

Joint Meetings – Top Ten Tips for Experts

from @clinneysilk

Dr Simon Fox QC

In light of my last blog - “*Top Ten Tips for Expert Meetings*” for lawyers - and the number of experts who found it helpful, I thought it might be useful to produce a similar quick guide aimed at those experts taking part in the meeting.

Yip J’s comments in the recent case **Saunders v Central Manchester University Hospitals NHS Foundation Trust 2018 EWHC 343 (QB)** are a great reminder of the importance of the experts’ Joint Statement in any case and in particular those that get to trial. Her comments have particular authority in light of her many years’ specialism as a silk in PI and clin neg cases before she went on the High Court bench.

Of the experts’ joint statement Yip J said –

“their joint statement was disappointing. It was 60 pages long and did not fulfil the purpose identified in CPR 35PD 9.2 “to agree and narrow issues”. It seemed to me that the difficulty may have arisen not through the fault of the experts but in the way the agendas were drafted. I say “agendas” because, for reasons not explained to me, there had apparently been two separate agendas that the experts were required to consider. Both involved repetitive questions for the experts and far from producing a focus on the real issues, the result was a document that served only to confuse rather than assist.

I can see no good reason why the parties were unable to agree a single agenda in this case. Perhaps greater input from Counsel may have assisted. The joint statement is an important document. It ought to be possible to read it and understand the key issues and each expert’s position on those issues. Sometimes less is more as far as the agenda is concerned. Parties should adopt a common sense and collaborative approach rather than allowing this stage of the litigation to become a battleground. Frankly, the approach to the joint statement in this case achieved nothing of value”.

Experts' meetings are *the* most crucial part of a case, so it's worth making sure you do everything you can to make sure you do a good job of it.

Here are my top ten tips for experts taking part in joint meetings -

1. Make sure you have all the relevant papers.

The case will normally have been going for a long time and you may have a rather random file of documents sent to you at different times. It may be unclear which of those documents have been disclosed. If so, ask your solicitor for a core bundle of the documents you will need and can refer to in the meeting.

2. Read the papers.

This may sound obvious too, but I have had plenty of cases where experts have had meetings without all the relevant papers or have clearly not read them, resulting in an inadequate and even inaccurate contribution to the joint statement. You may not have looked at the case for some time. Remind yourself of the facts and issues. You will need to spend some time preparing for the meeting.

3. Make sure you are happy with the agenda.

Lawyers will try to agree one agenda but this may not be possible, in which case the standard direction from the Judge is that you have to address both agendas. I usually have a conference with my experts just before the meeting but, if not, feel free to phone your solicitor with any queries ahead of the meeting.

4. Allow plenty of time for the meeting and don't be rushed.

We would rather wait a little longer for a properly prepared and thought through joint statement. Your solicitor will advise you of any Court deadlines which must be complied with.

5. Don't try to settle the case in the meeting.

That's not your job. You are not the Judge. Your role is to summarise your positions on the key issues, including indicating where you agree or where there is only narrow disagreement and your reasons. It is not to mediate or arbitrate or determine the case.

6. Read the preamble.

It should explain how you should conduct the meeting and the relevant legal tests to apply.

7. If you change your opinion from that set out in your report, you must explain why.

8. Give reasons, reasons, reasons.

Do not simply state your opinion or that you disagree with your counterpart – that tells the Judge next to nothing. Unless you agree on an issue, you must give your reasons for your answers. And not just some of the reasons ...

9. If something is important, make sure it's written down.

If you consider something is relevant to the issues, make sure it is written down in your report or the joint statement or both. Your report and the joint statement are likely to stand as your evidence "in chief" at the trial and you may not be able give oral evidence on any point not contained in them. Don't come up with a great point and forget to put it down – the chances are it will never be heard in evidence.

10. Don't sign something you don't agree with.

Make sure you check the joint statement carefully and that it accurately reflects your opinion before you sign it.

It may sound obvious, but I have had experts sign off a joint statement handed to them in the middle of a busy clinic which they have signed without reading and which did not reflect their true opinion. This is a hole you do not wish to have to dig yourself out of and we don't want to either. It may result in us having to advise our client to consider a claim against the expert. Easily averted with proper preparation and care in finalising and signing the joint statement.

Follow me on twitter - <https://twitter.com/clinneysilk>

Dr Simon Fox QC