

An Expert's Perspective

A joint research paper by:
**The Academy of Experts
and HKA**

Foreword

I enthusiastically welcome this paper which addresses a subject of considerable importance to the administration of justice: the role, conduct and practical experience of expert witnesses. In this increasingly complex and fast-changing world, expert evidence is as indispensable to the resolution of modern disputes as it ever has been. Courts and arbitral tribunals (together “tribunals”) are increasingly faced with issues of substantial technical, scientific, financial and professional complexity, and they depend upon expert witnesses to explain those matters with clarity, independence and intellectual honesty.

For many centuries, the use of expert evidence has been accompanied by a growing body of judicial and professional criticism, and this criticism is familiar to readers of contemporary judgments and awards in cases involving expert testimony. Unfortunately, there appears to be little doubt that much of that criticism has been justified. An expert who does not understand or ignores the fact that their duty is owed to the tribunal, who strays beyond their proper area of expertise, who assumes the role of advocate, or who fails to disclose material assumptions or ignores contrary evidence, does not merely weaken the case of the party calling them; the behaviour or attitude of

such an expert risks undermining the integrity of the decision-making process itself. It is therefore right that tribunals and professional bodies should continue to insist upon high standards of independence, objectivity and transparency.

Quite rightly, this paper does not seek to excuse poor expert practice, or to diminish the personal responsibility of the expert. What this paper does is to provide an essential perspective which has too often been absent from the debate: the perspective of experts themselves. Its results benefit from being based on contributions from many experts who work across the world. In so far as is possible, it therefore represents a statistically reliable assessment, rather than being based on the experience of a few self-selected people whose views and experiences may not be representative.

The paper reveals that the quality of expert evidence is by no means determined by the expert alone. It is also shaped by the manner in which experts are identified, appointed, instructed, provided with documents, managed within procedural timetables, permitted to engage with opposing experts, and asked to present their evidence to the tribunal.

As a result, it seems to me that several themes emerge with particular force.

The first is the need for clarity at the point of appointment. Written instructions, clearly identified questions, applicable procedural rules and the required form of declaration should not be regarded as optional, or even merely desirable, administrative matters. They are the essential foundation upon which reliable expert evidence is built – and can then be seen to have been built. The survey’s indication that such instructions are not always provided is troubling. It suggests that, in some cases, experts are expected to discharge exacting duties without being given the basic framework within which those duties must be performed. A properly professional expert should require such instructions as a precondition for agreeing to act.

The second theme is the importance of proper evidential foundations. The disclosure of timely and proportionate (in terms of both volume and balance) information and documents is central to expert work. Experts cannot be expected to provide robust opinions if relevant documents are withheld, produced late, or made available asymmetrically or not produced promptly if asked for – or indeed if an unnecessarily substantial amount of documents are produced. The findings in the paper concerning late disclosure, difficulties in obtaining relevant documents and the need

to revisit opinions are a reminder that efficient case management must not be confused with procedural compression. A timetable which prevents or even impedes careful expert analysis may ultimately increase cost, delay and uncertainty.

The third theme is the need to preserve and respect the expert's independence during the preparation and presentation of evidence. The paper rightly draws attention to the risks that may arise in pre-appointment processes, unpaid preliminary opinions, so-called beauty parades, the involvement of lawyers in draft joint statements, and the way tribunal presentations and witness conferencing are conducted. None of these procedures is inherently objectionable. Many may be useful and efficient if they are properly managed. But any such procedure must be conducted in a way which preserves both the reality and the appearance of expert independence.

The fourth theme is transparency. This is needed not only in relation to the expert's reasoning, assumptions, sources and limitations, but also in relation to the contribution of expert assistants and increasingly, the use of artificial intelligence (AI). The use of assistants is a practical necessity in many substantial disputes and is not, of itself, problematic. What matters is that their involvement is properly disclosed where appropriate, and that the appointed expert appreciates that they remain personally responsible for the opinions expressed. The same principle applies with equal force to the use of AI. AI may assist; it cannot assume responsibility. The expert's judgment must remain human, independent and accountable – and their own honest view.

The fifth and final theme is that the guidance addressed in the paper, including guidance given by The Academy of Experts on the role of the expert witness, on expert conferences, on model expert reports, on expert witness CVs and on the responsible use of AI, provides a coherent framework for addressing these issues. Its recurring messages are simple but fundamental: the expert's overriding duty is to the tribunal; expert evidence must be independent, impartial and confined to their area of expertise; reports should distinguish fact from opinion and should explain reasoning transparently; joint statements should remain the experts' own work; and all those involved in the process, including instructing lawyers and tribunals, have responsibilities in ensuring that expert evidence is useful, reliable and fair.

The merit of the research described in this paper lies in its practical orientation. It identifies relatively modest procedural steps, which, if adopted, should yield significant benefits: earlier appointment, clearer instructions, common questions, proper disclosure, realistic timetables, transparent management of joint statements, disciplined tribunal presentations, structured witness conferencing and appropriate disclosure of assistants and AI use. These steps are not simply points of professional etiquette. Nor should they be regarded as "mere" best practice. They should be regarded by all those concerned with organising, giving or assessing expert evidence as fundamental requirements. After all, compliance with each of these steps will contribute to the effectiveness of expert evidence as an instrument of justice.

Accordingly, I strongly commend this paper to judges, arbitrators, lawyers, experts and all those concerned with the proper administration of dispute resolution. Apart from emphasising to experts and those instructing them the importance of doing all that can be reasonably done to maximise the reliability of expert evidence, it should also be read by judges and arbitrators. At a time when expert evidence is both increasingly necessary and increasingly scrutinised, the paper reminds us that when considering whether, or in what terms, to criticise an expert, a tribunal should have well in mind the system in which expert evidence is commissioned, prepared and tested. The objective must be neither to defend experts uncritically nor to criticise them reflexively, but to improve the expert process so that tribunals receive the independent assistance which they, and therefore the proper administration of justice and the public interest, require.



The Rt. Hon. The Lord Neuberger of Abbotsbury
October 2026

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An Expert's Perspective

Against a backdrop of increasing scrutiny and criticism of expert witnesses, this research seeks to provide an expert-led perspective on a number of recurring themes arising in contemporary dispute resolution practice. Drawing on quantitative responses from experienced experts and expert assistants across a range of jurisdictions and disciplines, the paper examines key aspects of the expert process, including appointment, instructions, disclosure, report preparation, expert meetings, joint statements, tribunal presentations, witness conferencing, the use of expert assistants, and the emerging role of artificial intelligence.

The survey findings are considered alongside relevant guidance from The Academy of Experts, with the aim of identifying practical measures that may assist experts, instructing lawyers, parties and tribunals in improving the quality, independence and utility of expert evidence. We are also grateful to Professor Doug Jones AO, a highly respected international arbitrator and judge, for his companion piece, which considers how tribunals may, through effective case management and procedural oversight, maximise the value of expert evidence and better support its contribution to fair and efficient decision-making.

Much is written, rightly, about experts that fail to understand and fulfil their role and obligation to courts and tribunals. Where that criticism is justified; it is to be welcomed as a reminder of the privileged role that experts play in assisting courts and tribunals. Throughout many of those cases where the expert has been criticised, and without abdicating the responsibility of the expert, in many instances the

question remains: to what extent did the actions, omissions, instructions or oversight of the legal team contribute to the circumstances in which those failings arose?

Lord Hodge, the deputy president of the UK Supreme Court, said: *"25% of [Experts]... reported that they had been asked or felt pressurised to change their report by an instructing party in a way which damaged their impartiality"*.¹

Lord Hodge further stressed that legal teams must ensure that experts are aware of their duties, saying *"It was disappointing that the survey... points to evidence of instructing parties putting pressure on experts to change their evidence in a way which [Experts] feel damages their impartiality. Lawyers must do better."*

The role and performance of party appointed experts has attracted commentary from judges, arbitrators and lawyers, but very little exists that voices the perspective of the expert.

"An Expert's Perspective" was canvassed on key aspects of the use of experts to provide insight and perspective from experts themselves.

¹ The Law Society Gazette, 28 May 2021. Available at <https://rb.gy/w6wn3l>

Summary outcomes

This report presents the findings of a survey designed to capture, from the perspective of experts and expert assistants, how expert appointments are made, how instructions are given, how expert evidence is prepared, and how it is ultimately presented to tribunals. The respondent cohort was both geographically diverse and comprised highly experienced practitioners, lending the results considerable comparative value and grounding the findings in substantial practical experience across a range of sectors and jurisdictions.

Several clear themes emerge from the survey. First, while expert selection remains largely driven by senior lawyers, the data suggests that the methods used to identify and appoint experts are not always confined to the most appropriate levels of professional judgement. In most cases, experts are sourced by partners, senior associates or counsel, but the survey also indicates that more junior lawyers, trainees and paralegals may sometimes be tasked with identifying experts. Respondents also highlighted concerns arising from selection processes that seek preliminary opinions or presentations on key issues before

appointment, particularly where such exercises may create the perception of potential conflicts of interest or give rise to a perception of 'expert shopping'.²

Secondly, the survey identifies several recurring weaknesses in the way experts are instructed and supported at the outset of appointments. A notable proportion of respondents reported that they do not consistently receive written instructions, the questions they are being asked to address, the applicable procedural rules, or the text of the declaration they will be required to make. Experts also appear to have only limited involvement in shaping the investigative scope of their appointments and in identifying the categories of documents that ought to be preserved or made available. These findings suggest that, in a material number of cases, the foundations for expert evidence are not established as clearly or as transparently as they could be.

Thirdly, the results point to continuing procedural pressures that can affect the quality and efficiency of expert work. Although most respondents reported broadly equivalent access to documentary material, a meaningful minority experienced difficulties obtaining relevant documents, encountered asymmetries in disclosure, or were required to revisit opinions because of late production. Concerns were also expressed about the realism of procedural timetables, particularly in relation to late

appointment and the preparation of reply reports. Taken together, these findings indicate that late or incomplete disclosure, coupled with compressed timetables, remains a significant source of concern impacting the depth and rigour of expert analysis.

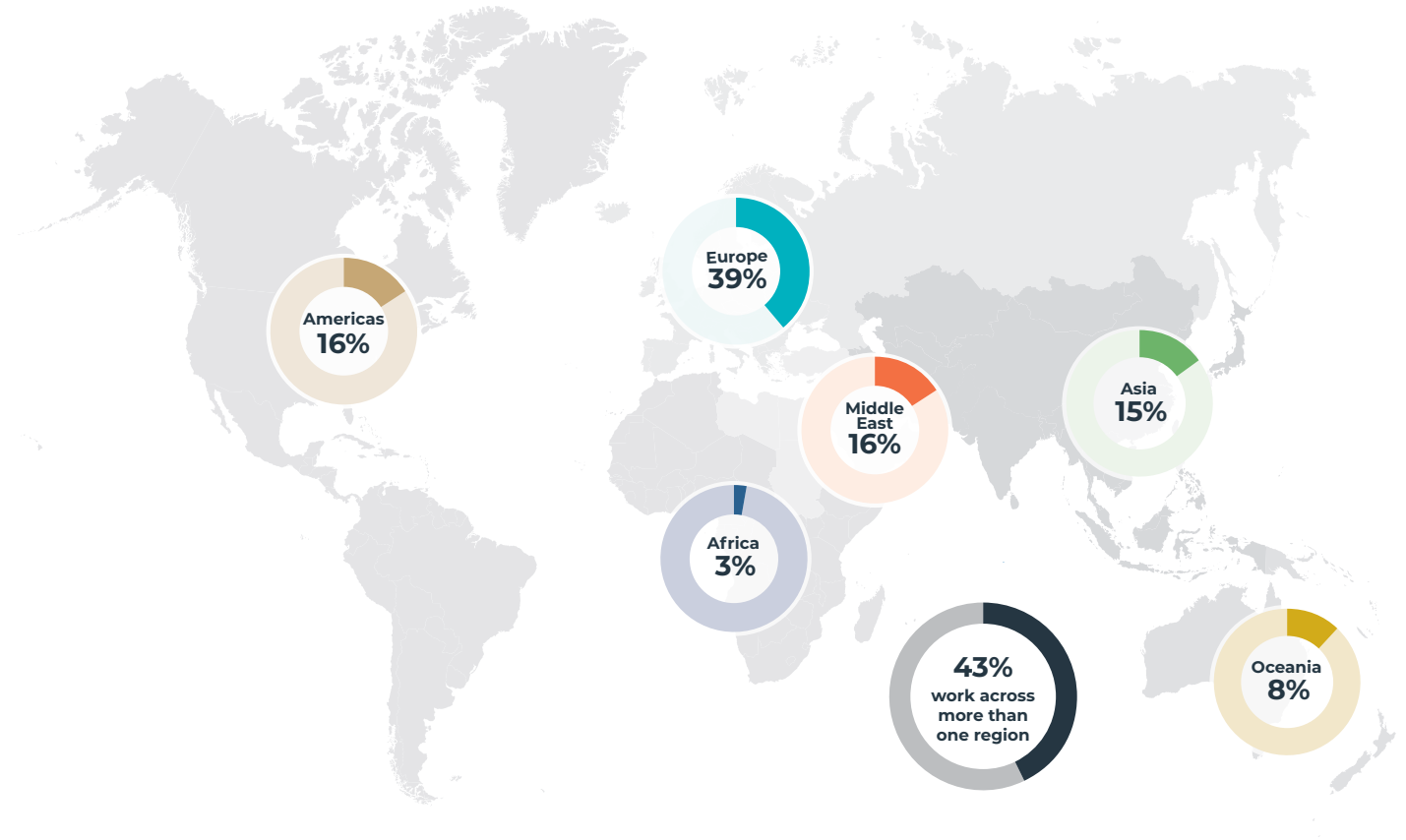
Finally, the survey highlights both strengths and areas of inconsistency in the procedural treatment of expert evidence. Direct pressure from lawyers to alter opinions does not appear to be routine, which is reassuring. However, substantial variation remains in the timing and conduct of expert meetings, the preparation and review of joint statements, the use of tribunal presentations, and the format of witness conferencing. The findings suggest a preference by experts for procedures that preserve clear structure, transparency and tribunal control, while also underscoring the need to guard against any encroachment on expert independence. A parallel theme arises in relation to expert assistants: although their use is commonplace, disclosure of their identity, qualifications and contribution remains inconsistent. Overall, the review points to a series of practical 'easy wins' for lawyers, experts and tribunals alike: clearer instructions, earlier and more complete disclosure, more realistic timetables, transparent handling of joint statements, and more consistent disclosure of the role of expert assistants.

² Expert shopping refers to the practice of seeking opinions from multiple experts before appointing the expert whose views are most favourable to the appointing party's case. It is discouraged because it may undermine the perception of expert independence and suggest that evidence is being selected to support a preferred outcome rather than provide objective assistance to the tribunal.

