

CHOOSING AND USING AN EXPERT

SEMINAR FOR CHARTERED INSTITUTE OF ARBITRATORS

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INTRODUCTION

What makes a good expert from the legal adviser's point of view?

The good expert – shows expertise beyond technical experience

Characteristics of the “expert from hell”

INTRODUCTION

Evolving relationship between adviser and expert

Pitfalls when the adviser inherits the client's expert

When is an "expert" not an expert but a factual witness?

Ø Kirkman v Euro Exide (2007)

ENDING YOUR EXPERT

Is the adviser liable for a poor recommendation?

- ∅ CJC Protocol Sections 6 and 7
- ∅ Cf. Sansom v Metcalfe Hambleton (1988)

Liability for wasted costs

FINDING YOUR EXPERT

Factors to take into consideration during enquiries

Finding and dealing with technical specialists

Asking the right questions in order to get the answers you need

ENDING YOUR EXPERT

Reading the signals before choosing the wrong expert

Must an expert always be independent? – British Nuclear Fuels – v Gemeinschaft (2007)

When and how to use a single joint expert

CHANGING YOUR EXPERT

What happens if you lose confidence in your expert?

Criteria for seeking a new expert – how much do you have to explain to the court?

Has the expert been named?

Do you have to disclose reports that you don't wish to rely on?

CHANGING YOUR EXPERT

Case examples:

Beck v MOD (2003)

Hajigeorgiou v Vasiliou (2005)

Ramage v BHS (2006)

Carruthers v MP Fireworks (2007)

Jackson v Marley Davenport (2004)

Keeping your options open – CJC Protocol Section 5

IVING INSTRUCTIONS: KEEPING THE EVIDENCE ON TRACK

Make sure the expert is instructed in accordance with correct legal principles:

e.g. *Smith v Peter North & Partners* (2001)

When does the expert need to advise the lawyer about scope of issues?

Pay attention to causation and forensic analysis:

Thorp v Sharp (2007)

Novartis v Cookson (2007)

US examples: *Stotts v Heckler & Koch*, *Marsha v Grace*, *Norfolk Corp. v Chevron*

IVING INSTRUCTIONS: EPING THE EVIDENCE ON TRACK

Production of supporting literature

Ø Breeze v Ahmad (2005)

CASE STUDY: the insurance broker and the factory fire

IVING INSTRUCTIONS: KEEPING THE EVIDENCE ON TRACK

Disclosability of materials supplied with instructions:

- Ø Morris v Bank of India (2001)
- Ø Lucas v Barking & Havering NHS Trust (2003)

Consequences of failure to keep experts updated: Re GS&H (2000).

ASKING INSTRUCTIONS: KEEPING THE EVIDENCE ON TRACK

Asking an expert to amend report:

∅ CJC Protocol Section 15.2

Single joint experts: what if they make a mistake?

∅ Woolley v Essex CC (2006)



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