



# Rules for Expert Determination (2023)



The Academy of Experts  
3 Gray's Inn Square  
London WC1R 5AH

Tel: 020 7430 0333  
Email: [admin@academy-experts.org](mailto:admin@academy-experts.org)

# Expert Determination

Expert Determination is one of the many forms of resolution that is available for parties to a dispute. It has many advantages including that it is speedy, cost effective and final. Expert Determination can be agreed as the procedure for resolution when a problem arises or it can be expressly provided for in the contract which governs the relationship between parties. There are many possibilities.



The Academy's Rules for Expert Determination (2023) are clear and easy-to-follow and are available for use where rules are not already in place. They are equally suitable for adoption in a contract between parties as the 'Agreed Rules', should a dispute arise. The Academy's Rules give the framework and required timetable for the determination process. Although many trade and professional bodies publish their own expert determination rules, they are not necessarily appropriate for all disputes which might arise. The Academy's Rules are carefully drafted to create an independent procedure for use across sectors and in disputes in virtually any part of the world.

Unless the parties are already in agreement, valuable time and resources can be wasted in trying to establish which Expert shall be appointed to make the determination. Unfortunately, where there is no quick agreement, goodwill is often eroded as well.

As a globally-recognised professional body for Experts, The Academy of Experts assists parties by acting as a nominating authority. This efficient service removes what can sometimes be an obstacle and enables all concerned to concentrate on the Expert Determination secure in the knowledge that the Expert is not only knowledgeable but also truly independent.

To ensure the highest standards and to enhance the skills of Expert Determiners, The Academy through its educational services organises training programmes for Expert Determination. Participants in such programmes are encouraged to pass a stringent test and become Accredited Expert Determiners. The Academy is the only professional body awarding this accreditation and those reaching this standard are on the list of Determiners from which The Academy nominates.

Further information on Academy services can be obtained from the Chief Executive.

For nomination of an Expert Determiner, application should be made via email to [admin@academy-experts.org](mailto:admin@academy-experts.org) or in writing to:

Chief Executive  
The Academy of Experts  
3 Gray's Inn Square  
London  
WC1R 5AH

[www.academyofexperts.org](http://www.academyofexperts.org)

# The Academy of Experts

## Rules For Expert Determination (2023)

### Part I: General Rules and Principles

#### Rule 1: Interpretation

1. **“The Academy”** refers to The Academy of Experts, 3 Gray’s Inn Square, London, WC1R 5AH.
2. References to the **“Procedure”** are references to an expert determination conducted in accordance with the Rules in Parts I and II.
3. **“Agreement”** means an agreement between two or more parties allowing for expert determination of a dispute or issue.
4. The **“Expert”** is defined in Part I, Rule 4.
5. The **“Rules”** and **“The Academy’s Rules”** shall mean the applicable rules in Parts I and II.
6. Words used in the singular include the plural and vice versa as the context may require. The masculine is taken to include any person or entity.

#### Rule 2: Scope

Where an Agreement provides for expert determination under The Academy’s Rules, the Rules in force at the time the agreement is entered into shall be deemed to form part of that agreement.

#### Rule 3: Services of Notices, Communication and time calculation

1. Unless the parties have agreed otherwise, any notice or other communication that may be or is required to be given under these Rules shall be:
  - (a) in writing and delivered by post, delivery service or email and
  - (b) copied to each of the other parties and the Expert.
2. For the purpose of calculating a period of time under these Rules: in the case of delivery by post, it shall begin to run from 48 hours after 9am on the date after it is evidenced the notice or communication was sent; in the case of delivery by a delivery service, it shall begin to run on such date as the service provider records the fact of delivery; in the case of an email sent before 4pm, it shall begin to run from the time of sending; in the case of an email sent after 4pm, it shall begin to run from the following day. In each case, unless otherwise expressly agreed between the relevant parties, the time zone from which the communication is sent shall apply.
3. Any reference to “days” in this agreement means whole calendar days and excludes weekends and public holidays.

#### Rule 4: Appointment of the Expert

The parties shall agree to the appointment of an expert (the “Expert”) and his terms of engagement. If the parties are unable to agree on an Expert, The Academy will nominate up to 3 experts and the parties shall then endeavour to choose and appoint the Expert from the nominations within 14 days. If the parties are unable to agree on the identity of an Expert after the said 14 days, The Academy shall nominate the Expert. A party may object to The Academy’s first nomination by sending the reasons for his objection to The Academy in writing within 7 days of receipt of the notice of nomination. The Academy shall consider the reasons for the objection and may in its absolute discretion nominate another Expert. The parties shall accept as final the second nomination of The Academy or The Academy’s decision not to nominate a further Expert. Upon completion of this procedure, the parties shall appoint the applicable Expert.