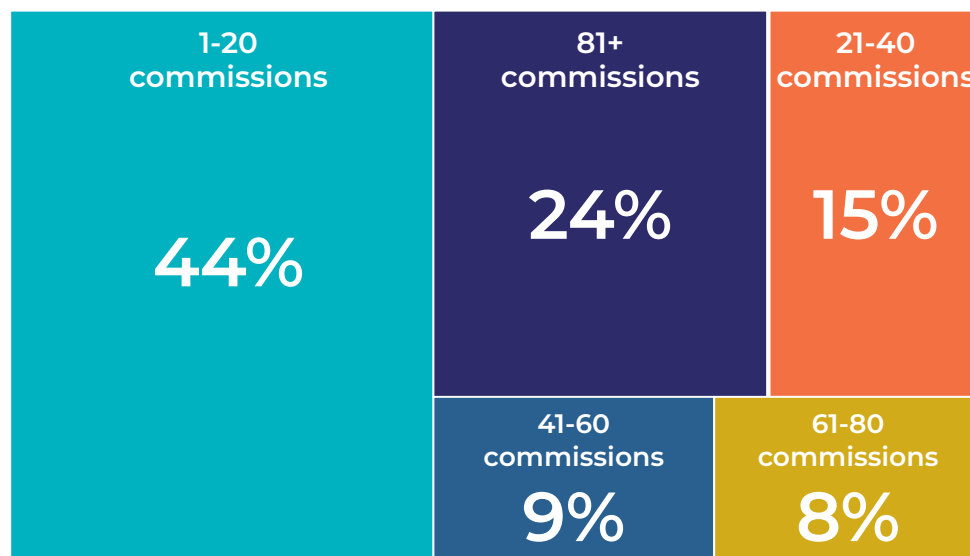
Global responses drawn from experienced practitioners

Expert views from around the globe...

The views of practicing experts from across a range of jurisdictions were sought in order to capture insights from their experiences and the challenges that they commonly encounter. The respondent group comprised 456 experts and was geographically diverse, with 43% reporting practice across more than one region. This breadth enhances the comparative value of the findings and reduces the likelihood that the results reflect a solely local or single-market perspective.



The views of experienced experts and assistants...

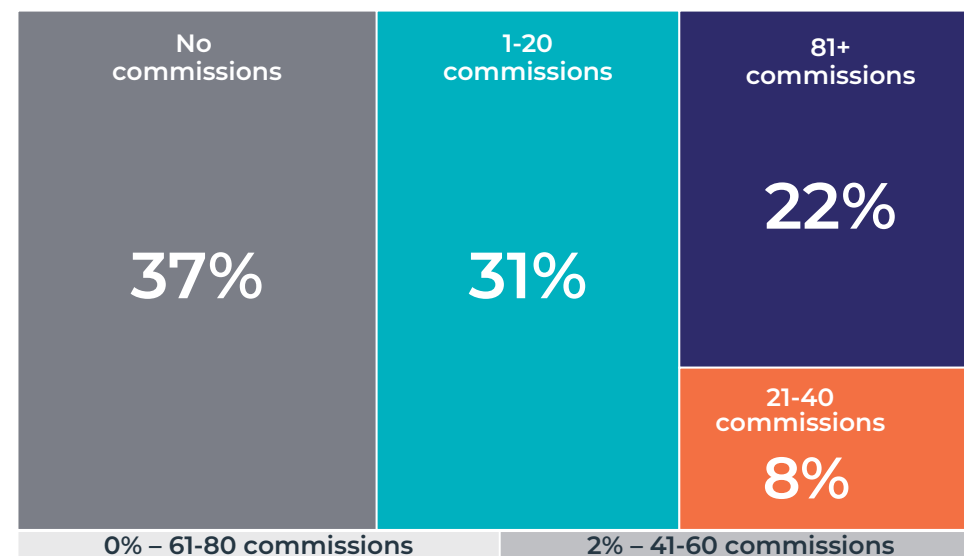


...41% have been appointed as lead expert on over 40 occasions

The survey draws on the views of a highly experienced cohort of experts, with 41% of respondents reporting that they have been appointed as lead expert on more than 40 occasions. This level of experience suggests that the findings are informed by substantial practical exposure to expert appointments and reflect the perspectives of practitioners who have operated repeatedly at the forefront of complex disputes across multiple sectors.

In addition, the experience of expert assistants was also canvassed.

A substantial proportion of respondents had extensive experience as expert assistants, with nearly one-third reporting involvement in more than 20 commissions. The survey therefore captures not only the perspectives of lead experts, but also those practitioners with significant experience in supporting complex expert appointments working alongside the lead expert, thereby enriching the evidence base on the day-to-day practice and challenges encountered within the wider expert community.



...32% have acted as expert assistants on over 20 occasions

Experts and expert assistants were asked to respond to a series of issues with a view, for the first time, to quantifying both the frequency and extent to which issues and behaviours arise in relation to expert appointment, instructions, report preparation and the giving of expert evidence. The responses, illustrated below, offer valuable, and in some respects unexpected, insight into several of the challenges facing experts in contemporary practice.

Before delving into the outcomes of the review, we set out what an expert witness is, drawn from guidance produced by The Academy of Experts. The following section summarises key recommendations for Experts, Instructing Lawyers and Clients.

The Academy of Experts: What is an Expert Witness? Key recommendations for Experts, Instructing Lawyers and Clients

The Academy of Experts' What is an Expert Witness? is a concise but important guidance note aimed primarily at those proposing to instruct an expert witness in civil proceedings. While directed at users of experts rather than experts themselves, it contains several fundamental principles concerning the role, duties and limitations of expert witnesses. These principles reinforce the overriding themes found throughout the Academy's wider guidance on expert evidence: independence, impartiality and service to the tribunal.

1. Understand the difference between a witness of fact and an expert witness

Key recommendation

Parties and lawyers should recognise that expert witnesses perform a different function from factual witnesses.

The guidance explains that:

- Witnesses of fact give evidence regarding factual matters but generally do not provide opinions.
- Expert witnesses may provide opinion evidence within their field of expertise as well as factual evidence where relevant.

Practical implication

One of the principal reasons for engaging an expert witness is that the court may require specialist assistance to understand technical, professional or scientific matters beyond ordinary knowledge.

2. An expert witness must possess relevant expertise

Key recommendation

An expert witness should possess knowledge or experience beyond that which could reasonably be expected of a lay person in the relevant discipline.

Practical implication

The expert's credibility derives not merely from professional qualifications but from specialist knowledge and practical experience relevant to the issues in dispute.

3. The expert's primary duty is to the court or tribunal

Key recommendation

The guidance repeatedly emphasises that the expert's overriding duty is to the court or tribunal rather than to the party who instructs and pays them.

Practical implication

This is perhaps the central message of the guidance. Once appointed, the expert is not part of the client's litigation team. Their role is to assist the tribunal impartially, even where their opinions may not support the position of the instructing party.

4. Independence and impartiality are fundamental requirements

Key recommendation

Experts must provide:

- Truthful opinions;
- Independent opinions; and
- Impartial opinions,

whether or not those opinions favour the case of the party who instructed them.

Practical implication

The guidance makes clear that courts are unlikely to place weight on evidence from experts who appear partisan. Objectivity is therefore not merely an ethical requirement but a practical necessity.

5. Distinguish between an expert witness and an expert adviser

Key recommendation

The guidance draws a clear distinction between:

- An expert witness; and
- An expert adviser.

Practical implication

An expert adviser assists a party in developing or evaluating a case and owes duties primarily to that party. An expert witness, by contrast, owes an overriding duty to the tribunal and must remain independent.

This distinction is particularly important when experts perform both advisory and reporting roles during the course of a dispute.

6. Expert evidence must usually be presented through a report

Key recommendation

Experts should normally provide their opinions through a written report and, where required, oral testimony.

Practical implication

The report is the foundation of the expert's evidence and will typically be disclosed to the opposing party and reviewed by the tribunal before any hearing.

7. Experts must comply with procedural rules and tribunal directions

Key recommendation

Experts are expected to comply with:

- Applicable procedural rules;
- Court directions; and
- Tribunal orders.

Practical implication

Compliance extends beyond technical expertise and includes procedural obligations relating to reports, meetings between experts, declarations and evidence.

8. Expert witnesses are not advocates

Key recommendation

Expert witnesses must not act as advocates for the instructing party.

Practical implication

The role of advancing the client's case belongs to lawyers and the parties themselves. Experts assist the tribunal by providing independent technical analysis.

9. Expert witnesses must stay within their area of expertise

Key recommendation

Experts should not express opinions outside their field of expertise.

Practical implication

Experts should identify the limits of their expertise and avoid commenting on matters that properly fall within another discipline.

10. Expert witnesses are not negotiators or case strategists

Key recommendation

The guidance expressly states that expert witnesses should not:

- Act as negotiators;
- Formulate a party's case; or
- Determine what claims or defences should be advanced.

Practical implication

This reinforces the distinction between litigation strategy and independent expert opinion.

11. Avoid conflicts of interest

Key recommendation

Experts should not accept appointments involving conflicts of interest unless the conflict is capable of being resolved through proper disclosure.

Practical implication

Conflicts can undermine confidence in the expert's independence and may result in challenges to admissibility or credibility.

12. Fee arrangements must preserve independence

Key recommendation

Experts should not accept engagements where remuneration is dependent upon the outcome of the case.

The guidance specifically identifies:

- Success fees; and
- Conditional fee arrangements

as inconsistent with expert independence.

Practical implication

Outcome-based compensation may create the appearance that the expert has a financial interest in the result of the proceedings.

13. Instructing parties have responsibilities too

Key recommendation

The guidance identifies several obligations on those instructing experts:

- Agree written contractual terms before work commences;
- Provide clear and detailed instructions;
- Keep the expert informed of developments; and
- Provide notice of important procedural dates.

Practical implication

The effectiveness of expert evidence often depends on the quality and completeness of the instructions received.

14. Lawyers should usually be the primary point of contact

Key recommendation

The guidance suggests that, where legal representatives are engaged, communications with the expert are generally best managed through the lawyers.

Practical implication

This helps ensure consistency of instructions, procedural compliance and appropriate document management.

Key takeaways for expert witnesses and instructing parties

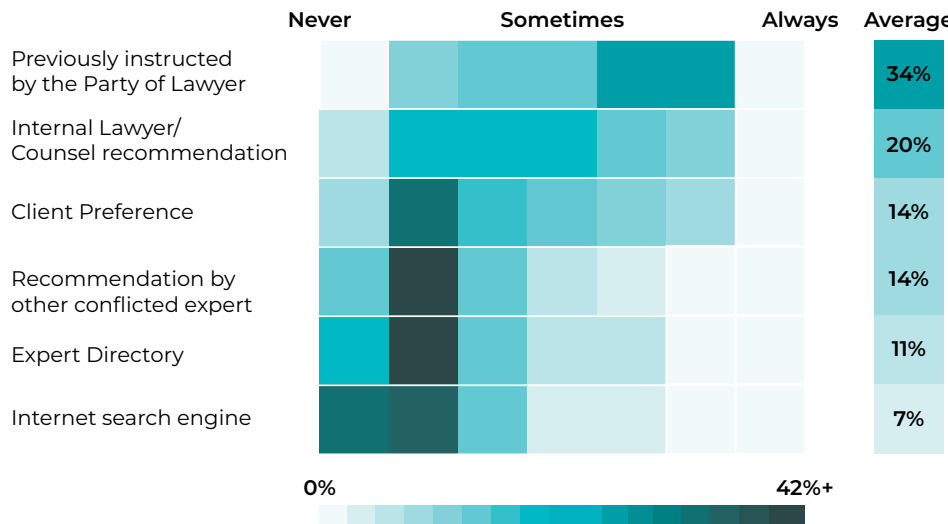
The principal messages emerging from this guidance note are:

- An expert witness serves the court, or tribunal, not the party who appoints them.
- Independence and impartiality are essential attributes of expert evidence.
- Experts may provide opinion evidence, but only within their area of expertise.
- Expert witnesses are not advocates, negotiators or strategists.
- Experts should avoid conflicts of interest and outcome-based fee arrangements.
- Written reports form the foundation of expert evidence and must comply with procedural requirements.
- Instructing parties must provide clear instructions and maintain effective communication with the expert.
- The tribunal will place little weight on expert evidence that appears partisan or influenced by the interests of the instructing party.

Taken together, the guidance provides a succinct statement of the fundamental principles underpinning expert evidence. Although directed at clients and lawyers, it serves as a valuable reminder that the defining characteristics of an expert witness are independence, objectivity, competence and a commitment to assisting the tribunal rather than advancing a party's case.

What are ways in which lawyers search for / find experts?

The heat map below illustrates the extent to which the various approaches are used by lawyers in identifying and appointing experts.

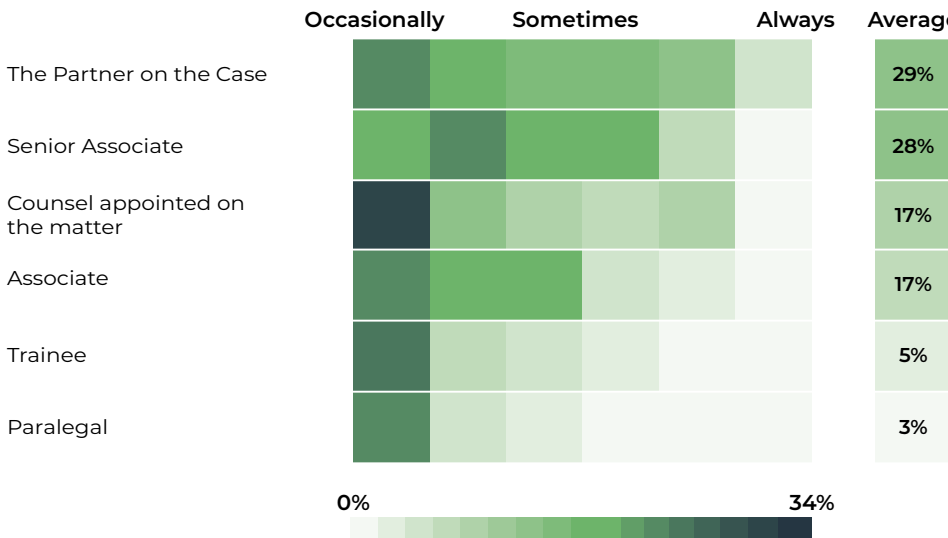


The three most frequently used approaches, which together account for approximately 68% of all methods identified, are unsurprising. More notable, however, is the finding that internet search engines, used as a primary source, account for 7% of all approaches to identifying experts.

