidence (which is derived from the physical nature of an object or place and observed upon an examination or visit).

What is the standard of proof?

3. The overall legal process of proof in court requires a combination of facts and arguments to prove cases. The rules of evidence and of court procedure draw a distinction between facts, which are proven by the evidence, and arguments, which are advanced later by the advocates in the case. Every allegation in a case must be established to a particular "standard of proof", which standard is set by the law, and is generally imposed on the party bringing the case (i.e. the claimant in civil cases, the prosecution in criminal cases). This is called "the burden of proof". The standard of proof for civil cases is 'on the balance of probabilities', the standard of proof for criminal cases is 'beyond reasonable doubt', the standard of proof for disciplinary matters is 'so as to be sure' (the highest civil standard of proof which is tantamount to the criminal standard).

What is the role of a witness?

4. The Court will receive evidence of fact from a witness for consideration in a case. The evidence of a factual witness is usually presented by the witness attending court, swearing an oath (or affirming), and then standing in a witness box to give his or her evidence orally in court. The Court's rules of procedure also allow for reliance on written, sworn witness statements in place of calling a witness to give evidence orally. Each statement of fact by the witness is evidence of that fact, and once the evidence has been 'given' on oath, it becomes 'sworn evidence' or 'testimony'.
5. A veterinary surgeon may be called as a witness of evidence of fact. This means the veterinary surgeon is being asked to tell the court what he/she personally saw, said or did. This is different from evidence of what another person saw, said or did which is called "hearsay evidence".

What is opinion evidence?

6. By contrast, the opinions of witnesses are not generally admissible as evidence in Court: this is called 'the rule against opinion evidence'. This rule is adopted because opinions and conclusions are for the Court to reach, based upon its assessment of the information placed before it: its factual conclusions will be (or should be) based upon the evidence of fact put before it; its legal conclusions will be based on its application of the law to the facts it has found, having regard to the legal arguments put before it by the advocates. Thus a witness of fact should not in ordinary circumstances be asked questions, or offer answers, which require the witness to venture an opinion on a fact in issue. This applies to statements made in preparation for giving evidence in Court as well as when giving evidence in Court, although there are exceptions to this which will be explained below.

When is opinion evidence received in Court?

7. Opinion evidence is received when the Court requires additional assistance to form an opinion on, and thereby decide justly, a particular issue which concerns matters of specialised knowledge and expertise.
8. The principle exception to the general rule excluding evidence of a witness's opinion is in respect of "Expert Evidence" given by an Expert Witness. This opinion evidence may be admitted provided the court is satisfied that the witness is qualified to give that opinion by relevant learning and experience. These witnesses often play an important role in cases involving veterinary science. See more below.
9. There are also instances where the opinion evidence of a professional witness to fact will be accepted. See further below.

What is a professional witness?

10. A 'professional witness' is one who by reason of some direct professional involvement in the facts of a case is able to give an account of those facts to the court. Thus a professional witness is a **witness of fact**, who is also professionally qualified. This factual evidence is admitted when the facts in question are relevant to an issue which the court is to decide.
11. However, there will also be occasions when a professional witness of fact will be asked by an advocate or by the court to explain the reasoning which underlay his/her findings made or actions taken in respect of a given animal. This will most commonly arise where the witness was a treating clinician, and the professional witness in these circumstances and subject to the court's permission will be able to give an answer which involves evidence of opinion. As to this situation see further below.

What is an expert witness?

12. An expert is anyone with knowledge or experience of a particular field or discipline beyond what is expected of a layman. An expert witness is a person who is qualified by his or her knowledge, experience or formal qualifications, to give **an opinion** to a Court on a particular issue to assist the Court in deciding the matter or case before it.
13. The evidence that expert witnesses can give is called 'expert opinion evidence', and this evidence is used and admitted where the Court lacks competence due to a lack of necessary expertise ((ii) above). The expert witness' primary responsibility, even if they are called and paid for by one of the parties to the case, is to the Court, and not

to their client. This leads to an expert witness sometimes being referred to as “independent”. The expert witness is usually asked to provide a report and may also be called to give evidence, on behalf of their client, in Court, nevertheless they must remain independent of their client’s vested interest.