## Rule 5: The Expert

1. **Function:** the Expert shall act as an expert and shall determine the dispute before him. The Expert shall not act as an arbitrator or adjudicator, nor as an expert witness. The parties agree that the expert determination process is not an arbitration or adjudication within the meaning of any statute.
2. **Role:** the Expert shall adopt procedures suitable to the circumstances of the particular case so as to provide an expeditious, cost-effective and fair means of determining the dispute between the parties.
3. **Neutrality:** the Expert shall act with impartiality, shall have no vested interest in the outcome of the dispute or issue and shall not be biased in any way towards or against any party. If the Expert becomes aware of any circumstance which might reasonably be considered to affect his ability to act impartially, he shall inform the parties and The Academy immediately. The parties shall then inform the Expert and The Academy within 10 days whether or not they agree that the Expert should continue the determination. If the Expert wishes to continue and any party considers that the Expert should withdraw, The Academy will decide whether the Expert is to withdraw. The Academy's decision will be binding. A new expert will be appointed under Rule 4 of Part I.
4. **Evidence:** the Expert is not bound by the rules of evidence and may at his discretion receive and take into consideration any information submitted to him by any party in such manner as he thinks fit and may give such weight to the same as he considers appropriate.
5. **Final and binding:** the Expert's determination shall be final and binding on the parties. It shall be made in writing, signed and dated and communicated to all parties.
6. **Interest:** the Expert has discretion to determine that simple interest is payable at such a rate and for such period as he thinks fit on any amount in dispute or any part of it. The Expert may also decide that interest for late payment following determination is payable at such a rate as he thinks fit.
7. **Payment:** unless otherwise expressly agreed in writing by the parties any amount payable under the determination shall be paid within fourteen days of the determination.
8. **Liability:** the Expert shall not be liable for any act or omission arising from the Expert determination under these Rules unless such act or omission is shown to have been fraudulent or as a result of collusion. The Academy and any officer, or employee or agent or authorised representative of The Academy shall not be liable for any such act or omission of the Expert unless it is shown that he was a party to fraudulent or collusive conduct by the Expert.
9. **Status of Expert's deliberations and materials:** the Expert shall not voluntarily divulge, produce or disseminate or provide details (in whole or in part) of any evidence, documents or information arising from the Procedure to any person or body other than the parties. The Expert will only be released from the requirements of this sub-Rule where he is under a legal obligation to provide evidence or other information.
10. **Incapacity, inactivity, resignation or death:**
  - (a) if due to sickness, other incapacity or a conflict of interest arising after his appointment, the Expert is unable to reach a determination in accordance with a timetable acceptable to the parties or as otherwise set out in Rule 8 of Part II, the Expert shall withdraw from the Procedure. In such circumstances, the Expert shall:
    - (i) retain any interim payments that have been made in the course of, and be entitled to receive any payments duly invoiced, in relation to the Procedure and shall forego the rest of his fee; and
    - (ii) arrange for the documents to be returned to the parties.
  - (b) If the Expert is unwilling to reach a determination within the agreed timescale or at all, he shall withdraw from the Procedure. In such circumstances, he shall:
    - (i) forego his fee and repay any interim payments already made in the course of the Procedure; and
    - (ii) arrange for the documents to be returned to the parties.
  - (c) If the Expert dies during the course of the determination, The Academy will use its reasonable endeavours to arrange for the parties' documents to be returned.

In any of the circumstances described in (a), (b) and (c) of this Rule, the Academy will, if the parties so wish, nominate another Expert whom the parties shall then appoint.

11. **Discretion:** at the request in writing of either party, and either with the agreement of all other parties or of his own motion, the Expert shall have discretion:
  - (a) to amend the time limits set out in Parts I and II of these Rules and/or
  - (b) to amend any of the Procedural Rules in Part II of these Rules.The Expert's decision as to his exercise of this discretion shall be final.
12. **Consultation:** unless otherwise determined by the Expert and agreed with the parties, no one party or anyone acting on one party's behalf shall communicate with the Expert in the absence of the other party. The Expert shall not consult with a party other than in the presence of the other party except where a party, having received a notice under Rule 13(1) of Part II, has failed to make a written submission or appear at a meeting.
13. **Disclosure:** except as provided in Rule 12 of Part II, the Expert shall disclose all information and documents received from any party to all other parties.