Given the importance of expert evidence in many cases, we were interested to understand who was tasked with finding the expert on a matter.

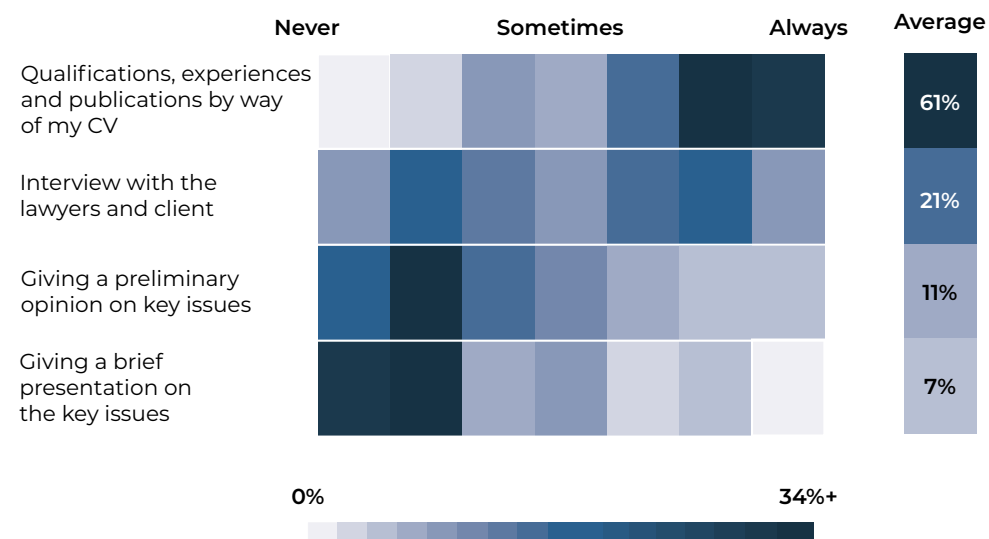
It is encouraging that, in a proportion of cases, responsibility for identifying the expert rests with the Partner, Senior Associate or Counsel. These roles account for 74% of cases. More strikingly, the data indicates that, in 8% of cases, the task of sourcing an expert is delegated to trainees and paralegals.

Who is normally tasked with finding expert candidates in a law firm?



Taken together, these figures suggest that the identification of expert candidates within law firms remains primarily Partner-led, with Senior Associates also playing a meaningful supporting role. By contrast, junior fee earners and support staff appear to have a comparatively limited role in this process. The distribution is consistent with a market in which expert selection is treated as an important strategic exercise and typically retained within more senior levels of the legal team.

When asked how they were selected, experts noted the following responses.



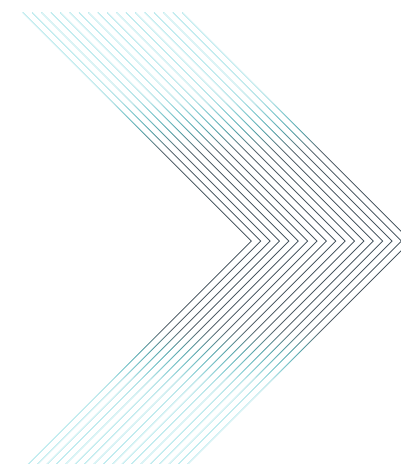
Although the two most frequently identified methods of selection are not, in themselves, surprising and account for 82% of requests to demonstrate expertise in connection with the matter in dispute, the findings raise a more significant concern in relation to requests for a preliminary opinion or a short presentation on the key issues in 18% of cases. If not handled with particular care, such exercises may place the expert in a position where views are expressed at too early a stage, potentially giving rise to a conflict that could prevent that expert from acting should the appointment with that party not proceed.

This is especially important where the exercise moves beyond a general discussion of experience and suitability and instead invites substantive comment on the merits, issues or likely analytical approach to the dispute. In those circumstances, there is a real risk that the expert may be seen as having engaged in a form of pre-appointment evaluative work that is difficult to reconcile with subsequent independence if approached by another party, or indeed with professional prudence more generally.

Several respondents expressed the view that, in some cases, the selection process may be used strategically to create conflicts, thereby preventing certain individuals from acting on a matter if they are not ultimately appointed by the lawyer conducting the exercise by providing them with selective 'confidential' material and asking the prospective expert for a preliminary opinion. Sight of that confidential information may then be used to exclude experts from acting against that party on the basis that they are 'conflicted'.

A further concern arises where such work is requested without payment as part of a so-called 'beauty parade'. While parties and their legal advisers may wish to assess the suitability of competing candidates, requiring experts to provide preliminary substantive input without remuneration risks creating the perception of expert shopping. That perception may, in turn, undermine confidence in the integrity of the appointment process and blur the distinction between legitimate expert selection and the pursuit of a preferred opinion.

Central to any expert appointment are the expert's instructions, the issues on which an opinion is sought, and the applicable procedural or evidential rules. It is striking, therefore, how frequently experts are not provided with these fundamental materials by those instructing them.



How often do you receive written instructions as an expert on appointment?

No Written Instruction Issued on Appointment

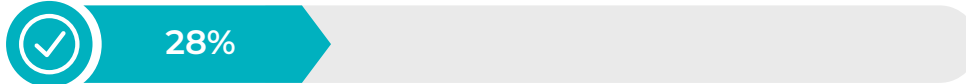


Written Instruction Issued on Appointment



How often do you receive a copy of the questions that you are to opine on?

Questions received by the Expert



Questions not issued to the Expert



How often are you involved in developing the areas of investigation and the questions that your report will opine on?



74%
No involvement

In most cases, experts are not involved in defining the investigative scope or the questions to be addressed in their reports. This suggests that the framing of the expert exercise is commonly determined in advance by lawyers or clients, with experts engaged primarily to respond to an already established brief. From a procedural standpoint, that may assist in maintaining role boundaries, although it may also limit the expert's opportunity to refine the scope necessary at an early stage.

The approach outlined in the above responses may artificially constrain the appropriate scope of investigation considered necessary by the expert to address the issues in hand and contribute to a mismatch between the analysis and opinion advanced by the experts in a matter, at least in initial submissions.

How often are you provided with a copy of the Rules of Court or Rules of Evidence outlining your role, obligations and duties as an expert with your letter of appointment?

Rules of Court or Rules of Evidence are provided



16%

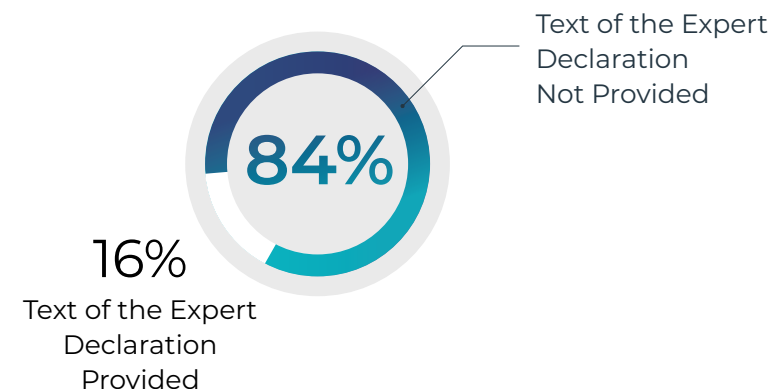
Rules of Court or Rules of Evidence are not provided



84%

The results show that only a small minority of respondents are routinely provided with the text of the declaration they will be required to make. Such declarations commonly articulate the expert's formal duties to the court or tribunal. The limited practice of providing this text in advance may therefore contribute to inconsistency in how experts are informed of their procedural obligations at the point of appointment. There have been a number of reported judgments where experts have been criticised for not including the specific declaration required for that court or tribunal. Given that it is the instructing lawyer who submits the expert's report to the tribunal it is surprising that a document would go forward without the correct, or any, declaration being included.

How often are you provided with a text of the declaration that you will be required to make in producing your expert report?

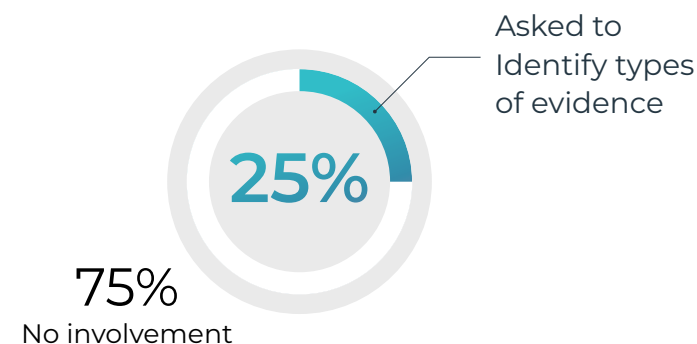


16%

Text of the Expert
Declaration
Provided

Text of the Expert
Declaration
Not Provided

How frequently are you asked to identify the kind of documentary evidence that you as expert would expect to have been kept?



75%

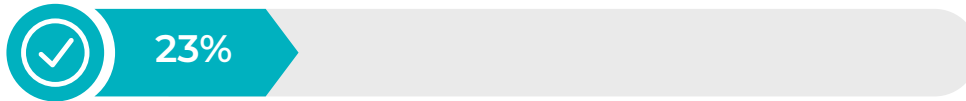
No involvement

Asked to
Identify types
of evidence

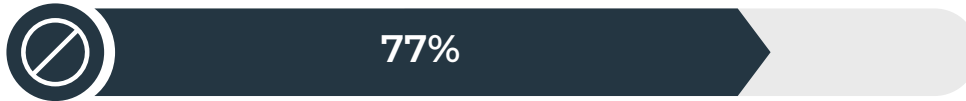
The data suggests that experts are seldom asked to identify, at an early stage, the categories of documentary material they would expect to see preserved or available. That finding may indicate a relatively limited role for experts in shaping evidence preservation and collection strategies. In cases where documentary evidence is central to the dispute, the absence of early expert input could have implications for the completeness of the evidential record.

How frequently, if at all, are you asked to prepare a list of documents for disclosure?

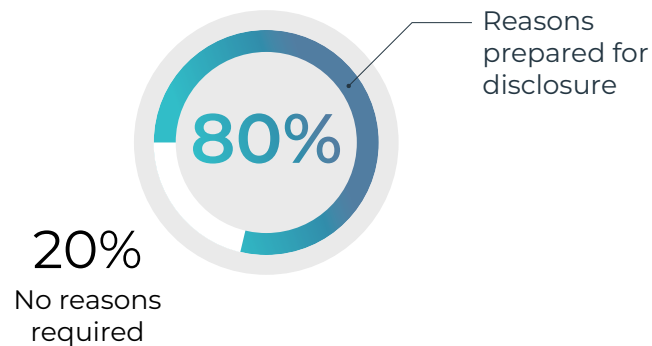
Asked to list documents for disclosure



Not involved in disclosure



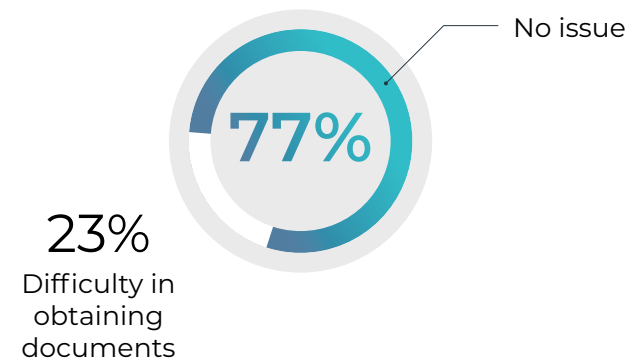
Of those involved in disclosure, how frequently, if at all, are you required to include reasons why such documents are considered as relevant?



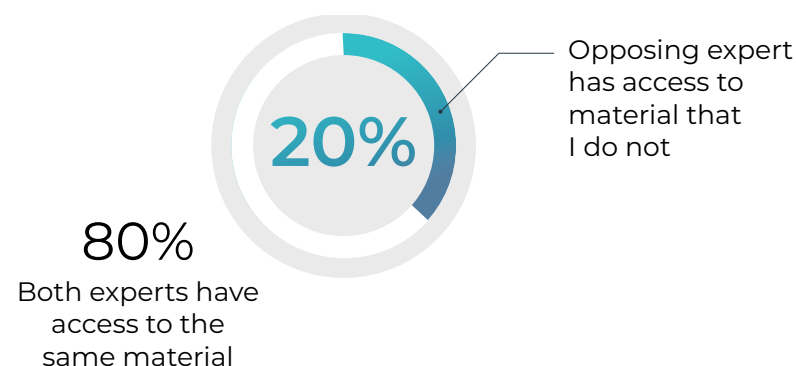
These results show that only a minority of respondents are involved in preparing lists of documents for disclosure and, even among those who are involved, relatively few are asked to provide reasons why particular documents are relevant. The pattern implies that expert participation in disclosure remains selective and often peripheral. It also suggests that disclosure exercises may not consistently benefit from expert insight into the evidential significance of particular categories of material.

The results indicate that only a minority of respondents are involved in preparing lists of documents for disclosure and, among those who are, one in five are not asked to explain the relevance of particular documents. This pattern suggests that expert involvement in disclosure remains limited and often peripheral, with the result that disclosure exercises may not consistently benefit from expert insight into the evidential significance of specific categories of material.

How frequently have you experienced difficulty in obtaining access to relevant documentary evidence?

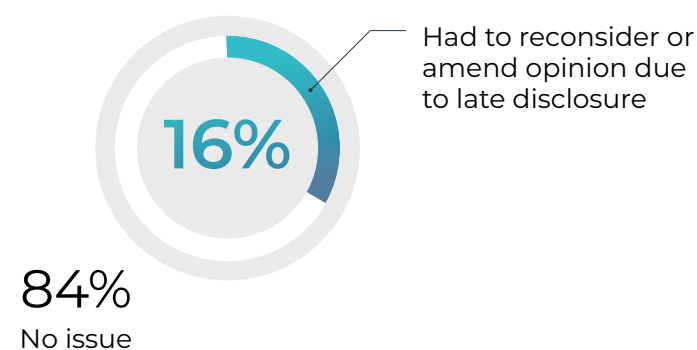


How frequently have you experienced your opposing expert having access to documents that were not initially available to you?



