

Welcome

Welcome to this issue of the Wilkins Kennedy newsletter which once again focuses on Forensic Accounting. In it, we outline some of the new changes to the Civil Procedure Rules which were introduced by the Ministry of Justice on 1st October this year, and explain how they might impact on many members of the legal profession. The bulk of the new legislation is aimed at clarifying the use of expert witnesses and how they give evidence. At first glance it might appear that the subtle changes to the actual wording of the new rules look less than significant. However, much of it needs to be looked at carefully to understand the true impact of the changes.

Subtle – but important – changes to the CPR Statement of Truth

October 2009 sees the 50th update to the Civil Procedure Rules which includes significant changes to the text of Part 35 and its Practice Direction.

Among other things, the redefined CPR 35:

- > **gives a new definition of ‘expert’;**
- > **defines a ‘single joint expert’ for the first time;**
- > **provides, in small claims track or fast track cases, that permission will normally only be given to call expert evidence on a particular issue from one expert;**
- > **requires that written questions to experts should be proportionate.**

Changes to Part 35 – Practice Direction

The first important change is that the declarations which experts give in their reports are being strengthened. So, the old requirement that the report should “contain a statement that the expert understands his or her duty to the court, and has complied and will continue to comply with that duty” is changed to:

“contain a statement that the expert:

- (a) *understands their duty to the court, and has complied with that duty; and*

(b) *is aware of the requirements of Part 35, this practice direction and the Protocol for Instruction of Experts to give Evidence in Civil Claims.”*

Plus a new Statement of Truth

The mandatory statement of truth has also been changed, from:

“I confirm that insofar as the facts stated in my report are within my own knowledge. *I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.*”

To:

“*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.*”

The use of Single Joint Experts

It is now for the court to decide on whether a Single Joint Expert is appointed or separate experts for each party. To achieve this, the court will decide whether it is proportionate to have separate experts for each party, and whether the instruction of a single joint expert is likely to help the court to resolve the

issue more speedily and in a more cost-effective way than with separately instructed experts.

In addition, where a claim has been allocated to either the small claims track or the fast track, where permission is given it will usually be given for evidence from just one expert witness on the particular issue.

Experts’ Discussions

Finally, the Rules Committee has added an entirely new section on Discussions. This includes the ruling that, unless ordered by the court, or agreed by all parties and the experts, neither the parties nor their legal representatives may attend experts’ discussions.

If the legal representatives do attend they should not normally intervene in the discussion, except to answer questions put to them by the experts or to advise on the law.

How to find out more

Obviously, with limited space, we have only been able to outline the main changes in the new legislation. However, if you would like more information on these topics – or any other areas covered by the new legislation – simply contact your nearest Wilkins Kennedy office who will be pleased to help.

When you hit a brick wall, call in a **WK expert**

One of the less publicised services offered to its clients by Wilkins Kennedy is that supplied by our team of expert witnesses and forensic accountants who are specifically trained to understand the dynamics of businesses from an external perspective.

This is a vital service that can often resolve complex financial disputes fairly, amicably and cost-effectively. Indeed quite often an independent viewpoint can often shed light on problems that may appear intractable from within an organisation.

Stephen Grant, Managing Partner of our Amersham office, outlines a recent, currently ongoing, case where the services of an expert witness are helping to resolve a major dispute.

The case revolves around a shareholder who has recently left a large and successful private limited company and is seeking fair compensation for his shareholding, which amounts to 25% of the company's shares.

The problem is that the exiting shareholder and the remaining shareholders cannot agree on the value of those shares and if the case cannot be resolved amicably, it will be referred to a court.



Clarifying all the issues

Stephen points out that there is no precise formula which applies to all businesses in all sectors, even to all businesses within a sector. Instead, an accurate valuation will depend on consideration of a number of factors.



In many cases, such as the one quoted above, it is necessary to look more deeply into areas such as the organisation's operational results in order to arrive at a figure for maintainable earnings. In order to calculate maintainable earnings it is necessary to review expenditure and adjust for both excessive and insufficient expenses so the results reflect a true operational result that could commercially be achieved if the company were being run by an independent third party.

By using a capitalised earnings method and looking carefully at an appropriate price/earnings ratio by comparing these to similar external businesses in the UK, it is possible to arrive at a fair valuation of the business and its assets.

Published price-earning (P/E) ratios may be used as a starting point. These ratios are based on profits after deducting tax at the full corporation tax rate.

In order to arrive at a valuation, the appropriate price earnings ratio is multiplied to a weighted average of historical earnings, weighted in favour of the more recent results. In addition future projections may also be used but due diligence should be carried out as to how achievable the projections are.

Rarely a simple solution

These are just some of the methods which we employ to achieve a fair, and amicable agreement between two opposing partners. And in cases where no agreement can be reached between the two parties, and thus the matter is referred to a court, many of our senior staff are qualified to act as Independent Expert Witnesses.

Above all, as you can see, valuing a business is a complex process, and good, professional advice is essential. If you would like to know more about how our forensic accounting teams can help resolve an issue in your organisation, simply contact Stephen Grant on 01494 545 570 or email stephen.grant@wilkinskennedy.com, or alternatively your nearest Wilkins Kennedy office who will be pleased to help.

London

Bridge House, London Bridge, London SE1 9QR
Tel: 020 7403 1877 Fax: 020 7403 1605 Email: london@wilkinskennedy.com

Amersham

Anglo House, Bell Lane Office Village, Bell Lane, Amersham, Buckinghamshire HP6 6FA
Tel: 01494 545 570 Fax: 01494 764 351 Email: amersham@wilkinskennedy.com

Ashford

Stourside Place, Station Road, Ashford, Kent TN23 1PP
Tel: 01233 629 255 Fax: 01233 643 901 Email: ashford@wilkinskennedy.com

Egham (Heathrow)

Gladstone House, 77-79 High Street, Egham, Surrey TW20 9HY
Tel: 01784 435 561 Fax: 01784 430 584 Email: egham@wilkinskennedy.com

Guildford

Mount Manor House, 16 The Mount, Guildford, Surrey GU2 4HN
Tel: 01483 306 318 Fax: 01483 565 384 Email: guildford@wilkinskennedy.com

Hertford

Cecil House, 52 St. Andrew Street, Hertford, Hertfordshire SG14 1JA
Tel: 01992 550 847 Fax: 01992 554 515 Email: hertford@wilkinskennedy.com

Orpington

Greytown House, 221-227 High Street, Orpington, Kent BR6 0NZ
Tel: 01689 827 505 Fax: 01689 831 478 Email: orpington@wilkinskennedy.com

Reading

6c Church Street, Reading, Berkshire RG1 2SB
Tel: 0118 9512 131 Fax: 0118 9512 161 Email: reading@wilkinskennedy.com

Romsey

3-4 Eastwood Court, Broadwater Road, Romsey, Hampshire SO51 8JJ
Tel: 01794 515 441 Fax: 01794 830 705 Email: romsey@wilkinskennedy.com

Southend-on-Sea

1 Nelson Street, Southend-on-Sea, Essex SS1 1EG
Tel: 01702 348 646 Fax: 01702 330 148 Email: wk@wkonline.co.uk

Winchester

Parmenter House, 57 Tower Street, Winchester, Hampshire SO23 8TD
Tel: 01962 852 263 Fax: 01962 841 197 Email: winchester@wilkinskennedy.com

Falkland Islands

Globe Offices, Philomel Street, Stanley, Falkland Islands FIQQ 1ZZ
Tel: 00500 22 918 Fax: 00500 22 918 Email: karen@wilkinskennedy.co.fk