

Ch 13: Hearsay admissible by statute in civil proceedings

Admissibility under the Civil Evidence Act 1995

Abolition of the rule against hearsay

'Hearsay'

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Concerning reports by experts, under CPR, r 35.4, no party may call an expert or admit an expert's report without the court's permission. See also: CPR r 35.1 (the duty to restrict expert evidence); s 3(1) of the Civil Evidence Act 1972; and *Illumina v TDL Genetics Ltd* [2019] EWHC 1159 (Pat).

However, this rule only applies where the expert has been instructed to prepare the report for the purpose of the proceedings. See CPR r 35.2(1). See also *Illumina v TDL Genetics Ltd* [2019] EWHC 1159 (Pat), at [26] and *Gregory v Moore* [2019] EWHC 2430 (Ch), at [30].

Where the report has not been prepared for this purpose, the court may still exclude it under CPR, r 32.1, if, for example, it merely duplicates other evidence, or if it might carry little weight and evaluating it would give rise to disproportionate effort and costs: see *Illumina v TDL Genetics Ltd* [2019] EWHC 1159 (Pat), at [27] - [29].

Safeguards

The requirement of advanced notice

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As can be seen, CPR r 33.3(d) waives the need for notice where a practice direction (PD) so provides. Under CPR PD 32, para 7, all documents contained in bundles which have been agreed for use at a hearing are admissible as evidence. Where hearsay is included in an agreed bundle the precise effect of r 33 and PD 32, para 7, on the notice requirements in s 2(1) is unclear: *Charnock v Rowan* [2012] EWCA Civ 2, at [23]. However, notice will not normally be required because such a requirement would sit uncomfortably with PD 32, para 7, and might be an invitation to extensive legal wrangling and additional costs: *Charnock v*

Rowan [2012] EWCA Civ 2, and see also *Goodenough v Chief Constable of Thames Valley* [2020] EWHC 695 (QB), Footnote 1 of the judgment.

Where litigation is straightforward, any issues as to whether notice is required in respect of hearsay in an agreed bundle may be avoided by proper pleading and by making necessary amendments to the pleadings in the light of disclosure (*Charnock v Rowan* [2012] EWCA Civ 2 at [24]).

Where any evidence in the bundle relates to a contention which has not been pleaded it may be excluded on that basis, whether it is hearsay or not: *ibid*; see also CPR 32.1(2).

Weighing hearsay evidence

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In s 4(1), the ‘...circumstances from which any inference can be reasonably drawn as to the reliability or otherwise of the evidence’ are not restricted to facts that are proved to the civil standard. Indeed, facts relevant to weight must be considered, even if not proved to the civil standard: *Shagang Shipping Co Ltd (in liquidation) v HNA Group Co Ltd* [2020] 1 WLR 3549, SC at [96].

See also *ibid* at [67] – [69]: addressing questions of weight and reliability need not necessarily involve the judge taking a distinct step in his reasoning and expressly referring to s 4, even though this may be a more satisfactory approach.