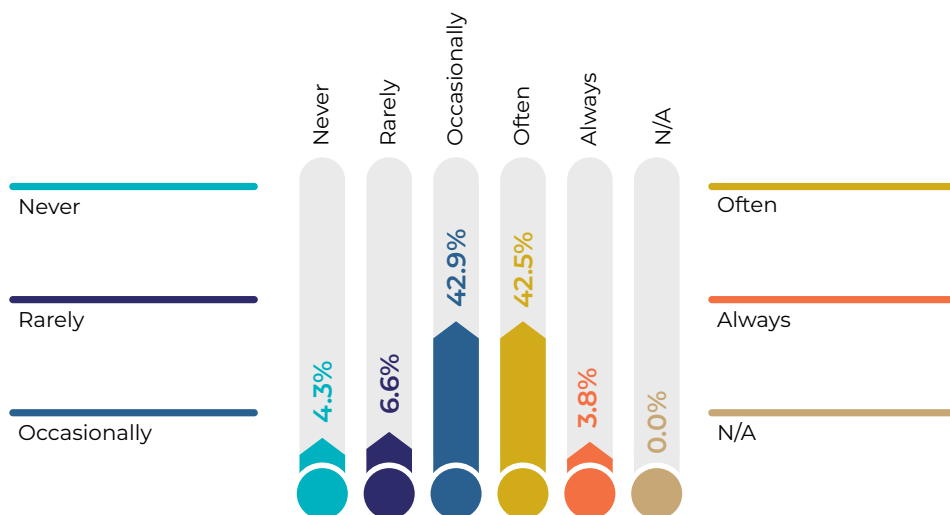
The findings present a mixed but significant picture of documentary access. Although most respondents reported that both sides generally had access to the same material, a meaningful minority experienced difficulty obtaining relevant documents or encountered situations in which the opposing expert appeared to have access to material not initially available to them. These results underscore the continuing importance of timely and complete disclosure, alongside common datasets, to the effective conduct of expert work.

How frequently have you been required to reconsider or amend your opinion due to late disclosure of documents by one or both parties?



The responses indicate that most respondents have not been required to amend their opinions because of late disclosure, although a notable minority have experienced precisely that difficulty. The implication is that late production of documents remains a live procedural risk in a significant subset of cases. Where it arises, it can undermine efficiency, increase cost and potentially require experts to revisit conclusions at a late stage in the process.

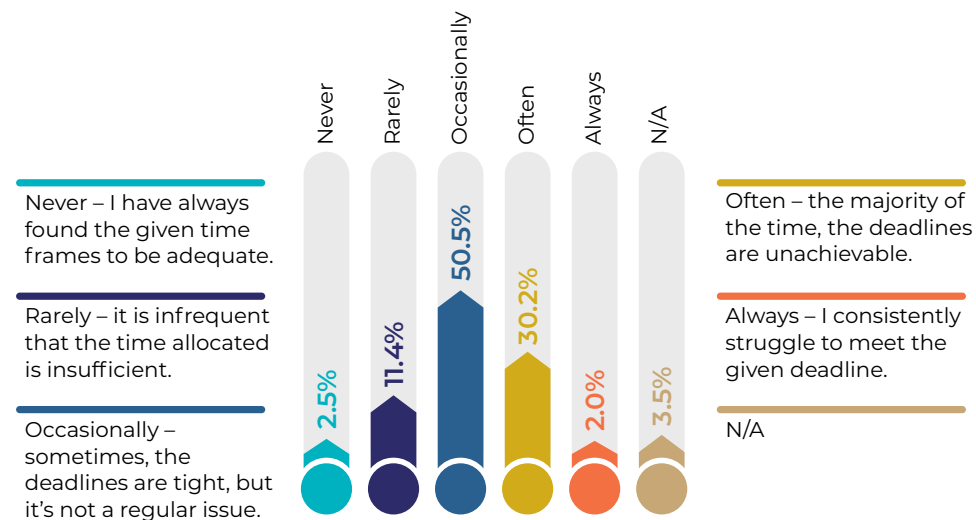
How often do you believe you are appointed late in proceedings?



These results suggest that concerns about the realism of procedural timetables are most acute in relation to reply reports and, more broadly, to the stage at which experts are brought into proceedings. A substantial proportion of respondents appear to regard at least some deadlines as unreasonably tight, particularly where appointment occurs late and the expert is then expected to engage rapidly with a substantial evidential record.

The findings reflect a familiar difficulty in expert practice: compressed timetables can materially constrain the depth and quality of analysis, especially in complex matters involving large volumes of documents, multiple issues and limited time for proper investigation. This is likely to be particularly problematic in the context of reply reports, where experts must not only consider further material but also engage critically with the opposing expert's analysis within a restricted period.

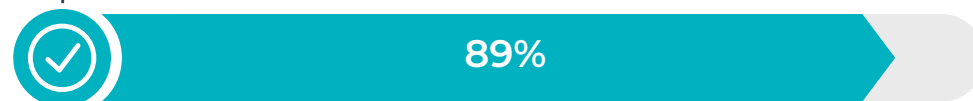
How often do you find the time allocated to submit Reply Reports in arbitration cases to be unrealistic?



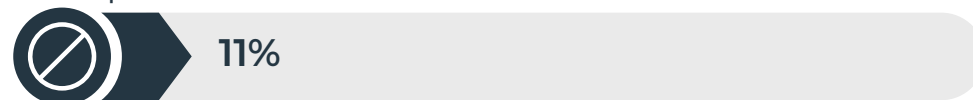
More generally, the data suggests that procedural efficiency may, in some cases, be achieved at the expense of analytical rigour. Where experts are appointed late or required to work to unrealistic deadlines, there is an increased risk that the resulting opinion will be shaped by time pressure rather than by the full and careful consideration that expert evidence is intended to provide.

How frequently have you experienced pressure from lawyers to modify your expert opinion to be more favourable to their client?

No pressure



Under pressure

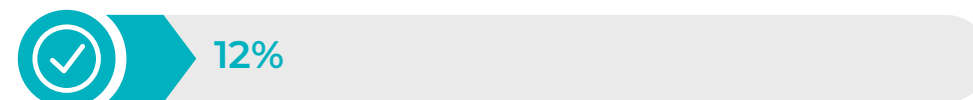


It is comforting to see that in most cases experts do not feel that they are being pressured to make their opinion more favourable to their client's case. That said, 11% do feel that pressure is applied by lawyers to express or amend their opinion to be more favourable to their client. At the outset of this paper, we noted that Lord Hodge, in May 2021, said that "25% of [Experts]... reported that they had been asked or felt pressurised to change their report by an instructing party in a way which damaged their impartiality".³ While it would be reassuring to conclude that practice has improved since 2021, the more cautious interpretation is that the difference may reflect the experiences of a different cohort of experts and should not be taken as evidence of a broader trend.⁴

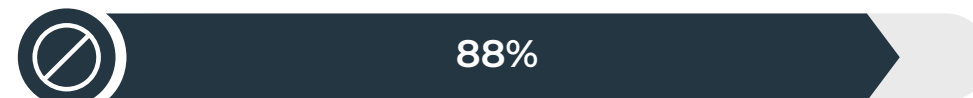
Questioning, testing or clarifying the expert's opinion is legitimate. Pressurising the expert to change their opinion to 'support' the client's position is not.

Does the procedural timetable typically require experts to meet on a 'without prejudice' basis and prepare a joint statement setting out matters agreed and disagreed in terms of general methodology or approach before preparing a first expert report?

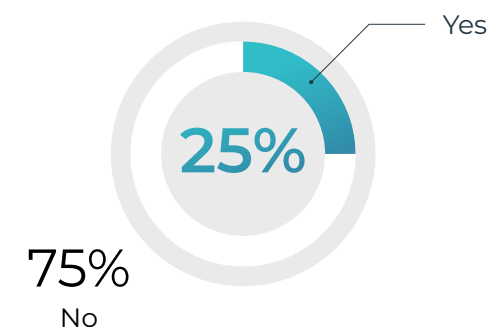
Yes



No



How often does the procedural timetable require experts to meet on a without prejudice basis and prepare a joint statement setting out matters agreed and disagreed on the matters to be opined upon after preparing a first expert report?



³ The Law Society Gazette, 28 May 2021. Available at <https://rb.gy/w6wn3l>

⁴ Whilst the number of respondents were broadly similar, some 73% of respondents in the 2021 study referred to by Lord Hodge were Medical Experts (414 number). That figure was less than 10% in the current study (46 number).

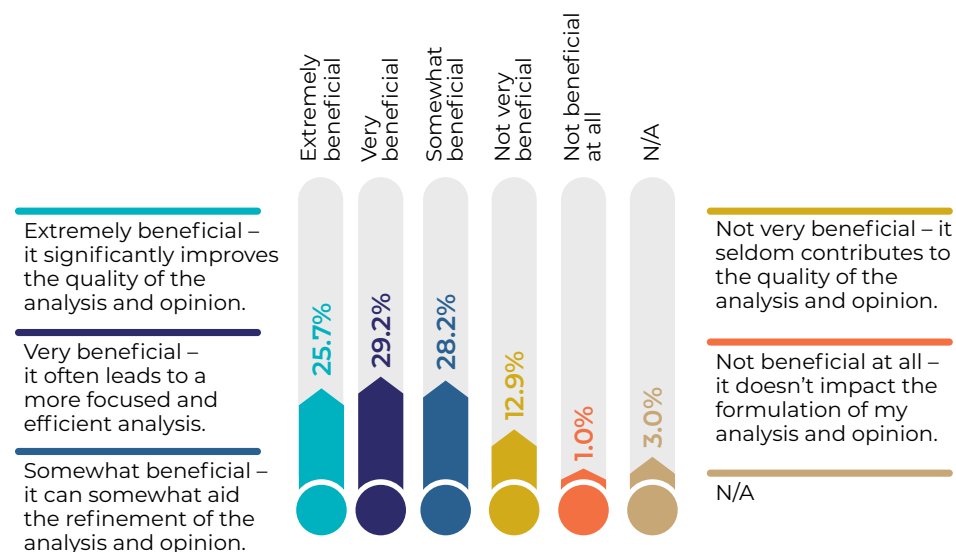
The survey indicates that structured interaction between experts is now a common procedural feature of modern dispute resolution. In particular, expert meetings and the preparation of joint statements frequently require experts to engage with one another either before or after the exchange of reports. These processes appear to have become well-established mechanisms for identifying areas of agreement and disagreement, narrowing issues for determination, and assisting tribunals in understanding the points that remain in dispute.

At the same time, the responses suggest that there is no single uniform model governing how or when those interactions occur. Practice varies both in the timing of expert engagement and in the degree to which instructing lawyers seek sight of, or comment upon, draft joint statements. While such variation is not necessarily problematic in itself, it highlights the continuing need to preserve a clear distinction between legitimate procedural coordination and any involvement that might risk compromising, or appearing to compromise, the expert's independent role.

Respondents noted that early engagement between experts can be beneficial in certain respects, particularly in establishing common datasets and ensuring a shared evidential foundation. However, efforts to agree methodology before any substantive analysis has been undertaken, and before first reports have been exchanged, may prove problematic if experts are brought together too early and it later emerges that the available factual material or underlying assumptions do not support the proposed approach.

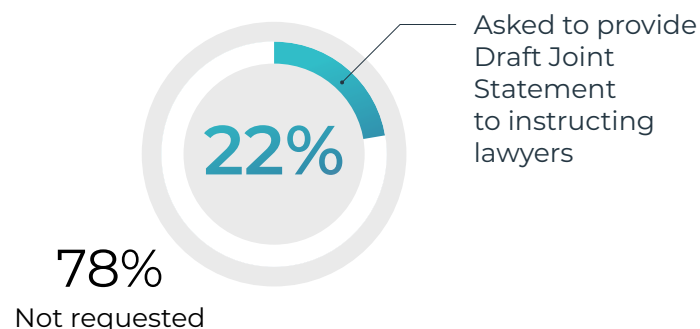
Respondents also observed that it may be difficult to identify meaningful areas of agreement and disagreement at a stage when the experts have not yet formulated, let alone exchanged, their own opinions. In that sense, premature engagement between experts may risk creating artificial division, or focusing discussion on methodology in the abstract, before the factual and analytical basis for doing so has been developed and properly tested.

How beneficial are expert meetings to narrow areas of disagreement after formulating your own opinion?



The findings indicate a clear difference between meetings held before an expert has formulated a view and those held afterwards. Pre-opinion meetings appear to attract more mixed assessments, whereas meetings conducted after experts have formed their own opinions are viewed more positively as a means of narrowing issues. This distinction is significant: it suggests that the value of expert meetings depends materially on whether each expert has first had a proper opportunity to undertake an independent analysis.

How often are you asked to provide the draft joint statement to your instructing lawyer before agreeing the content?

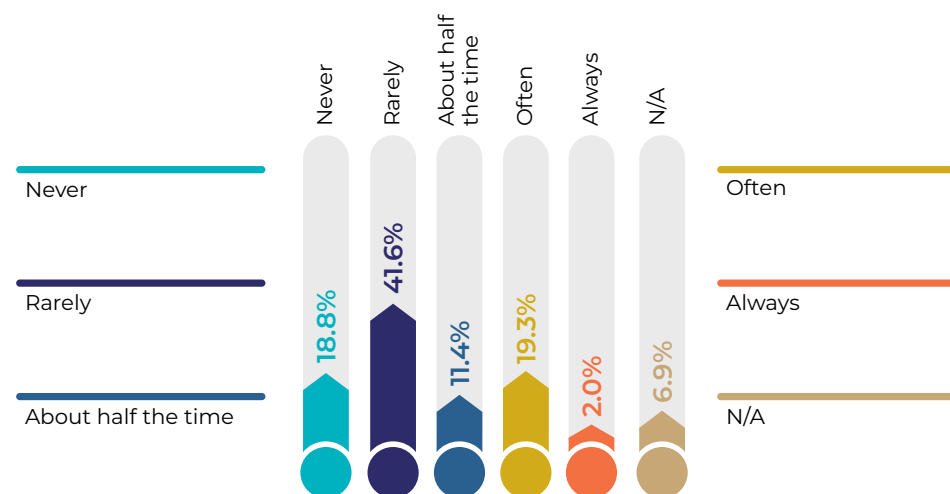


The results suggest that, in the majority of cases, experts are not asked to provide draft joint statements to their instructing lawyers before the document is finalised. This is a significant and generally reassuring finding, as it accords with the well-established principle that a joint statement should represent the experts' own independent views on the matters agreed and disagreed, rather than a document shaped through the involvement of the parties' legal representatives.

The position of the minority is nevertheless important. The data indicates that there remain circumstances in which lawyers are involved at an interim stage of drafting, whether by reviewing, commenting upon or seeking amendments to the proposed wording before the statement is concluded. While limited involvement may in some cases be directed towards ensuring factual accuracy or procedural clarity, such intervention can give rise to legitimate concern if it extends beyond those functions.