## Rule 6: The Determination

1. **Law:** English law applies to the Procedure.
2. **Language:** the determination shall be conducted in the English language and the parties will provide to the Expert and the other parties, at their own expense, translations into English of any documents and communications in a foreign language, if requested by the Expert.
3. **Confidentiality:** each person involved in the expert determination shall maintain the confidentiality of the expert determination and may not use or disclose to any other person the determination or any information concerning, or obtained exclusively in the course of, the expert determination except to the extent that:
  - (a) the relevant parties have agreed otherwise in writing
  - (b) the information is already in the public domain
  - (c) disclosure is required in connection with legal proceedings relating to the expert determination or
  - (d) disclosure is otherwise required by law.
4. **Slip rule:** the Expert may, within 14 days of it being delivered to the parties, correct the determination where he finds that it contains a clerical mistake, an obvious error, a miscalculation of figures, a mistake in the description of any person, thing or matter, or a defect of form.
5. **Costs:** Where the Agreement so provides, the Expert may at the request of a party make an award as to costs. Unless otherwise agreed in writing between the parties:
  - (a) each party shall pay its own costs of or incidental to the Procedure, and
  - (b) the parties shall, unless they agree otherwise, be jointly and severally liable for the costs of the Procedure which they shall pay in equal shares.

## Rule 7: Procedure

1. The Procedure will be as specified with the Rules listed in Part II.
2. The Rules set out in Part II may only be varied by the written agreement of (1) all the parties to the dispute and/or (2) the Expert as provided for in Rule 5 (11) of Part I.
3. A party who becomes aware of any non-compliance with the Rules in Part I or II shall object in writing within 14 days of the time at which he became aware or should have been aware of the non-compliance, or he will be deemed to have waived his right to object.



## Part II: Procedural Rules and Requirements

### Rule 8: Timetable

1. The following timetable is subject to Rule 5(11) of Part I: the timetable shall be variable at the discretion of the Expert.
2. Within 14 days of the date on which the Expert accepts appointment, the first party shall provide the following to any other party and the Expert:
  - (a) a written document setting out the nature of the dispute or issue, the legal and factual matters involved, his submissions in relation to those matters and the quantum of his claim (if any); and
  - (b) the documents and other evidentiary material on which he relies (“the Claim”).
3. Within 14 days after receipt of the Claim, all other parties shall provide any other party and the Expert with:
  - (a) a written document indicating whether or not he agrees with the first party’s description of the dispute or issue and, if not, his statement of the nature of the dispute or issue (including any cross claim), the legal and factual matters involved in the Claim and any cross claim, his submissions in relation to those matters, and the quantum of any cross claim (if any) and
  - (b) all documents and other evidentiary material on which he relies (“the Response”).
4. Within 7 days after receipt of the Response, any party may provide to the Expert and the other party:
  - (a) a written document indicating whether he agrees with the Response and if not why he disagrees; and
  - (b) any documents or other evidentiary material in reply to the Response and/or the cross claim (“the Reply”).
5. If a cross claim is made under Rule 8.3 of Part II then the cross claimant may serve a reply to the written material served in response to such a cross claim under Rule 1.3. Such reply shall be served within 7 days of receipt of the Response under Rule 1.4.

### Rule 9: Meetings, hearings and directions

1. If he considers it necessary, the Expert may at any stage hold a scheduled online or in person meeting (“a Meeting”) with the parties to clarify the issues and make such orders as he considers necessary for fair and expeditious determination.
2. All parties will be given at least 7 days notice that such a Meeting is to be held.
3. At least 3 days before such a Meeting the Expert shall inform the parties in writing of any specific matters to be addressed at the meeting.
4. The Expert may also hold a hearing if he considers it necessary.
5. All parties will be given at least 10 days notice that such a hearing is to be held.
6. At least 5 days before such a hearing the Expert shall inform the parties in writing of any specific matters to be addressed at the hearing.
7. The Expert may make such directions and rulings during the Procedure as he considers are necessary.

### Rule 10: Expert evidence

1. Where a party or both parties has considered it desirable to engage an expert, the Expert may, if he considers it appropriate, direct that the party’s or parties’ expert(s) attend a Meeting with him so as to narrow the issues. The Expert shall have total discretion over the procedure adopted and the recording of any decisions made at such a meeting.

### Rule 11: Powers of the Expert to seek further evidence and assistance

1. The Expert may at any time, on his own motion or at the request of a party, allow or require further evidence, including the submission of documents or other information in a party’s possession or control.

2. The Expert may, on his own motion or at the request of a party, require statements or appearances by witnesses for either party.
3. The Expert may, on his own motion or at the request of a party, inspect or require the inspection of any site, property, product or process as he deems appropriate.
4. The Expert may, on his own motion or at the request of a party, carry out at the parties' expense such non-destructive tests and investigations as he deems appropriate.
5. The Expert may, on his own motion, at the parties' cost seek technical assistance from a qualified professional in the relevant field.

