

## CPR PART 35 BREACHES AS PI EXPOSURES FOR EXPERT WITNESSES

*Reviewed by Matthew Bartlett, Director · Last reviewed 2026-06-22*

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Civil Procedure Rules Part 35 governs the duties of expert witnesses in English civil proceedings. The expert's overriding duty is to the court (CPR 35.3), and that duty overrides any obligation to the instructing party. Practice Direction 35 and the Civil Justice Council's Guidance for the Instruction of Experts (current edition 2014, revised) supplement the rule and set the practice standards.

### THE JONES V KANEY SHIFT

Until 2011, expert witnesses enjoyed immunity from suit by their instructing client for negligent conduct of their expert work. The Supreme Court abolished that immunity in *Jones v Kaney* [2011] UKSC 13, holding that experts owe their instructing client a duty in contract and tort that can be enforced through the civil courts. The decision created the modern expert-witness PI market.

An expert who breaches Part 35 — by departing from the overriding duty, by failing to consider material the expert should have considered, by giving an opinion outside their expertise — can now face a claim from the instructing client where the conduct has led to an adverse outcome. PI cover responds to the claim, provided the policy includes expert-witness work within the scope of the insured activities.

### WHAT PART 35 REQUIRES

Part 35 and Practice Direction 35 require the expert to:

- Address only matters within their expertise (CPR 35.3, PD 35 para 2.2).
- State the substance of all material instructions (CPR 35.10(3)).
- Give an opinion that is the expert's own and that they believe to be true (PD 35 para 3.3).
- Identify the range of opinion on a matter where there is one (PD 35 para 3.2(6)).
- Sign a Statement of Truth that they are aware of and have complied with their duties (PD 35 para 3.3).

A breach of any of these can give rise to a PI claim, particularly where the breach has led to the expert's evidence being excluded, criticised or carried less weight by the court.

### WHERE SOLICITORS AND EXPERTS SHARE THE EXPOSURE

The instructing solicitor has a separate Part 35 obligation — to ensure the expert is given an appropriate letter of instruction and has the relevant material to form an opinion. Where the expert's evidence is poor and the solicitor's instruction is also poor,

both may be defendants in the resulting claim. Our [solicitors PI insurance guide](#) covers the litigation-conduct dimension; our [expert witnesses PI insurance guide](#) covers the expert side.

#### THE IKARIAN REEFER PRINCIPLES

The seven principles in *The Ikarian Reefer* [1993] 2 Lloyd's Rep 68 remain the foundation of expert conduct in English civil litigation. They are referenced in PD 35 para 2 and survive across criminal, family and tribunal contexts with local adaptation (CrimPR Part 19; FPR Part 25). An expert who departs from the Ikarian Reefer principles risks both judicial criticism and a downstream PI claim.

#### SINGLE JOINT EXPERTS

Where the parties have agreed a single joint expert under CPR 35.7, the expert owes duties to both parties. The contractual position is different from a party-appointed expert; the PI exposure can be larger because there are two potential claimants.

#### THE WIDER REGULATORY OVERLAY

Many experts are regulated by their own professional body in their day job — surveyors by RICS, engineers by their CEng institution, accountants by ICAEW or ACCA, doctors by the GMC. The professional body's standards apply in addition to CPR Part 35. A finding of fact in expert witness work may be referred to the professional body and trigger a separate regulatory process.

#### COVER SCOPE

Expert witness work is not automatically included in every PI policy. Where an expert acts in litigation occasionally — for example, a chartered surveyor giving valuation evidence on partnership-dispute matters — the firm's main PI wording may not extend to it. A specific expert-witness extension or a stand-alone wording may be required.

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- [Expert Witnesses PI](#)
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