14. Academic eminence in the relevant field is useful, as is an impressive set of qualifications and past relevant experience. However, in modern court cases an expert witness is also expected to have a sound and practical knowledge of the subject matter, based on actual clinical or practical experience, which is preferably ongoing at the time of the court case, or the time of the incident. The expert witness will be subjected to cross examination in the witness box of their self-professed standing as ‘expert’ on the subject matter in dispute. The easiest way for an advocate to seek to discredit a ‘retired’ clinician undertaking expert witness work is to ask and elucidate the date on which they last carried out the procedure in question, or treated the condition in question, to find that the answer is “some years ago”. The expert witness should be prepared to deal with such questions and should not undertake expert witness work unless they have the relevant expertise and ongoing or recent experience.
15. The qualities of a good expert witness include self-confidence and the ability to inspire and command confidence in others, particularly in the witness box; the ability to give a concise opinion which can be understood by lay people; the ability to quickly and promptly adapt to changing information.
16. For further guidance as to the role of an expert witness see: [ADD LINKS TO BMA’S AND GMC’S EXPERT WITNESS GUIDANCE](#)

Guidance for writing an expert report

17. It is important to remember, as an expert witness, that although you will be retained by your client (or clients) your primary duty is to the Court and that you are expected to remain objective, impartial, independent, and to act with integrity. You must not compromise on these matters, or act where there is an actual or potential conflict of interest unless this conflict is disclosed. An expert witness is also under a duty to maintain confidentiality. If you are going to regularly undertake expert witness work, you would be well advised to join an appropriate organisation such as the Academy of Experts, the Institute of Expert Witnesses, the Veterinary Association for Arbitration and Jurisprudence or the Council for the Registration of Forensic Practitioners: see List of Experts below.
18. The content of the expert’s report will depend on the purpose for which it is prepared, but it should aim to be a clear, precise and convenient resource of information. Experts’ reports are used to provide advice as to the merits of a case as well as for the purpose of disclosure in proceedings. In both instances the report is intended to assist non-experts (including the judge and counsel) to understand the matter in issue from a technical, clinical or scientific point of view. The report may provide the stimulus for pursuing a claim; it may form the basis for drafting the statements of case on which claims are based, or it may provide material for cross examination at trial. An expert’s report may be disclosed to the opposing side, either before proceedings are issued or afterwards, at which point the report’s author may be called upon to answer and address the opposing side’s challenges to the opinions expressed in the report.
19. There are certain minimum requirements for an expert’s report to be acceptable to a court in civil proceedings. It must be prepared having regard to the provisions and

requirements of the latest version of the Civil Procedural Rules (CPR) and their Practice Directions (PD), especially CPR Part 35 and PD 35. For example, the report should be addressed to the Court not the client; it should contain an expert's statement of truth/declaration and qualifications; if a range of opinion on a particular issue exists and it is relevant to the matter in hand, this should be referred to and addressed; relevant sources of evidence or literature cited or relied upon should be included in a bibliography; any technical terms used should be explained; matters of fact should be clearly distinguished from matters of opinion. See [ADD LIVE LINK TO CPR PART 35/PD 35](#)

20. The exact layout of the report is left to the practice of the individual expert, but the report must state the expert's name, the name of the party instructing them, the date of the report, include an expert's declaration and statement of truth and be signed by the expert. A good basic format is to have:

- a coversheet (with identification information)
- a table of contents
- a summary of conclusions (this may come at the start or the end of the report)
- a summary of instructions
- a list of documents or evidential sources
- a chronology (if appropriate for the case) or a factual summary
- a technical section (to permit a lay person reader to understand the opinion and summary of conclusions sections)
- an opinion section
- a brief curriculum vitae of the expert's qualifications and experience
- a bibliography of literature (if any literature or works of reference are cited or relied upon)
- a paginated sequence of numbered and headed sections composed of short, suitably headed paragraphs.

21. Model reports may assist as a starting point: see [ADD LIVE LINK TO EXPERT WITNESS INSTITUTE MODEL REPORT](#).

22. For further information as to expert's Codes of Practice, Protocols, Procedural Rules (both criminal and civil), model form of reports, model terms of engagement, Expert's Declarations, see:

The Expert Witness Institute Website: www.ewi.org.uk and the Academy of Experts Website: www.academy-experts.org
/OR ADD LIVE LINKS TO THESE SOURCES?

What is the difference between an expert witness and a professional witness?

23. An expert witness is asked to provide an expert opinion in respect of a particular set of facts or on a particular issue, a professional witness is asked to testify solely on the observed facts of the matter or particular issue. However, (as indicated above) there is a 'grey area' which arises because the professional witness, in the course of carrying out his or her professional role, will have formed an opinion based on the observed facts, e.g. a view as to the patient's condition or a possible diagnosis following a clinical examination is such an opinion. **A professional witness should be aware that when providing testimony of fact they should only testify as to the observed facts, but that they could be led by others, either your client or the**

advocates, into giving their opinion, and thus straying into expert territory. If this happens the professional witness should seek clarification from the judge as to whether or not they may answer these questions.

24. Generally, professional witnesses should avoid giving opinions on the central issue in the case, or accept that they are acting as an expert witness in the case. A veterinary surgeon who is asked to prepare a report should establish whether the report is required from them as a professional witness (of fact) or as an expert witness.

