

The Academy of Experts

INFORMATION SHEET

What is an Expert Witness?


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A brief guide for Individuals proposing to instruct an Expert Witness in civil proceedings.

An introduction to what can and cannot be expected of an expert witness.

EXPERT

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What is a Witness?

- A witness is a person giving sworn evidence to a tribunal or court of law. There are basically two types of witness:
 - Witnesses of Fact** who may give evidence of fact but may not normally give opinions;
 - Expert Witnesses** who may give opinion evidence within their expertise and in addition evidence of facts.

What is an Expert Witness?

- An Expert Witness can be anyone with knowledge or experience of a particular field or discipline beyond that to be expected of a layman. The Expert Witness's duty is to give to the Court or tribunal an impartial opinion on particular aspects of matters within his expertise which are in dispute.
- The Court must give permission for an Expert Witness to give evidence.
- An Expert Witness is not an expert adviser who is normally appointed by a party to assist in the formulation and preparation of a party's claim or defence. An expert adviser does not have an overriding duty to the court but to the party instructing him.

An Expert Witness will

- Provide an independent expert opinion in their area of expertise on the subject matter in accordance with the instructions they are given. These instructions will be shown in the Expert Witness's Report which will be seen by the other side and the Court.
- Provide the opinion in the form of a report and/or evidence before a Court (or other tribunal) as required. The report is required as it is not usually possible for the Expert to give evidence without it.
- Ensure the Expert's Report provided to you contains the information required by the Court Rules. If you proceed you will have to give a copy of the report to the other side in the dispute. At that time a copy of the other side's Expert's Report will be given to you.
- Comply with the specific procedure rules applicable and any Court or tribunal Orders in the case.
- Provide truthful, impartial and independent opinions whether or not these opinions favour your case.
- An expert witness has an overriding duty to the Court (or other tribunal). This duty supersedes any duty owed to you even though you are still responsible for paying the expert's fees.
- The Court expects an expert witness to be independent and impartial and will discount the evidence of one who is or is seen to be partisan.

An Expert Witness will not

- Be your advocate and argue your case, nor will they find evidence or suggest what your case should consist of. It is for you or your legal representatives to advocate your case.
- Provide any opinion beyond their specific area of expertise.
- Provide advice.
- Accept any appointment which involves a conflict of interest (unless resolvable by disclosure).
- Accept any appointment on terms that are conditional on the outcome of the case. Examples of these are success fees or conditional fee arrangements (any form of payment linked to the results of the Case). Conditional terms are incompatible with the expert being seen to be independent.
- Act as a negotiator.

You must (yourself or through your legal representatives)

- Agree contractual terms with the expert in writing before the work is started. These will include terms of payment. Many experts use standard terms such as The Academy of Experts 'Model Terms of Engagement For The Employment of Experts.'
- Provide detailed instructions.
- Keep the expert informed of developments in the case and of all key dates in good time.

It is better that the legal representative, if you have one, deals with the Expert rather than you doing so.

Useful Resources

- The Civil Procedure Rules; in particular Part 35 and Practice Direction 35.
www.justice.gov.uk/courts/procedure-rules/civil
- The Guidance for the instruction of experts in civil claims published by the Civil Justice Council.
www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/
- The Academy of Experts website.
www.academyofexperts.org

The Academy of Experts

The Academy

Located in Gray's Inn TAE was founded in 1987 with the objective of providing, for the first time, a professional body for experts to establish and promote high objective standards.

Although there is representation on the Academy's Council from the legal profession the majority of the officers, including the Chairman, are practising Experts - The Academy of Experts (TAE) is run by Experts for Experts and those using them.

Training and development

TAE offers a comprehensive range of training programmes to enable members to develop their expert skills, and undertake Continuous Professional Development activity. Courses range from basic Role and Responsibilities through to the requirements of Procedure Rules and the practice of Giving Evidence.

TAE is also a training and accreditation body for ADR Neutrals, including Mediators, Conciliators and Expert Determiners. It publishes and maintains The Register of Qualified Dispute Resolvers and awards the designatory letters QDR to those achieving the approved standard. Standards are enforced in exactly the same way as for experts.

Accreditation of experts

All applicants to TAE who wish to become Accredited Practising Expert Witnesses undergo a rigorous vetting procedure to ensure standards of excellence are maintained. This is the process which gives the officially recognised full accreditation as a Practising Expert. Those achieving it are awarded the designatory letters MAE. Ethical and professional standards are underlined by Codes of Practice and enforced by a disciplinary committee.

ADR

The promotion of Cost Efficient Dispute Resolution became increasingly important to TAE. It is now a major force in the introduction and development of Alternative Dispute Resolution (ADR) and has led to the development of the Faculty of Mediation and ADR.



Range of services

TAE provides a full range of services to its members including:

- ❑ Technical Helpline
- ❑ Bespoke Training
- ❑ Technical Meetings
- ❑ Magazine and regular newsletters
- ❑ A detailed Expert's Handbook for Practical Guidance
- ❑ A regular survey of expert's fees
- ❑ Regular meetings on matters of expert interest
- ❑ Social functions

TAE provides a number of services which assist both Academy members and the legal profession including:

- ❑ ExpertSearch Finding and matching the right accredited expert to the case.
- ❑ Full training & accreditation of Commercial Mediators. The Academy awards the qualification QDR (Qualified Dispute Resolver) to members on its register.
- ❑ Mediator Appointment Service - Finding the right accredited mediator.
- ❑ Membership also open to the legal profession.