

EXPERT EVIDENCE AT THE HEARING

ALEXANDER NISSEN QC

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15, Essex Street,
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1) Substance or spin?

- Royal Brompton Hospital v Hammond
88 Con LR 1 at 19

2) Turn up at the hearing

3) Know your report inside out (and back to front)

4) Answer the question

4) Engage with the tribunal

5) Re-examination

6) Don't make assumptions

EXPERT EVIDENCE - CASE LAW CONSIDERED

Difference between factual and
expert evidence:

- Kirkham v Euro Exid Corporation [2007] EWCA Civ 66

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Consequences of a failure to comply with expert's duties:

- Stevens v Gullis and Pile (1999) BLR 394- Under CPR
- London Fire and Emergency Planning Authority v Halcrow Gilbert Associates (2008) 24 Const LJ 103

Conflict of Interest:

- Toth v Jarman [2006] 4 All ER 1276 – no automatic disqualification but relevant to degree of independence

Practical suggestion: raise it early for consideration by the tribunal

See also Factortame Ltd v Sec of State for Environment [2003] QB 381 and paragraph 7.6 of the Protocol for Instruction of Experts

Single Joint Experts:

- Quarmby Electrical Ltd v Trant [2005] EWHC 608: recommendations in small value cases

Immunity:

- Stanton v Callaghan [2000] 1 QB 75

Immune: expert report in the arbitration; joint statement; attendance at expert meetings; oral evidence

Not immune: advising on merits; advice whether expert is qualified to advise at all preparation of a report other than for proceedings eg: for negotiation

Not immune: disciplinary proceedings on fitness to practice: Meadows v GMC [2007] QB 462.

status of expert's agreements:

Joint Statement: Robin Ellis v Malwright
[1999] BLR 81

No implicit authority: see CLR 35.12(5)
and Britannia Zinc Ltd v Connect South
West Ltd (2003) CILL 1927

At trial, it could: Richard Roberts v
Douglas Smith Stimson (1989) 47 BLR
113 and Robin Ellis

See, also, Stringfellow v Blyth
[2001] 83 Con LR 124

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Substitution of Experts:

- Beck v Ministry of Defence [2003] 1 WLR 2206

Reliance by one party on the expert report of another party

- Gurney Consulting Engineers v Gleeds
[2006] EWHC 43
- Shepherd & Neame v EDF Energy
[2008] EWHC 123

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