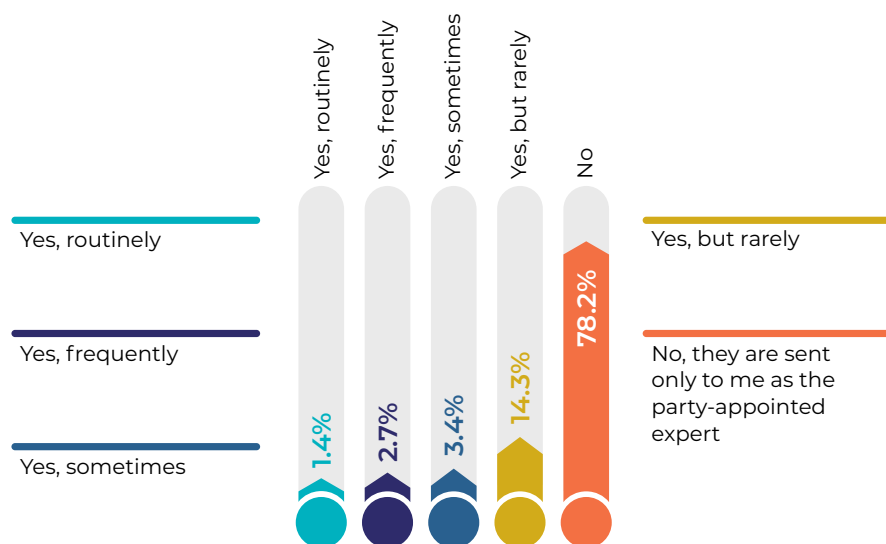
In particular, there is a risk that premature or substantive involvement of instructing lawyers may blur the distinction between a genuinely joint expert document and one influenced by the strategic interests of the parties. That, in turn, may raise questions not only about the preservation of expert independence, but also about the transparency and procedural integrity of the joint statement process itself.

How often do you receive 'suggestions' from instructing lawyers for amendments to, or inclusion of additional points in, the Expert's joint statement that go beyond clarification of points of fact or law?



The survey suggests that most respondents (Never and Rarely: 60.4%) infrequently receive proposed amendments to joint statements that go beyond clarification of matters of fact or law. That is, in itself, a reassuring indication that direct attempts to influence the substance of joint statements may not be commonplace.

Are those suggestions sent to both experts, the tribunal and the parties' representatives?



Nevertheless, the above figures suggest that, where such interventions do occur, 78.2% are not communicated transparently to all relevant participants, including the opposing expert, the parties and, where appropriate, the tribunal.

This is a significant finding from the perspective of procedural fairness and the integrity of the expert process. A joint statement is intended to record, in the experts' own words, the matters on which they agree and disagree, together with the reasons for any continuing differences. If one party's representatives are able to propose substantive changes outside a transparent and properly shared process, there is a risk that the document may cease to reflect the experts' independent position and instead become susceptible, or appear susceptible, to partisan influence.

Even where such suggestions are framed as minor refinements, the absence of openness in how they are conveyed may create unnecessary uncertainty about the provenance of the final text and the extent to which it truly represents a joint expert view. The findings therefore underline the importance of maintaining a transparent process in which any proposed amendments that go beyond mere clarification are disclosed openly and handled in a manner that preserves both the reality and appearance of expert independence.

The Academy of Experts: Expert Conferences and Discussions between Experts: Key recommendations for Expert Witnesses

The guidance published by The Academy of Experts emphasises that discussions between experts are a judicial case-management tool designed to assist the court, tribunal, or arbitral tribunal by narrowing issues, identifying areas of agreement and disagreement, and improving the efficiency of proceedings. Experts should approach these meetings as an extension of their overriding duty to the tribunal rather than as an adversarial exercise.

1. Understand the purpose of expert discussions

Key recommendation

Experts should view conferences as an opportunity to:

- Identify and discuss the issues requiring expert opinion;
- Reach agreement where possible;
- Narrow remaining issues where agreement cannot be achieved; and
- Explain clearly the reasons for any continuing disagreement.

Practical implication

The guidance makes clear that experts are not negotiators, mediators, or advocates for their instructing parties. The objective is not settlement of the dispute but assistance to the decision-maker through independent expert analysis.

2. Maintain independence and focus on professional opinion

Key recommendation

Experts:

- Must comply with court or tribunal directions;
- Must not be instructed to avoid reaching agreement on matters within their expertise; and
- Should advocate only their professional opinions, not a party's case.

Practical implication

The guidance reinforces a recurring theme in modern expert evidence: genuine engagement with opposing experts is required, and strategic obstruction of agreement is inconsistent with the expert's overriding duty.

3. Prepare thoroughly before the meeting

Key recommendation

Experts should:

- Understand the procedural rules governing the meeting;

- Review court orders and directions carefully;
- Contribute to the preparation of a comprehensive agenda; and
- Ensure all relevant issues for discussion are identified in advance.

Practical implication

Failure to understand procedural requirements may have financial and reputational consequences. A properly structured agenda significantly improves the effectiveness of the conference and minimises subsequent disputes regarding what should have been discussed.

4. Ensure the correct participants attend

Key recommendation

Expert meetings should ordinarily be attended only by the appointed experts.

Parties, legal representatives, and assistants should not attend unless:

- The court orders attendance; or
- All parties and experts agree.

Practical implication

The guidance recognises that meaningful expert-to-expert engagement is often best achieved through direct discussions between professionals of similar discipline without external influence.

5. Choose an appropriate meeting format

Key recommendation

Meetings may take place:

- In person;
- By video conference;
- By telephone; or
- Through other suitable communication methods.

Practical implication

While cost savings are important, proportionality requires consideration not only of expense but also of whether a particular format will promote productive discussion and effective issue resolution.

6. Respect the without prejudice nature of discussions

Key recommendation

Expert discussions are generally conducted on a “without prejudice” basis.

However, once signed, the joint statement becomes an open document available to the court or tribunal.

Practical implication

Experts should engage candidly during discussions but recognise that the final joint statement will be scrutinised carefully by the tribunal, particularly regarding unresolved disagreements.

7. Focus on narrowing issues

Key recommendation

During the conference experts should:

- Approach discussions professionally;
- Address each agenda item;
- Narrow issues wherever possible; and
- Seek agreement on factual calculations or figures even where broader opinions differ.

Practical implication

For quantum, delay, valuation and technical disputes, substantial procedural efficiency can often be achieved by agreeing underlying facts, measurements or calculations despite having differing ultimate conclusions.

8. Produce a clear and comprehensive joint statement

Key recommendation

The joint statement should identify:

- Issues agreed and the basis of agreement;
- Issues not agreed and the reasons for disagreement;
- Additional issues arising during discussions;
- Any further actions required; and
- Any significant changes in expert opinion together with reasons for the change.

Practical implication

The quality of the joint statement frequently influences subsequent case management and may shape the tribunal’s understanding of the technical issues before hearing evidence.

9. Record agreements during the meeting

Key recommendation

The guidance discourages leaving the entire drafting process until after the conference.

Where possible, experts should:

- Record agreed positions during the meeting; and
- Sign off individual items as consensus is reached.

Practical implication

This approach reduces later disputes regarding what was actually agreed and minimises the time and cost associated with post-meeting drafting exchanges.

10. Review the joint statement carefully before signing

Key recommendation

Experts should read the joint statement thoroughly before signing and ensure it accurately reflects:

- The discussions held;
- The agreements reached; and
- The status of the document.

Practical implication

The guidance repeatedly stresses that once signed it will generally be too late to correct substantive inaccuracies. This is one of the strongest warnings in the publication.

11. Confirm ongoing compliance with duties to the tribunal

Key recommendation

joint statements should be accompanied by an appropriate Statement of Truth and supporting declarations confirming:

- Understanding of the expert's overriding duty;
- Compliance with applicable rules; and
- Freedom from any instruction to avoid reaching agreement.

Practical implication

The declarations reinforce the independence of the expert process and provide transparency regarding the conduct of the conference.

12. Exercise particular care in arbitration and party-arranged meetings

Key recommendation

Where the meeting is organised under arbitral rules or by agreement of the parties, experts should establish beforehand:

- Which procedural rules apply;
- Whether the meeting is open or without prejudice;
- What documents may be disclosed;
- Who may attend; and
- Whether a joint statement will be produced.

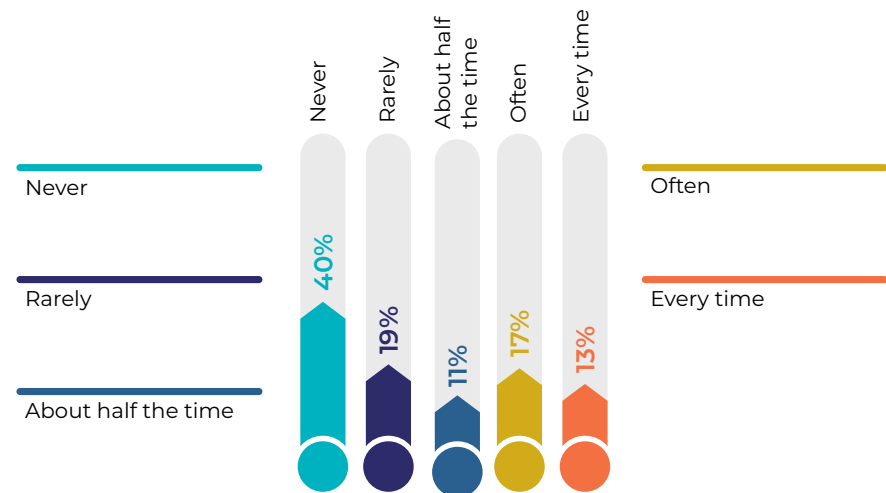
Key takeaways for expert witnesses

The most important messages emerging from the guidance are:

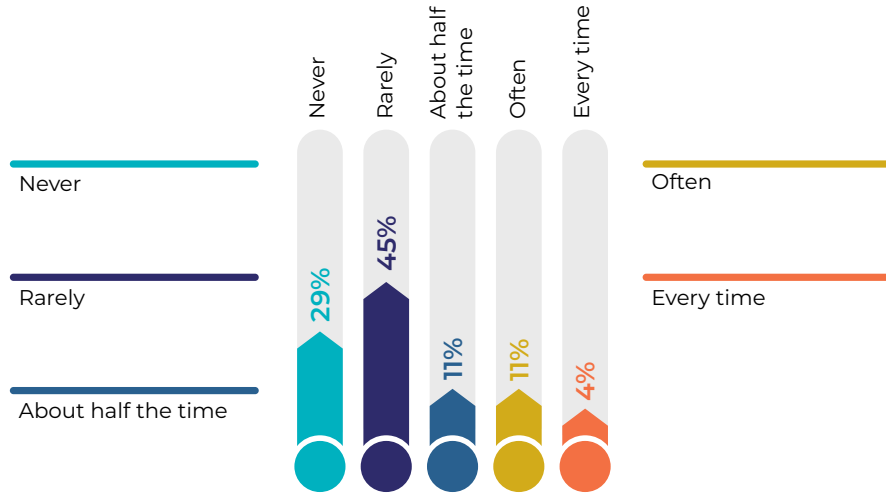
- The purpose of expert discussions is issue resolution and, to the extent possible, a narrowing of differences, not case advocacy.
- Experts must remain independent and free to reach agreement where appropriate.
- Preparation and a clear agenda are essential.
- The conference should remain an expert-led process.
- Joint statements should clearly explain both agreements and disagreements.
- Agreements should be recorded contemporaneously wherever possible.
- Experts must review every joint statement with great care before signing.
- The expert's overriding duty to the court or tribunal remains paramount throughout the process.

These principles are equally relevant to litigation, arbitration and adjudicative processes generally and provide a useful framework for expert witnesses seeking to conduct productive, independent and tribunal-focused discussions with opposing experts.

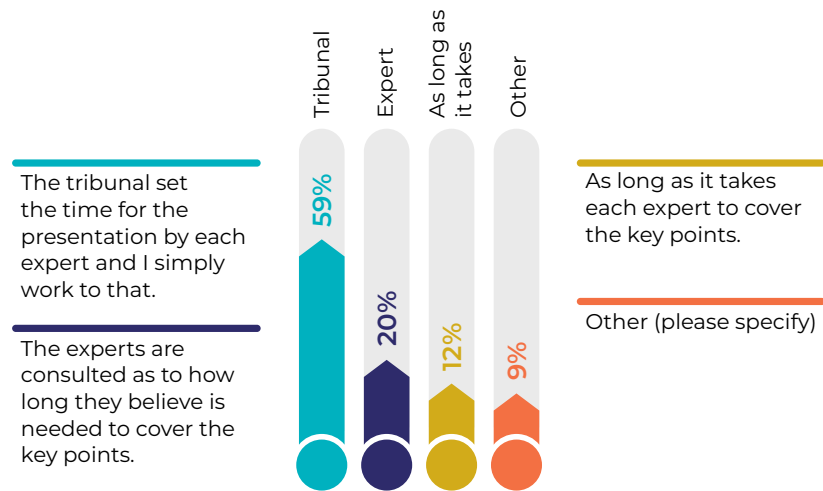
How often in the last 5 years have you been asked to make a presentation to the tribunal before being examined on your evidence?



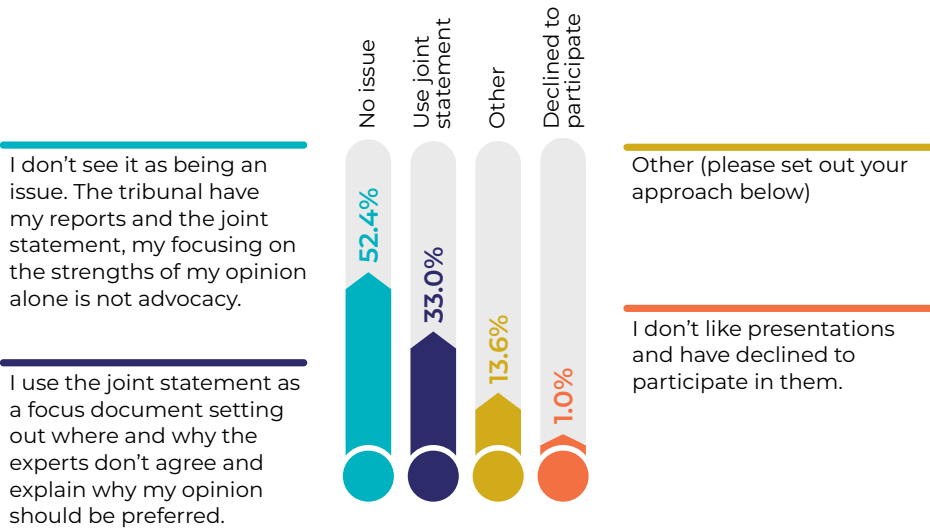
How often are you told in advance what areas the tribunal wish you to address in your presentation?



How is the length of the presentation determined?



How do you stop your presentation being perceived as advocacy?

