

How Lawyers Should Instruct A Digital Forensic Expert

This guide details how UK lawyers should instruct digital forensic experts, covering expert selection, instruction drafting, compliance with the Forensic Science Regulator's Code, and report requirements under CPR 35 and CrimPR 19. It also addresses managing the engagement and common pitfalls.

e-discovery.uk, Computer Forensics Lab. Published 2026-08-31.

<https://e-discovery.uk/library/how-lawyers-should-instruct-a-digital-forensic-expert>

INSTRUCTING EXPERTS · A GUIDE FOR UK LAWYERS How Lawyers Should Instruct a Digital Forensic Expert Selection, Instruction, the Forensic Science Regulator's Code and the Report the Court Will Accept COMPUTER FORENSICS LAB DISCOVERY. UK

§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM ESTABLISHED 2007 · LONDON ISO 17025-ALIGNED PROCEDURES FSR CODE DECLARATIONS SINGLE JOINT EXPERT APPOINTMENTS CPR 35 / CRIMPR 19 REPORTS FULL CHAIN-OF-CUSTODY DOCUMENTATION

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SYSTEM DEVICE RECOVERABLE SUPPLIED BY INSTRUCTING PARTY HELD BY
EXPERT'S PARTY RECORDS

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DISCLAIMER

§ HOW A SPECIALIST LABORATORY CAN ASSIST Working with Computer Forensics Lab
Speak to a forensic examiner, not a salesperson. INSTRUCT THE LAB
NEW ENQUIRIES EMAIL - DISCOVERY

Questions and answers

Does the Forensic Science Regulator's Code apply to a defence-instructed expert?

Yes: the Code regulates forensic science activities in the criminal justice system of England and Wales regardless of who instructs, and the declaration requirement applies to every practitioner's report: Example 1's defence expert learned this at the admissibility hearing. Ask the Code question at selection; check the declaration before service.

Our preferred expert cannot declare full compliance. Can we still instruct them?

Often yes: non-compliance is declared, not concealed, with the mitigations annex (competence, method validity, documentation, equipment, environment) prepared per the Regulator's guidance: and the court weighs the evidence accordingly. What is fatal is the missing declaration or the unprepared annex, not honest non-compliance in an activity where accreditation is still building.

Will the court see our letter of instruction?

In civil work the report must state the substance of all material instructions (CPR 35.10), and the court can order disclosure of the instructions themselves where there are reasonable grounds to think the statement is inaccurate or incomplete: Example 2's sentence reached the judge that way. Draft every letter on the assumption that it will be read.

Can we comment on the expert's draft report?

On accuracy, completeness, comprehensibility and compliance with the rules, yes; on the opinion, no: the line between clarifying and authoring is the independence the report asserts, and opposing counsel will probe draft history and communications where they suspect it was crossed. The Guidance for the Instruction of Experts in Civil Claims sets out the permitted scope.

Our expert's findings hurt our case. What are our options?

Advise the client candidly, reassess strategy on the true position, and re-scope lawfully where other evidence exists (Example 3's turn to the cloud-egress route): not suppression, not shopping for a friendlier second opinion to bury the first. The expert's duties and your own professional obligations both reach the inconvenient finding; handled properly, it is often the moment the case becomes winnable on what is actually there.

Is a single joint expert right for digital evidence?

Frequently, on discrete technical questions where proportionality matters (CPR 35.7's default in smaller claims): with the disciplines of joint instruction, copied communication and CPR 35.6 questions. On contested, case-deciding technical issues, parties often need their own experts and the CPR 35.12 discussion to narrow the dispute: the choice made on the question's weight, with the court's permission governing either way. cflab. u k · e-discovery. u k ©2026
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