### **Rule 12: Withholding information by reason of confidentiality**

1. A party may invoke the confidentiality of information he wishes or is required to submit for expert determination. The party shall submit the information to the Expert stating the reasons for which he considers the information to be confidential. If the Expert determines that the information is to be classified as confidential, he shall decide to whom, if anyone, the confidential information should be disclosed and under which conditions.

### **Rule 13: Power to impose sanctions**

1. Where a party has failed to provide the Expert with information which he has requested or has failed to attend a Meeting or hearing, the Expert may serve on the party a notice stating that unless the information is served within 7 days or the party attends on a set date he will proceed to determine the matter in the absence of the party not producing information or attending.
2. The Expert is entitled to draw adverse inferences from the non-production of information or non-attendance at a meeting.
3. The Expert shall make a final determination on the basis of information that is before him.

### **Rule 14: The Determination**

1. As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties under Rule 8 of Part II, the Expert shall determine the dispute or issue between the parties and notify such determination in writing to the parties.
2. Unless otherwise agreed by the parties and communicated to the Expert in writing at the time of his appointment, the Expert will not give reasons for his determination.
3. The determination shall be delivered to the parties upon payment in full of the Expert's outstanding fees and expenses. If one party pays the Expert's fees and expenses when another party should have paid all or part of that sum, then such amount shall be recoverable forthwith by the paying party from the other party, unless otherwise agreed in writing by the applicable parties.

## THE ORGANISATION

The Academy of Experts 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.

Since its establishment The Academy (TAE) has become an international centre of excellence for experts with a substantial multi-disciplinary membership. It acts as both an accrediting and a professional body.

As well as acting as a representative voice for experts The Academy publishes guidance of a technical nature on a number of issues for experts in both Civil and Criminal cases. For example, The Academy's 'Model Form of Report' and 'Guidelines for Forensic Scientists' are widely used by both members of The Academy and other experts and recognised by the legal profession.

The promotion of 'cost efficient dispute resolution' is extremely important to The Academy. The Academy is now a leading proponent of the development of Alternative Dispute Resolution (ADR) in the UK working with the Civil Mediation Council of which it is a member.

The Academy works strongly to liaise with other institutions in both the UK and internationally. In particular it was instrumental in the foundation of EuroExpert, the European Union Organisation for Expert Associations which was formed in 1998.

## ACCREDITATION OF EXPERT WITNESSES

All applicants to The Academy who wish to become Accredited Practising Expert Witnesses undergo a rigorous vetting procedure to ensure standards of excellence are maintained. This leads to the recognised full accreditation as a Practising Expert. Those achieving it are awarded the designatory letters MAE. (*see Membership below*)

Ethical and professional standards are governed by Codes of Practice and enforced by disciplinary procedures.

## WORKING WITH THE JUDICIARY

The Academy's Judicial Committee is chaired by a former President of the Supreme Court, and consists of Lords Justice of Appeal and other Senior Judges from the United Kingdom, Hong Kong and Singapore.

The committee is responsible for:

- The Model Form of Expert's Report (commended by Rt Hon Lord Woolf)
- Model Expert Witness CV
- Guidance Notes on The Meetings of Experts
- Guidance Notes on Contingency Fees
- Guidance of Remote Evidence

## ALTERNATIVE DISPUTE RESOLUTION

The Academy 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 on the register.

Standards are enforced in the same way as for experts.

## TRAINING & DEVELOPMENT

The Academy offers a comprehensive range of training programmes to enable members and non-members to develop their skills, and undertake Continuing Professional Development (CPD). Courses include training for:

- Expert Witnesses
- Expert Determination
- Mediation

## RANGE OF SERVICES

### To Members:

The Academy of Experts provides a full range of services to its members including:

- Helpline
- Technical meetings and training
- Regular magazine and newsletter
- Detailed handbook for practical guidance
- On-line information resources
- Experts fee survey

### To the Legal Profession:

The Academy of Experts provides a number of services which also assist the legal profession:

- On-line Registers
- ExpertSearch
- SJE Select
- Expert Determination Appointment Service
- Mediator Appointment Service
- Membership

A class of membership is open to the legal profession to enable input and involvement with the work and development of The Academy.

## MEMBERSHIP

The Academy has a range of memberships available for Expert Witnesses and ADR Practitioners.

### ADR Practitioners

For ADR Practitioners entry is through examination and assessment procedures.

### Expert Witnesses

For Expert Witnesses applications are judged on the basis of an applicant's experience as an Expert Witness.

The Academy recognises that the skills of an expert are separate from those required by an applicant's primary profession and awards different grades of membership:

- Associate Membership is for those starting out their Expert Witness careers.
- Full Membership is awarded to experienced Expert Witnesses who show an appropriate level of skill and understanding of the work of an expert.
- Fellows are those experts who demonstrate an exceptional level of skill and experience as an Expert Witness and must be Full Members of at least two years standing.