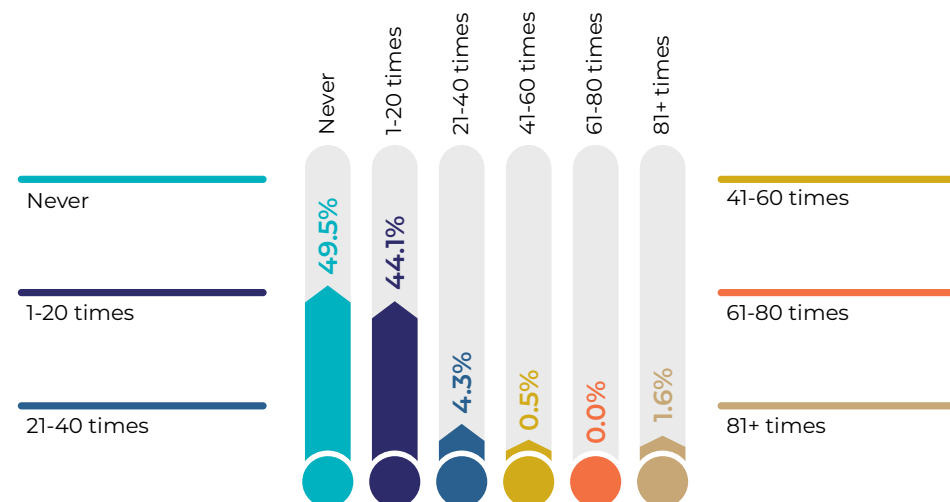


Respondents appear to adopt a range of approaches to avoid any perception that a tribunal presentation strays into advocacy. For some, the risk is regarded as limited provided the presentation remains firmly grounded in the expert's report and the joint statement, and is directed to explaining, rather than advancing, the opinion already expressed. Others place greater emphasis on confining the presentation to the reasons for disagreement with the opposing expert and to the analytical foundation underpinning their own conclusions.

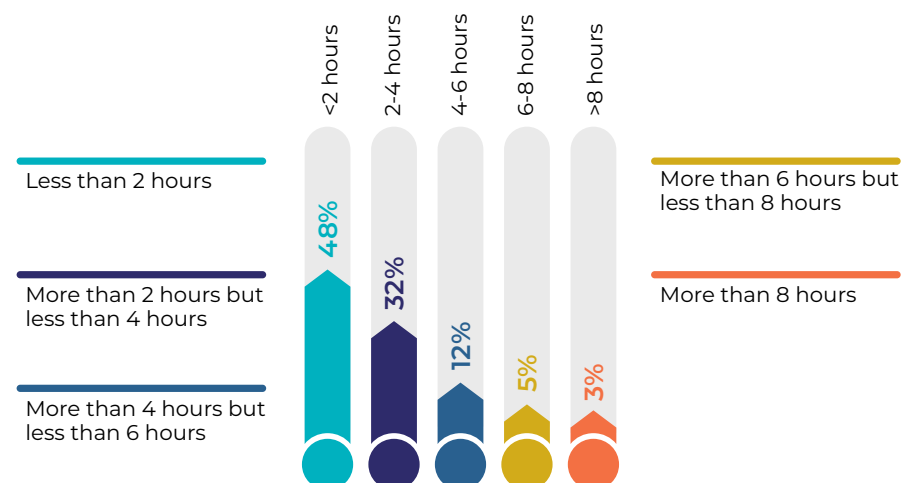
These responses suggest that experts are acutely aware of the need to preserve the distinction between independent explanation and partisan persuasion. A presentation to a tribunal may serve a legitimate and useful purpose in clarifying complex issues, focusing attention on the matters that remain in dispute, and assisting the tribunal in understanding the basis of the expert's reasoning. However, it also carries an inherent risk if it moves beyond exposition into a more assertive attempt to promote one outcome over another.

The variation in responses indicates that practitioners continue to navigate a delicate boundary between effective assistance to the tribunal and impermissible advocacy. The findings therefore underline the importance of ensuring that any presentation remains disciplined in scope, rooted in the expert's own analysis, and consistent with the overriding duty of independence owed to the court or tribunal.

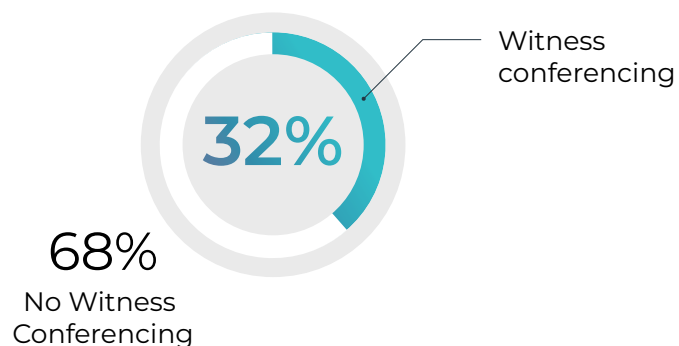
How many times have you been involved in Witness Conferencing / Concurrent evidence?



How long was the witness conferencing?



What proportion of cases have involved Witness Conferencing / Concurrent evidence?



The responses indicate that witness conferencing or concurrent evidence is not a feature of most respondents' cases, although it is by no means rare. This suggests that concurrent evidence remains an established but still selective procedural tool, more common in some forums or case types than others. Its continued presence in a meaningful minority of appointments justifies close attention to how it is conducted and perceived by experts.

The ranking of conferencing styles suggests a clear preference for formats in which the tribunal assumes a leading role, whether acting alone or in conjunction with counsel. By contrast, witness-led formats appear to be regarded less favourably. This preference is likely to reflect greater confidence in more structured forms of concurrent evidence, in which tribunal involvement is seen as more effective in directing the discussion, managing time efficiently and focusing attention on the issues most relevant to the decision-maker.

Rank the styles of witness conferencing / concurrent evidence from most to least effective



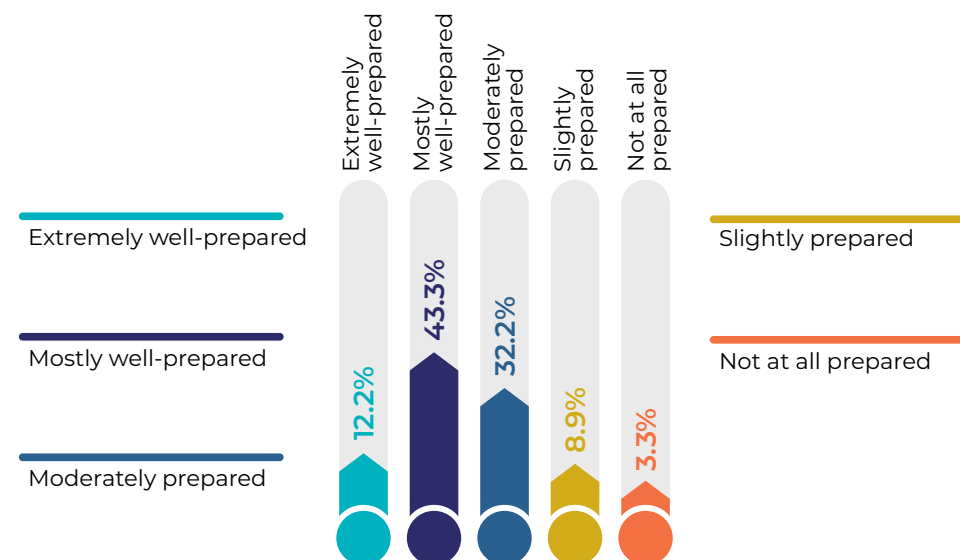
The responses suggest that tribunal-led or tribunal-supported conferencing is valued because it provides a clearer procedural framework within which expert evidence can be tested and clarified. In such formats, the tribunal is better placed to control the sequence and scope of the discussion, to ensure that the debate remains centred on the matters genuinely in dispute, and to reduce the risk of digression or repetition. This may enhance both the efficiency of the process and its usefulness as an aid to the tribunal's understanding of the expert issues.

By contrast, witness-led conferencing appears to give rise to greater reservation. One reason may be the risk that, in the absence of sufficient structure or external control, the expert is perceived as moving beyond explanation into the territory of advocacy. That risk is particularly significant in circumstances where the expert is required to lead the discussion, frame the issues or press a particular interpretation without the moderating influence of tribunal direction.

More broadly, the findings suggest that the perceived effectiveness of witness conferencing is closely linked to the extent to which the format preserves both discipline and the appearance of independence. Where the process is well structured and tribunal-led, it is more likely to be seen as a legitimate means of clarifying evidence. Where it is more loosely managed or driven principally by the expert witnesses themselves, there may be a greater risk that the exercise ceases to assist the tribunal and instead creates the impression of adversarial debate between experts.

Respondents have a mixed assessment of the extent to which tribunals appear to be familiar with, and prepared for, the expert evidence before it is heard. The responses indicate that whilst 55.5% are thought to be mostly well-prepared through to extremely well-prepared by the time of the hearing, the perception of tribunal preparedness is not uniform, which may have implications for how effectively expert evidence is tested, understood and ultimately relied upon.

How familiar / prepared are the tribunal with the expert reports before hearing expert evidence?



The Academy of Experts: Model Form of Expert's Report: Key recommendations for Expert Witnesses

The Academy of Experts' Model Form of Expert's Report is more than a template. It provides a framework for preparing expert evidence that is clear, independent, transparent, and tribunal-focused. The guidance reflects judicial expectations of what constitutes a reliable and effective expert report and offers practical recommendations that remain applicable across civil, arbitration and tribunal proceedings (subject to local procedural requirements).

1. Write reports for the tribunal, not for the instructing party

Key recommendation

The report should be a stand-alone, concise and user-friendly document that assists the court or tribunal in understanding the technical issues. Opinions must be expressed by the expert personally and not merely adopted uncritically from others.

Practical implication

The Judicial Committee emphasises that the report should be written for the decision-maker. Excessive length, poor structure, and the mixing of fact and opinion undermine its usefulness.

2. Keep fact and opinion separate

Key recommendation

A recurring theme throughout the guidance is that factual evidence and expert opinion should be carefully distinguished.

The expert should separately identify:

- Facts assumed;
- Facts personally observed;
- Facts observed by assistants or others;
- Opinions relied upon from others; and
- Opinions of others that are accepted but outside the expert's authority to verify.

Practical implication

One of the most common criticisms of expert reports is the failure to distinguish evidence from analysis. The guidance explicitly seeks to avoid this by segregating factual sections from the opinion section.

3. Adopt a structured seven-part report

Key recommendation

Reports should follow a logical progression through seven principal sections:

- Introduction
- Background to the Dispute and Issues
- Technical Investigation or Enquiry
- Facts on which Opinion is Based
- Expert Opinion
- Summary of Conclusions
- Expert Declaration.

Practical implication

The model structure is intended to make reports more accessible to judges and tribunals by ensuring that background information, evidence and analysis are presented in a logical sequence.

4. Present the issues clearly and early

Key recommendation

Experts should identify and list the issues they have been asked to address, together with the assumptions on which their opinions depend. The issues should be clearly numbered and defined.

Practical implication

A clear statement of issues assists the tribunal in understanding the scope of the expert's engagement and enables each conclusion to be linked directly to a defined question.

5. State assumptions explicitly

Key recommendation

All assumptions adopted in the report should be stated expressly, together with the justification for adopting them.

Where an assumption appears unreasonable or unlikely, the expert should say so clearly.

Practical implication

Transparency regarding assumptions enables the tribunal to test the robustness of the opinion and understand how the conclusions may change if underlying assumptions prove incorrect.

6. Describe the investigation methodology objectively

Key recommendation

The technical investigation should be described factually and systematically, including:

- Dates and locations of inspections;
- Methodology employed;
- Participants involved;
- Observations made; and
- Documents or investigations undertaken.

Practical implication

The guidance stresses that the investigation section should remain factual only. Experts should resist the temptation to begin expressing opinions until the dedicated opinion section.

7. Explain methodology and avoid unnecessary jargon

Key recommendation

Experts should provide clear explanations of technical concepts and avoid unnecessary jargon. Complex terminology should be explained, and a glossary may be provided where beneficial.

Practical implication

The intended audience is usually not comprised of specialists in the discipline concerned. Clear communication enhances both credibility and usefulness.

8. Ensure complete transparency of sources

Key recommendation

The report should identify all principal materials considered, including:

- Documents reviewed;
- Publications relied upon;
- Technical references;
- Photographs;
- Calculations;
- Schedules; and
- Reports prepared by assistants.

Practical implication

A tribunal should be able to trace the evidential foundation of every significant opinion expressed.

9. Provide fully reasoned opinions

Key recommendation

For each issue:

- State the opinion clearly;
- Explain the reasoning in full;
- Provide supporting references;
- Acknowledge contrary material; and
- Identify any limitations or qualifications.

Practical implication

The strength of an expert report lies not in the conclusion itself but in the transparent reasoning process leading to that conclusion.

10. Address contrary evidence fairly

Key recommendation

Experts should not omit material facts that detract from their conclusions.

Any matters that may weaken the opinion, alternative views held by competent professionals, or limitations in the available evidence should be openly addressed.

Practical implication

Balanced consideration of adverse evidence is a hallmark of expert independence and often enhances rather than weakens credibility.

11. Acknowledge limits of expertise

Key recommendation

Experts should clearly identify:

- Matters outside their expertise;
- Issues where information is insufficient;
- Provisional opinions; and
- Limitations affecting reliability.

Practical implication

The guidance strongly discourages experts from expressing opinions beyond their specialist competence.

12. Cross-reference conclusions back to supporting analysis

Key recommendation

The conclusions should appear in a dedicated section immediately before the declaration and

should be cross-referenced to the supporting analysis within the report.

Practical implication

A reader should be able to move easily from the conclusion to the underlying reasoning and evidential support.

13. Preserve independence at all times

Key recommendation

The guidance reiterates the well-known principles from *The Ikarian Reefer*, including that expert evidence must be:

- Independent;
- Objective;
- Unbiased; and
- Uninfluenced by the requirements of litigation.

Practical implication

The expert's primary duty is owed to the court or tribunal and not to the instructing party.

14. Correct errors and changes of opinion promptly

Key recommendation

Where an expert changes a view on a material issue, or discovers an error, that change should be communicated promptly.

Practical implication

The duty to provide reliable expert evidence continues after report service and throughout the proceedings.

15. Take the expert declaration seriously

Key recommendation

The declaration requires experts to confirm, amongst other matters, that they:

- Understand their overriding duty to the court;
- Have disclosed sources;
- Have exercised reasonable care and skill;
- Have identified qualifications and limitations;
- Have maintained independence; and
- Will correct their report if required.

16. Remember that expert work is subject to judicial scrutiny

Key recommendation

Experts are reminded that inadequate performance may result in public judicial criticism.

Practical implication

The declaration highlights the seriousness of the expert's role and reinforces the professional consequences of failing to meet accepted standards.

