

Using an Independent Expert Witness

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1. How I work

Independent Expert

In this role, which covers most of my appointments, my paramount duty in providing written reports and giving evidence is to help the Court impartially and independently on my area of expertise and not as an advocate for any party. This duty overrides any obligation to the party by whom I am appointed. I must therefore seek to be completely unbiased in my analysis and findings. I maintain this independence with the utmost strictness as this protects the credibility of the process on all sides.

Advisory

I am available to assist in an advocacy role, as an adviser to a case, using my decades of experience as a market practitioner. This is usually likely to occur in the early stages of a case and is sometimes known as being engaged as a 'dirty expert'.

I may well be asked to continue with the case as an Independent Expert Witness, in which case I shall declare in my report the date at which I have become independent. This process may be helpful where I have the confidence of one or both sides in the case.

Single Expert

I may be appointed as an Independent Expert by both sides. The Courts like this process as it saves time in hearing the expert evidence and it is an economical route, as much of the work will only have to be covered once.

Litigation, Arbitration and Mediation

I may be appointed as an Expert for any of these dispute resolution processes.

2. How to appoint an Expert

(a) Why do you need an expert?

1. To assist the Court, or it's constituents in a specialist field of knowledge
2. Help Court understand the issues
3. Help you and other side understand the issues
4. Strengthen your argument or weaken the other side
5. Intimidate the other side
6. Common law system is evidence based

(b) How do you select an expert?

1. Personal reputation: relevant, non-faded experience
2. Word of mouth, references, prior cases / clients, agencies, other experts
3. Expert Witness? or Expert Adviser? ("dirty expert", tactics)
4. Single Joint Expert.
5. Good writing expertise
6. Court cross-examination experience

(c) And the Expert is expert in what?

1. Difference between exact expertise and 'reasonable' expertise
2. Communication is key
3. Is it Current or Faded expertise
4. Avoid 'ambulance chasers' – people who just want the business

My speciality involves disputes in financial markets, banking and investment.
See CV's and resumes here.

(d) How do you use an expert?

They are:

1. Unpredictable
2. Opinionated
3. Biased
4. Knowledgeable
5. Independent
6. Analytical
7. You need the right Personality: calm, diligent, communicative...

3. On Appointment

(a) My modus operandi

1. **Complete independence**
2. **I will offer help if asked** (being aware of the “dirty / clean boundary”)
3. **My Opinions are also open to the other side** (if both sides permit)
4. **I never give “Opinions” – only evidence based** (may change with new data)
5. **I use as little “law” as possible**
6. **I know limits of my experience**
7. **I get the job done** – in the shortest reasonable time

(b) My Commitments on Appointment

1. **My paramount duty is to help the Court impartially and independently.**
I follow the Codes of Practice for Expert Witnesses issued by relevant authorities in the particular jurisdictions.
2. **My research is carried out to Court standards from the very beginning to ensure that it is robust at all stages of the process.**
Being brief or approximate in the early days merely leads to lengthy and unprofessional work. Appointers may find that the first report takes a little more time but experience proves that early care is accurate and economical in the long term.
3. **I do not present “opinions”.**
My conclusions are closely researched from the evidence presented and the assumptions carefully outlined.
4. **I corroborate data and obtain research from a wide range of sources.**
This ensures that my evidence base is not too narrow.
5. **I am keenly aware of any perceived or actual conflicts of interest.**
My independence from companies, and family groupings, or direct investments means that I rarely have conflicts of interest and any potential issues shall be declared and cleared.
6. **I seek to minimize cost for the Appointer.**
I shall keep you closely in touch with the progress of the work to completion.
7. **I aim to begin and complete appointments within a tight timeframe.**

(c) My workflow once Appointed

- 1. Instructions**
 - 2. Evidence**
 - 3. Independent background research, do a lot early on** (better than retracing)
 - 4. Analysis and re-analyse, verification of analysis**
 - 5. Answer questions in *Instructions to Expert***
 - 6. Recycle analysis and cross-check** (sometimes with a small time gap)
 - 7. First draft report**
 - 8. Clarify questions from Counsel** (may feedback to stage 1)
 - 9. Second draft and reiterate.**
 - 10. Court-ready documents may require 4 or 5 drafts**
 - 11. Report signed and/or notarised**
 - 12. Defend in Court**
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4. Preparing the Evidence

What I look for in a financial dispute?

Key questions to be asked?

What went wrong – analysis of financial instruments?

The answers to all of these are contained in my CPD talk to lawyers on being an expert witness. They are intellectual property and are available to Appointing Parties.

5. Behavioural Finance – our special study

Behavioural Finance is especially useful in analysing the impact or otherwise of insider trading, other movements due to price sensitive information and the impact of market movements on asset value.

Special Topics:

(a) Market Price movements, Information and Newsflow

1. **Newsflow** – who knew what and when?
2. **Key relationships between price changes and volumes** – understand impact
3. **Strip out different “risks”** – e.g. index, sector
4. **Industry knowledge and recollection of events**
5. **Access to data and news at the relevant time.**
6. **Quantum of loss:** “what if” scenarios, requires experience

See our more detailed review of Behavioural Finance on which I lecture [HERE](#).
See the attached White Paper on the materiality of information [HERE](#).

(b) Behavioural Aspects of Experts

A study of bias

1. **compliance bias, obedience, herd instinct**
2. **repetition bias** (twice is right?)
3. **status quo** (*‘paralysis by analysis’*)
4. **familiarity bias** (comfort zone)
5. **availability bias** (what comes to mind)
6. **hindsight bias** (overestimate past events)
7. **recency bias** (overestimate recent events)
8. **spurious correlations / pattern recognition / selective evidence**
9. **reporting and distribution of incorrect information**
10. **oversimplification**

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