Remaining within one's expertise

25. It is good clinical practice to remain within the scope of one's expertise. The same applies when undertaking both professional witness and expert witness work. Both types of witness should be aware of being drawn or pressurised into giving evidence or expressing opinions which are beyond their level of experience or expertise. Professional and expert witnesses can expect to be challenged in the witness box if they stray outside their own expertise, and should be firm and clear (both with their clients and the Court) as to the boundaries of their expertise and experience. A failure to remain within one's expertise when acting as a professional or expert witness could also potentially lead to disciplinary proceedings.
26. When faced with such a situation, just as in clinical practice, the veterinary surgeon should defer to a more senior or more specialist colleague, or to another source or form of expertise. The circumstances in which such a situation can arise may be less than clear cut. For example most veterinary surgeons may consider themselves competent to state whether or not a dog was emaciated, the same may not be said for an emaciated horse; it may not always be clear to a non-specialist veterinary surgeon that a particular species of animal is suffering distress in a particular set of circumstances.

When should evidence be collected?

27. It may not always be clear from the outset of a clinical case that evidence (in the form of samples) should be collected and retained. Veterinary surgeons should be alive to the possibility of a clinical case developing into a legal case, whether criminal (e.g. poisoning) or civil (e.g. negligent misdiagnosis), and, if suspicious or unsure veterinary surgeons should consider collecting and retaining samples. Apart from assistance from more senior colleagues, veterinary surgeons are advised to consider contacting the RSPCA and local authority officers if they are unsure about whether to collect evidence.

How to take evidential samples

28. To be of any evidential use in a legal case, the source or provenance and the whereabouts of the samples must be recorded to ensure there is 'continuity of evidence'. This applies to the collection, handling and despatch of samples. Practically speaking this means knowing and being able to state where the sample has been and how it has been stored from the moment it was taken. Taking these precautions will minimise the risk that the evidence could be subsequently challenged (as contaminated or tampered with) and rejected.
29. The samples must also be appropriately collected, labelled and stored. The appropriate method of collection and storage depends upon the nature of the sample. Diagnostic laboratories will be able to give some assistance as to how samples should be collected, sealed and stored.

30. As a minimum the sample should be labelled with the case name or other unique identification and the date of collection. In some situations two, or even three, identical samples should be collected, labelled and stored (e.g. equine cases).

The analysis of the samples

31. Consideration should always be given to sending the samples for analysis to quality controlled external laboratories, rather than attempting to conduct analysis using in-house equipment or inexperienced staff. Again this precaution will minimise the risk that the evidence could be subsequently challenged as inconclusive or incorrect.

Format of a court case

32. In the case of a criminal trial: the Prosecutor (a Crown Prosecution Service solicitor or a barrister acting on behalf of the CPS or other non-police prosecuting agency) will open the case, usually in the form of a summary of the Prosecution's case, the evidence and the law. The Prosecution will then "call" its witnesses, one at a time. Each witness will swear or affirm (by reading the oath or affirmation off a card provided by the court's usher) and will then give their evidence (called "evidence in chief") from the witness box. The witness will then be cross-examined by the Defence lawyer, and may be re-examined by the Prosecution lawyer. At any stage the judge or in the Magistrates' Court, the magistrates ("the bench") may also ask questions. The same procedure is then followed by the Defence. When all the witness evidence is heard the Defence lawyer and the Prosecutor give closing speeches, summing up the evidence that has been heard and applying the law to the evidence as they see it.
33. In a Magistrates' Court trial the bench will retire to consider their verdict. On their return to the court room the Chairman of the bench will announce the verdict of 'guilty' or 'not guilty'. If the verdict is guilty pleas in mitigation will then be heard. The bench will again retire to consider sentence, and will return to announce the sentence.
34. In a Crown Court trial, the judge will sum up the case and the Jury will then retire to consider their verdict. On their return to the court room the Chairman of the Jury will announce the verdict when asked by the judge. If the verdict is guilty pleas in mitigation will then be heard. The judge will determine the sentence.
35. In the case of a civil trial: there is no Prosecutor. The case is brought by a Claimant and defended by a Defendant. The same procedure is followed, but often there is no opening of the case by the Claimant's lawyer, and witness' evidence in chief is usually taken to be the witness statement that has been prepared and lodged at court on their behalf.

Preparation for court

36. If a witness statement has been prepared on your behalf you should re-read this to remind yourself of your evidence. If you are engaged as an expert witness you should re-read your report, the reports of other experts and all documents appended to those reports.
37. Check which court your case is to be heard and find out the location of the court and whether there is parking at the court or nearby. Plan to arrive in good time for the hearing allowing for journey time (you may wish to consider staying locally the night before).