Key takeaways for Expert Witnesses

The principal messages emerging from the Model Form are:

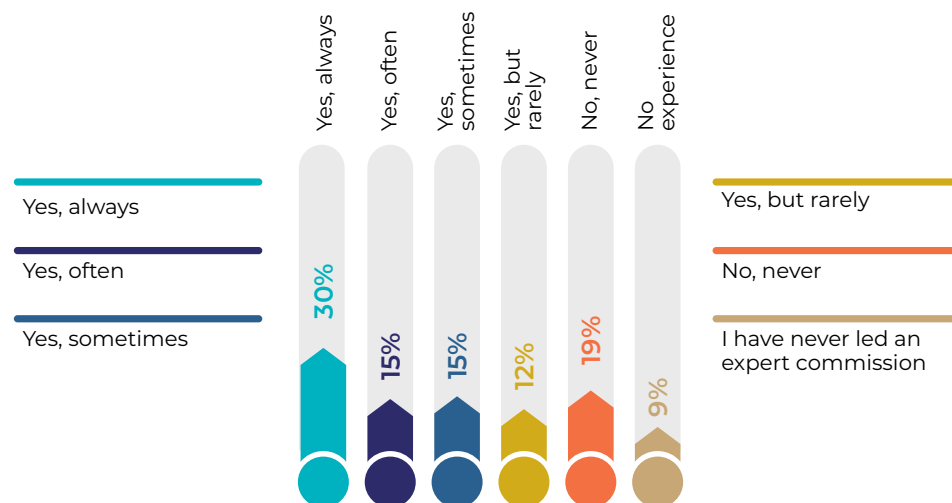
- Structure matters. A report should be concise, logical and tribunal-focused.
- Facts, assumptions and opinions should always be clearly separated.
- Every opinion should be supported by transparent reasoning and identified sources.
- Material adverse facts and alternative views should be addressed fairly.
- Experts should not stray beyond their expertise or certainty.
- Independence and objectivity are fundamental obligations, not aspirational ideals.
- Any change of opinion must be disclosed promptly.

The declaration and statement of truth are substantive professional commitments rather than mere formalities.

The report should enable a judge, arbitrator or tribunal to understand not only the expert's conclusions but how those conclusions were reached.

Taken together, the guidance provides a useful checklist for expert witnesses seeking to produce persuasive, defensible and procedurally compliant reports while remaining faithful to their overriding duty to the court or tribunal.

Do you use expert assistant(s) on your appointments?

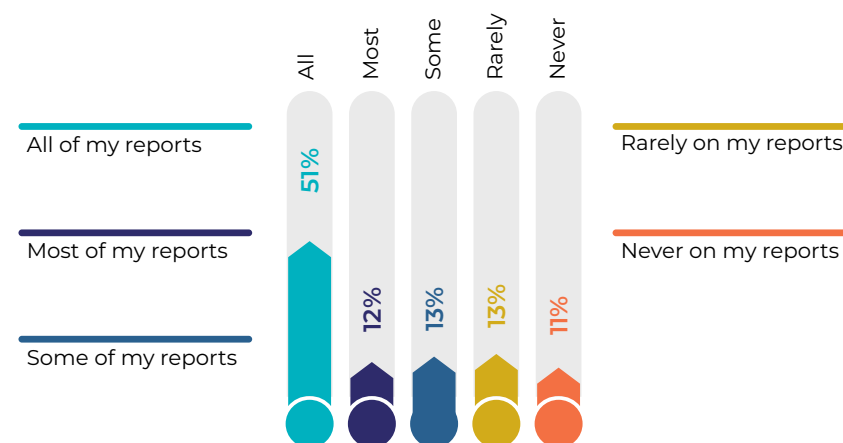


The above responses relate to the widespread (72%),⁵ though not universal, use of expert assistants in support of expert appointments.

The data shows that while the use of expert assistants is common in practice, there is no consistent approach to disclosure of their role. In particular, the data reveals a large variation in whether assistants are identified by name, whether their curricula vitae are included, and whether the nature and extent of their contribution to the report is described.

These results are significant because they point to a lack of settled convention in an area that bears directly on transparency and confidence in the expert process. The use of assistants is plainly an established feature of many expert appointments and, in itself, need not give rise to concern. However, inconsistent disclosure as to who has assisted, and what work has been undertaken, may create uncertainty as to the extent of the support provided and how openly that support is acknowledged. The findings therefore suggest that, although the deployment of expert assistants is commonplace, practices in relation to their role remain far from uniform across appointments.

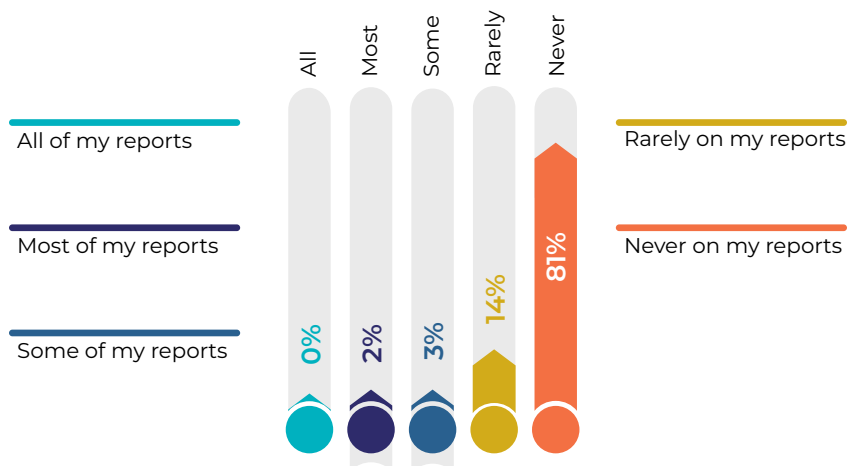
On what proportion of appointments do you name your assistant(s) in your report?



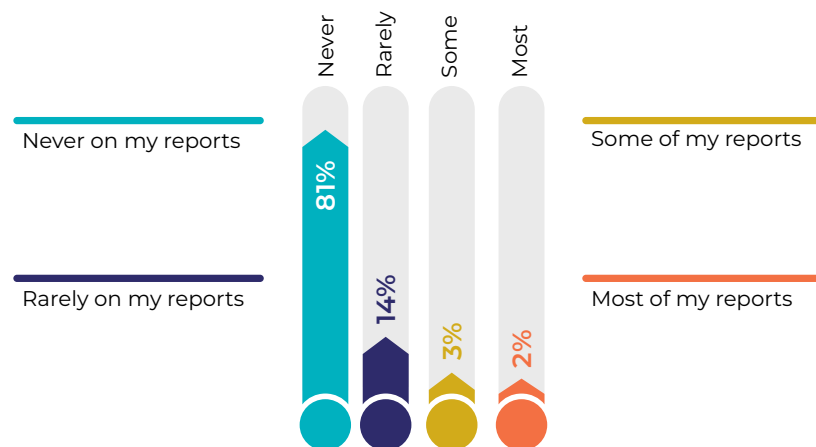
A further issue arising from the use of expert assistants concerns professional visibility and succession within the expert witness community. Many of tomorrow's lead experts develop their experience by assisting established experts on complex appointments, often over a period of many years. However, where assistants remain entirely invisible within expert reports, tribunals, clients and instructing lawyers may have little opportunity to recognise the breadth of their experience or the contribution they have made to the expert process. This creates a practical difficulty: if potential future experts are never identified as having participated in major appointments, how are they expected to develop the professional profile necessary to secure appointments in their own right? Greater transparency regarding the identity and role of expert assistants may therefore serve not only the interests of openness but also the longer-term development of the individual. Naming assistants and briefly describing their contribution allows tribunals and users of expert evidence to understand how the work was undertaken, whilst also providing appropriate recognition to those acquiring the skills and experience necessary to become the next generation of expert witnesses.

⁵ Do you use expert assistant(s) on your appointments?

On what proportion of appointments do you include the CV of your assistant(s) in the report?

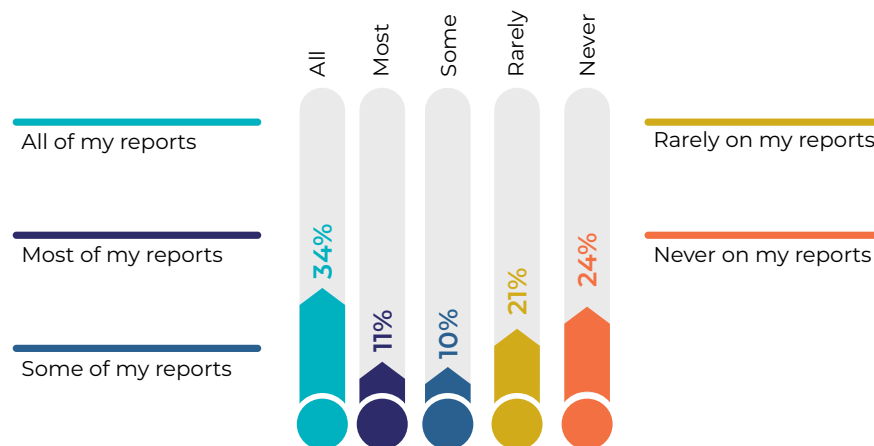


On what proportion of appointments have you been asked not to name or to remove the details of those that have assisted you from your report?



The position is particularly noteworthy when contrasted with other areas of modern expert practice. The Civil Procedure Rules and associated guidance require disclosure of individuals who have undertaken tests, examinations or investigations relied upon by the expert, yet there is generally no equivalent requirement to identify expert assistants who may have performed substantial analytical or evidential support functions. Equally, recent guidance issued by professional bodies and courts increasingly requires transparency regarding the use of artificial intelligence, including disclosure of the extent and nature of AI-assisted work. It is therefore somewhat paradoxical that procedural and professional frameworks are evolving to require disclosure of technological assistance, whilst often remaining silent as to the involvement of experienced human assistants whose contribution may be far more significant to the preparation of the expert evidence. Consideration might therefore be given to whether greater disclosure of expert assistants would enhance transparency, assist professional development, and provide tribunals with a more complete understanding of how expert evidence has been prepared. Throughout both of those approaches to assistance however, the opinion expressed must always remain that of the testifying expert.

On what proportion of appointments do you detail what your assistant(s) have done in connection with your report?



The Academy of Experts: Model Form of Expert Witness CV

The Academy of Experts' Model Form of Expert CV provides judicially endorsed guidance on the preparation of an expert witness curriculum vitae. The guidance recognises that an expert's CV serves a different purpose from a professional or business CV. Its primary function is to assist the court, tribunal or arbitral tribunal in assessing whether the expert possesses the qualifications, experience and specialist expertise necessary to provide evidence on the issues in dispute.

Unlike a marketing document, the expert witness CV should be concise, focused and directly relevant to the subject matter of the proceedings. The guidance repeatedly emphasises relevance, brevity and proportionality.

1. Recognise the purpose of an expert witness CV

Key recommendation

The CV should assist the tribunal in assessing the expert's suitability to provide opinion evidence on the matters in dispute. Information included should be relevant to that purpose and not merely demonstrate professional accomplishments generally.

Practical implication

The guidance was developed in response to judicial concern that many expert CVs had become excessively long and contained information that provided little assistance to the court. The focus should therefore be on qualifications and experience relevant to the dispute rather than on personal achievements or career history in general.

2. Tailor the CV to the issues in dispute

Key recommendation

Experts should ensure that all material included in the CV is related to the subject matter of the dispute and demonstrates expertise relevant to the issues requiring determination.

Practical implication

The CV is not intended to be a complete professional biography. Rather, it should explain why the expert is qualified to express opinions on the specific matters before the tribunal.

3. Focus on relevance rather than volume

Key recommendation

Experts should avoid including extensive lists of matters that do not assist the court, including:

- Every publication;
- Every conference presentation;
- School achievements;
- Personal interests;
- Hobbies;
- Photographs; and
- Unrelated career information.

Practical implication

Tribunals are generally interested in expertise, not personal biography. Excessive background information can distract from the expert's actual qualifications.

4. Keep the CV brief

Key recommendation

The Judicial Committee identifies brevity as one of the principal hallmarks of a good expert witness CV.

As a guide, the CV should generally not exceed three pages.

Practical implication

A concise CV is more likely to be read and understood by the tribunal. Length alone does not enhance credibility.

5. Use reverse chronological order

Key recommendation

Professional experience, appointments and achievements should generally be presented with the most recent matters first.

Practical implication

This approach allows the tribunal to assess the expert's current experience and expertise immediately.

6. Use clear structure and presentation

Key recommendation

The guidance recommends:

- Clear headings;
- Short statements;
- Consistent formatting;
- A4 paper;
- Black text;
- Formatting consistent with the main expert report; and
- Avoidance of appendices.

Practical implication

The CV will usually accompany the expert report as an appendix. Consistent presentation assists readability and professional presentation.

7. Summarise rather than catalogue

Key recommendation

Experts should provide summaries instead of lengthy itemised lists.

For example:

- Summarise publications by topic and quantity;
- Summarise key subject areas;
- Identify principal journals; and
- Avoid full bibliographic listings unless specifically relevant.

Practical implication

The tribunal is typically concerned with the existence and relevance of expertise rather than comprehensive academic records.

8. Include only those matters relevant to the dispute

Key recommendation

The guidance identifies nine principal categories that should be included where relevant:

- Name and professional title.
- Qualifications, training, accreditation and certifications.
- Present and previous positions.
- Principal areas of specialisation.
- Awards and positions of professional responsibility.

- Memberships of professional organisations.
- Books, editorial roles and publications.
- Research publications.
- Expert witness training and accreditation.

Practical implication

This provides a useful checklist when drafting or reviewing an expert witness CV for litigation, arbitration or adjudication.

9. Demonstrate expertise relevant to the particular case

Key recommendation

Experts should identify the aspects of their experience that specifically qualify them to opine on the matters in dispute.

Practical implication

General experience may not be sufficient. The CV should explain the connection between the expert's experience and the issues under consideration.

For construction experts, this may involve identifying experience in delay analysis, quantum assessment, productivity analysis, valuation disputes, cost auditing or other relevant disciplines.

10. Include expert witness training and accreditation

Key recommendation

The guidance specifically recommends inclusion of:

- Expert witness training;
- Expert witness accreditation;
- Continuing professional development;
- Provider organisations; and
- Relevant dates.

Practical implication

The tribunal is entitled to understand not only the expert's technical qualifications but also their training and competence as an expert witness.

11. Reflect jurisdiction-specific requirements

Key recommendation

The guidance stresses that the model CV is not a mandatory standard and may require modification to comply with particular court or tribunal requirements.

Practical implication

Different jurisdictions may require additional information. Experts should always verify procedural requirements applicable to the relevant court, tribunal or arbitral institution.

