

Art of persuasion

Convincing judge and jury is the expert's goal; Simon Carne offers his advice

Written communication is an essential part of being an expert witness. The expert's report provides an opportunity to exhibit the quality, excellence and innovation in the expert's thinking. But presenting a report in evidence is also a challenging and complex task. The other side in the dispute will have their own expert whose responsibilities include challenging any reports that threaten their position. It is not enough for the expert's report to be well-written. It must convince against counter-argument.

Writing a text-book-style exposition – even a brilliant one – is not the answer to the demands of expert evidence. The objective is not to educate the judge so that he can apply the expertise described. The objective is to win the judge's agreement with your thesis – and then stop. An expert communicator will present just enough of the reasoning and the background data to prove his point and no more. Surplus information is potentially confusing because it distracts the reader from the point being made and provides additional fodder for cross-examination.

The key to writing expert witness reports successfully is to understand the fundamental difference between the way you think in order to solve a problem and the way in which your reader thinks when being told about your solution.

To solve a problem, most people start with the facts and work through the analysis until they reach a conclusion. Many reports make the reader work through a similar logical process: facts, analysis and then conclusions. This is done in the belief that the readers will arrive at the same conclusion as the writer if they are taken through the writer's own analytical processes. But the reader of an expert's report does not normally have the same expertise as the writer and may not be able to follow the same deductive processes.

For experts' reports, it is the reader's logic that matters most. It is easier for a reader to be told first what the point is, followed by a supporting explanation, rather than the other way around. A judge does not want to see whether he can match the expert's thought process – he needs the point explained to him and to be convinced of it.

The key to a good expert witness report is: to present the message – the opinions – first; then the arguments that support those opinions; then the facts on which the arguments depend.

The diagram below illustrates the difference between an expert's report based on the approach outlined in this article and a more conventional one.

Although the diagram for the recommended approach is longer than the diagram for the conventional approach, the report would not be. The recommended version is almost certain to be shorter. This is because the information is presented in a sequence that is more natural for the reader and, therefore, requires less explaining. There is usually a reduction in length of at least 25 per cent.

The process of presenting the conclusion before the explanation can be applied throughout the report at all stages of the argument. In each chapter of the report tell the readers your message and then tell them why your message is correct, not the other way round. For example: *The writer's thought process* Turnover has more than trebled in the last five years from £15m to £47.5m and profits are up

from £55,000 five years ago (less than 0.5 per cent of turnover) to £5.5m now (11.5 per cent of turnover). This shows that the company's performance has improved significantly in the last five years and is now in a satisfactory state.

The reader's preference

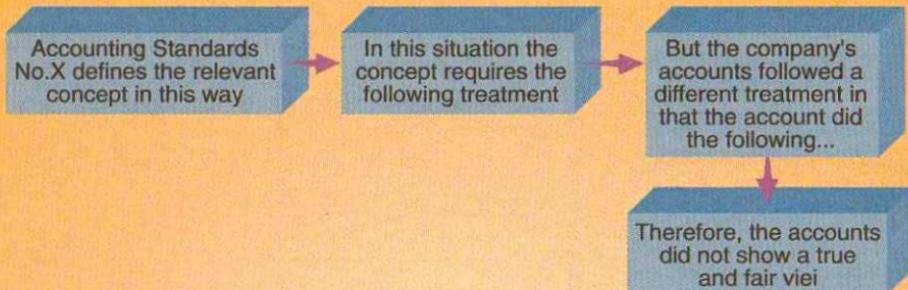
The company's performance has improved significantly in the last five years and is now in a satisfactory state. This is evidenced by an increase in turnover, which has more than trebled in the last five years from £15m to £47.5m, and an increase in profits from £55,000 five years ago (less than 0.5 per cent of turnover) to £5.5m now (11.5 per cent of turnover).

The second version is not only easier to comprehend, it is more interesting, because the reader is told why the facts are relevant before he has a chance to become bored by them.

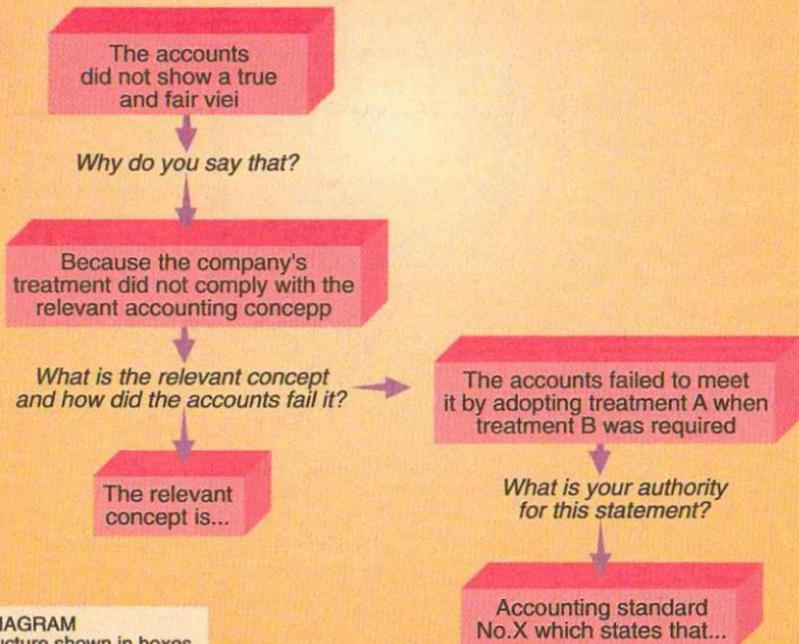
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REPORT STRUCTURE

Conventional Approach



Recommended Approach



KEY TO DIAGRAM

Report structure shown in boxes
Reader's logic shown in italics