38. When you arrive at court you will have to pass through a security scanner, after emptying your pockets. Once inside the court look for the court listing sheets (usually pinned to the walls or in glass fronted cabinets). These set out the court lists for each judge in each court room. Once you have found the case name note the judge's name and the court number and its location. If you cannot find any court listing sheets ask the usher or clerks as sometimes they are delayed in posting the lists. When attending court you should dress appropriately in a suit – a trial is a formal occasion. Ensure that your mobile phone or pager is turned off or switched to silent.
39. You will probably hear how the judge is addressed before you start to give your evidence or you can ask Counsel. As a guide:

Magistrates – should be addressed as “Sir” or “Madam”

County Court judges – should be addressed as “Your Honour”

High Court and Appeal Court judges – should be addressed as “My Lord” or “My Lady” or “Your Lordship/Ladyship”.

What happens when you are in the witness box?

40. The court usher will ask you whether you wish to swear (on a holy book) or affirm. This relates to the evidence that you will be giving making it “sworn evidence” or “affirmed evidence”. You will be asked the holy book on which you want to swear. The court usher has copies of the holy books of the main faiths. You will then be asked to read the oath (or affirmation) off the card handed to you.
41. You will be asked to state your name and professional address and your professional qualifications and experience. In the case of a civil trial you will be taken to a copy of your sworn statement (usually it is in a bundle of documents called the trial bundle, a copy of which will be provided in the witness box) and you will be asked to confirm the statement as your evidence. If you have any corrections to your statement which you want to make this is the time to do so.
42. You will then be subject to examination in chief (criminal trial only) when Counsel will put to you questions to prove his/her case. When being asked questions it is important to listen to, and answer, the question that is asked. Answers should be directed towards the judge (not the lawyer who is asking the questions) and should be given slowly and clearly enough to permit a written note to be taken. A commonly used guide is to watch the judge's pen – when the judge stops writing, it is time to continue speaking. You should answer the questions as fully as you need to bearing in mind that Counsel cannot ask you leading questions, but no more. Use simple, non-technical language. If you have to give a technical answer explain it.
43. In civil cases your witness statement will usually stand as your examination in chief.
44. You will then be subject to cross examination (in both criminal and civil trials), which is when Counsel for the opposing side will put questions to you with the object of furthering their case by casting doubt on the validity or accuracy of your evidence. It is important to remain professional when responding to cross examination. You should not allow yourself to become angry or upset with Counsel's questioning, they are simply carrying out their role which is to test their opponent's case by cross examination. It is also important to be precise but complete in your answers. For example, if you are asked whether a particular scenario or outcome is possible, and in your view it is, but unlikely, then you should give the complete answer, and not merely answer “Yes”.

45. After cross examination there may be re-examination by Counsel acting for “your side”. This does not always happen and is usually used to clarify aspects of what has been said during cross examination.
46. At any time the judge may also ask questions, and when he/she does so will invite Counsel to ask further questions if they wish to do so, arising out of the judge’s question.

Remuneration levels

47. The College does not usually offer guidance as to remuneration levels, unless the fees charged are so high as to risk bringing the profession into disrepute. The College recommends discussion with others working in the field to establish the reasonable ‘going rate’ for expert witness work in any particular field or area of practice.

Further Information

The following organisations offer further information and advice
[Provide website addresses or ADD LIVE LINKS?]

Veterinary Defence Society
Society of Practising Veterinary Surgeons
British Veterinary Association
British Equine Veterinary Association
Veterinary Association for Arbitration and Jurisprudence
Veterinary Benevolent Fund

Lists of Experts

Council for the Registration of Forensic Practitioners
Website: www.crfp.org.uk

UK Register of Expert Witnesses
Website: www.jspubs.com

The Law Society Directory of Expert Witnesses
Website: www.sweetandmaxwell.co.uk

The Expert Witness Institute
Website: www.ewi.org.uk

Academy of Experts
Website: www.academy-experts.org

The Society of Expert Witnesses
Website: www.sew.org.uk

The-Expert-Witness.co.uk
Website: www.the-expert-witness.co.uk

The Law Society of England and Wales
Website: www.lawsociety.org.uk

The Ministry of Justice

Website: www.justice.gov.uk

Civil Justice Council

Website: www.civiljusticecouncil.gov.uk

Reference Books

J.E. Cooper and M.E. Cooper, Introduction to Veterinary and Comparative Forensic Medicine, Blackwell Publishing, 2007, ISBN-10:1405111011

Other useful links

Royal Society for the Prevention of Cruelty to Animals
www.rspca.org.uk

Scottish Society for the Prevention of Cruelty to Animals
www.scottishspca.org

Veterinary Laboratories?
[others?]

Professional Conduct Department
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