12. Present credentials without advocacy

Key recommendation

The overall structure encourages experts to present qualifications and experience objectively without promoting themselves or overstating expertise.

Practical implication

The example provided by the Academy demonstrates a neutral, factual style that allows credentials to speak for themselves rather than relying upon marketing language.

Key takeaways for expert witnesses

The principal messages emerging from the Model Form of Expert Witness CV are:

- An expert witness CV is a court document, not a marketing document.
- Every section should be relevant to the issues in dispute.
- Brevity is a virtue. A CV should generally not exceed three pages.
- Only professional experience and qualifications should be included.
- Qualifications and experience should be presented in a clear and structured format.
- Publications, presentations and research should be summarised rather than listed exhaustively.
- The CV should explain why the expert is qualified to address the specific issues before the tribunal.
- Expert witness training and accreditation should be included alongside technical qualifications.
- The emphasis should always be on assisting the tribunal's assessment of expertise rather than promoting the expert personally.

Taken together, the guidance promotes a disciplined approach to expert witness CVs: concise, relevant, evidence-based and focused on demonstrating competence in the issues before the court, tribunal or arbitral tribunal.

The use of Artificial Intelligence (AI)

The use of AI is now prevalent in business with several high-profile stories around its use, and misuse, in the legal and other fields. The expert witness is not immune from the issues arising in connection with the deployment of AI. The Academy of Experts has produced timely guidance for Expert Witnesses on the use of AI which, in conjunction with the expert's own professional guidance forms an important point of reference.

The Academy of Experts: Guidance for Expert Witnesses on the use of Artificial Intelligence (AI): Key recommendations for Expert Witnesses

The Academy of Experts' Guidance for Expert Witnesses on the Use of Artificial Intelligence is the first comprehensive guidance issued specifically on the use of Artificial Intelligence by expert witnesses. Unlike much of the existing commentary on AI, the guidance does not advocate either unrestricted adoption or blanket prohibition. Rather, it recognises that AI may provide substantial benefits to expert witnesses, while emphasising that the expert remains personally responsible for all work product and must always ensure continued compliance with their duties to the court or tribunal.

The central theme running through the guidance is simple:

AI may assist the expert, but AI can never replace the expert

1. The expert remains personally responsible for their evidence

Key recommendation

Experts remain fully responsible for their work product regardless of whether AI has been used in its preparation.

The guidance expressly states that experts cannot divest themselves of responsibility or evade their duties through reliance on AI. AI is not a substitute for expert judgment or opinion.

Practical implication

This is the most important principle in the guidance. The report, analysis and opinions must remain the expert's own work and professional judgment.

2. Understand when you are using AI

Key recommendation

Experts should actively identify whether technology being used incorporates AI and should not assume that AI is limited to obvious tools such as ChatGPT.

Practical implication

Many current technologies incorporate AI, including:

- Search engines;
- Document review platforms;
- eDiscovery tools;
- Analytics systems;
- Summarisation tools; and
- Transcription applications.

Experts should understand what technologies are being used and how they operate.

3. Use AI as a tool, not as a decision-maker

Key recommendation

The guidance identifies a number of potentially legitimate uses of AI including:

- Self-education;
- Document summarisation;
- Data analysis;
- Quality control;
- Translation;
- Communication support; and
- Generation of visual aids.

Practical implication

The Academy accepts that AI can increase efficiency and improve productivity when used appropriately and subject to proper supervision.

4. Recognise the risks of AI

Key recommendation

Experts must understand and evaluate the risks associated with AI before using it. The guidance identifies six principal categories of risk:

a. Hallucinations and inaccuracies

AI may generate false facts, fabricated authorities, invented citations and incorrect analysis.

b. Confidentiality and privilege

Uploading client material to public AI systems may compromise confidentiality and privilege.

c. Bias and toxicity

AI outputs may reflect biases embedded within training data.

d. Privacy

Personal data may trigger data protection obligations.

e. Intellectual property

Questions may arise regarding ownership and permissible use of AI-generated content.

f. Regulatory compliance

Experts must remain compliant with applicable laws, regulations and procedural rules governing AI use.

5. Expert duties override any benefit derived from AI

Key recommendation

Experts must consider the impact of any AI use on their duties to the court or tribunal.

The guidance reiterates familiar expert witness obligations:

- Independence;
- Objectivity;
- Consideration of all material facts;
- Acknowledgement of limitations; and
- Remaining within areas of expertise.

Practical implication

Any AI use that impairs these duties is inappropriate irrespective of efficiency gains.

6. Assess whether AI use is permissible before using it

Key recommendation

Before using AI, experts should assess:

- Legal restrictions;
- Professional obligations;
- Contractual constraints; and
- Tribunal requirements.

Practical implication

AI should not be used simply because it is available. The expert must first determine whether it is lawful and appropriate.

7. Classify intended AI use according to risk

Key recommendation

The guidance introduces a practical risk-based framework categorising AI use as:

- Prohibited;
- High-risk; or
- Low-risk.

Practical implication

Experts should assess the level of scrutiny and safeguards required according to the role AI will play in their work.

8. High-risk uses require particular caution

Key recommendation

The guidance identifies several activities as high-risk, including:

- Generating substantive report content;
- Conducting material analysis;
- Scenario modelling;
- Counterfactual modelling; and
- Assisting formation of opinions affecting individuals.

Practical implication

These activities demand particularly rigorous oversight and validation.

9. Select the appropriate AI tool

Key recommendation

Experts should carefully evaluate available AI tools and select the most appropriate system for the intended task.

Practical implication

The guidance cautions against defaulting to general-purpose tools where a specialist application may be more suitable.

For example, a medical AI trained on medical literature may be more appropriate for a medical expert than a general-purpose language model.

10. Liaise with instructing lawyers

Key recommendation

Experts should consider discussing AI use with instructing solicitors, particularly where proposed uses are high-risk.

Practical implication

The guidance recommends disclosure and discussion of significant AI use before implementation.

11. Maintain comprehensive records of AI use

Key recommendation

Experts should document key decisions concerning AI use and maintain records of:

- Why AI was used;
- What tool was selected;

- Intended purpose;
- Safeguards implemented;
- Outputs used; and
- Issues encountered.

Practical implication

Experts should assume that their use of AI may be scrutinised during disclosure, cross-examination or challenge.

12. Human oversight is mandatory

Key recommendation

Experts should implement adequate human oversight of all AI-generated outputs.

Practical implication

The degree of oversight should increase as risk increases.

The guidance specifically emphasises that generative and agentic AI require particularly close supervision.

13. Verify all AI outputs

Key recommendation

Experts must independently verify AI-generated outputs and remain alert to hallucinations and inaccuracies.

Practical implication

Verification should include:

- Checking facts;
- Validating calculations;
- Reviewing sources; and
- Independently confirming references.

14. Protect confidential information**Key recommendation**

Experts should exercise particular caution before entering confidential client information into AI systems.

Practical implication

The guidance treats confidentiality and privilege risks as among the most serious consequences of inappropriate AI use.

15. Monitor team use of AI**Key recommendation**

Named experts should understand how team members are using AI and ensure compliance across the team.

Practical implication

The expert may ultimately be required to explain AI use undertaken by assistants contributing to the report.

16. Consider whether AI use should be disclosed**Key recommendation**

Experts should consider whether their AI use should be disclosed to:

- Instructing solicitors;
- The opposing party; and/or
- The court or tribunal.

Practical implication

Even where disclosure is not expressly required, transparency may be prudent.

17. Some AI uses are prohibited**Key recommendation**

The guidance identifies certain activities as fundamentally incompatible with expert witness duties.

Examples include:

- AI writing the entire expert report;
- AI drafting substantive expert opinion;
- Complete outsourcing of expert reasoning; and
- Uploading confidential client material into unrestricted public AI systems.

The Academy explicitly states that an expert's opinion must remain the expert's own and that complete outsourcing cannot be justified.

Key takeaways for expert witnesses

The principal messages emerging from the AI guidance are:

- AI may assist an expert but can never replace expert judgment.
- The expert remains personally responsible for all opinions and conclusions.
- AI use should be subject to a structured risk assessment before deployment.
- Human oversight and verification are essential safeguards.
- Experts must remain vigilant against hallucinations, bias and confidentiality breaches.
- High-risk uses require lawyer engagement, stronger controls and fuller documentation.
- The use of AI should never undermine independence, objectivity or professional duties.
- Experts should document and be prepared to explain every significant AI-related decision.
- Certain uses, particularly outsourcing substantive opinion-writing to AI, are fundamentally incompatible with the role of an independent expert witness.

Taken together, the guidance represents a significant development in expert witness practice. It adopts a balanced position: recognising the substantial benefits of AI while making clear that courts and tribunals will continue to expect expert evidence to be the product of independent human expertise, careful judgment, and professional accountability.

Conclusions

Expert evidence remains essential to the fair and effective resolution of complex disputes, but its value depends upon the procedural environment in which it is commissioned, prepared and tested. The survey responses identify a number of recurring practical issues: experts are not always appointed early enough, instructed with sufficient clarity, provided with the necessary procedural framework, or afforded timely access to the documents required to undertake a robust analysis. These issues are not merely administrative. They can affect the independence, reliability and usefulness of expert evidence.

The findings also demonstrate that many of the improvements required are practical and achievable. Earlier engagement of experts, clearer written instructions, common questions, proportionate disclosure, realistic timetables, transparent management of joint statements, properly structured tribunal presentations and careful oversight of witness conferencing would each assist in preserving the independence of the expert while improving the assistance provided to the court or tribunal.

A further theme is transparency. The increasing use of expert assistants and artificial intelligence reinforces the need for clear disclosure of the sources, methods and support that contribute to expert evidence. Neither assistants nor AI diminish the responsibility of the appointed expert. The opinion expressed must remain that of the expert, reached independently, verified personally and presented with candour.

The paper does not suggest that responsibility for expert evidence rests with experts alone, nor does it seek to excuse poor expert practice. Rather, it shows that experts, lawyers, parties and tribunals each have a role in ensuring that expert evidence is independent, properly founded and genuinely useful. Criticism of experts, where justified, remains necessary. However, meaningful improvement also requires attention to the wider process by which expert evidence is selected, instructed, managed and heard.

Professor Doug Jones AO's companion note that follows develops these themes from the perspective of the tribunal. It provides practical proposals for case management,

disclosure, expert meetings, joint reporting and the presentation of expert evidence. Those observations complement the survey findings and underline the central conclusion of this research: expert evidence is most valuable when the process is structured to support independence, transparency, proportionality and focused assistance to the decision-maker.



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Companion note by Professor Doug Jones AO



In a much-welcome initiative over the past two years, the Academy of Experts and global consulting firm HKA, have conducted research exploring the perspective of experts on some salient procedural issues in dispute resolution. The survey data has significant comparative value, being drawn from a geographically diverse sample of experienced practitioners, as well as expert assistants.

The question of how to best manage the use of experts in dispute resolution is one which cuts to the heart of the administration of justice. Particularly in the realm of complex cross-border construction, infrastructure and energy disputes it would be difficult to overstate the important role played by expert evidence in narrowing the

issues in dispute, assisting decision makers to navigate areas of great technical complexity, and ensuring the accuracy and integrity of calculations of damages. By extension, when decision-makers, counsel and experts themselves fail to make productive use of expert opinions, the consequences for the administration of justice can be quite negative. Much has been written on the topics of spiralling costs, protracted procedural timetables, and overly lengthy awards and judgments. Loss of efficiency in the expert process threatens the very *raison d'être* of international arbitration, namely, to provide the parties with enforceable awards for their disputes in a timely, expert, and economical manner. It is thus encouraging to see the development in this report of a systematic approach to exploring the experiences of experts in dispute resolution.⁶

The researchers have captured the perspective of experts on a broad set of questions ranging from how appointments are made, to the preparation of evidence and its presentation to the tribunal, as well as the use and disclosure of expert

assistants. From this research, three areas of concern can be distilled. First, what procedural steps can be adopted by courts and tribunals to maximise productive cooperation between the experts and reduce the risk that they are merely used by the parties as hired guns. Secondly, how experts can productively contribute to document disclosure requests, ensuring that they have the documents they need to effectively and fairly analyse technical questions without adding excessive cost and delay to proceedings. Thirdly, what reforms are needed in the way parties select and instruct experts.

There are some practical steps which, in my experience, have been essential to reducing inefficiency, cost and unnecessary dispute in the provision of expert evidence.

i Focusing disclosure

The cost of document disclosure is often capable of comprising a significant proportion of the total cost of disputes. Moreover, given the time taken to source, review, and provide the documents in

⁶ Doug Jones, 'Witness Statements and Memorials: Reforms to Serve Parties, Arbitrators and Arbitrations' (2024) 18(1) *Journal of the American College of Construction Lawyers* 65, 68, 72 ('Witness Statements and Memorials'); Doug Jones, 'Ineffective Use of Expert Evidence in Construction Arbitration' (2021) 1(5) *Journal of International ADR* 21, 22 ('Ineffective Use of Expert Evidence'); Doug Jones, 'Diversity of Expertise in Arbitration: The Past, Present and Future' (Lecture, CIARB Australia Annual Lecture, 14 October 2025) 21; Doug Jones, 'Jones shares procedural approaches after GAR-LCIA roundtable' *Global Arbitration Review* (Web Page, 6 December 2024) <<https://globalarbitrationreview.com/article/jones-shares-procedural-approaches-after-gar-lcia-roundtable>>.

question, it is often a source of delay.⁷ The excessive magnitude of document disclosure requests may be one reason why the survey reports 30.2% of experts often consider the deadlines for reply reports to be unrealistic.

Issues of cost and delay should be at the forefront of an arbitrator's mind. However, taking the perspective of the experts who often have to rely on these documents to perform their work, the survey draws attention to a range of further issues that may plague the disclosure process. These relate to difficulties in obtaining the relevant documents (23% of experts), opposing experts having access to broader sets of documents (20% of experts), and late disclosure requiring reworking of expert analysis (16% of experts). This bespeaks the need for proactive tribunal involvement after the exchange of Redfern schedules.

In my experience, the usefulness of Redfern schedules can be undermined by a lack of regard to the spirit of the IBA Rules on the Taking of Evidence in International Arbitration. Further, a tribunal's grasp of the issues immediately post-Redfern exchange may often be inadequate to make fully informed decisions on the materiality and relevance of disputed disclosure requests.⁸

To mitigate these issues, it is fruitful to separate requests for disclosure of documents needed for the merits; and requests for disclosure which arise from the needs of experts to undertake their work. In respect of merits disclosures, after the completion of the Redfern process, lead counsel should be required to confer and confirm which of the contested requests they wish to pursue (bearing in mind that the preparation of the Redfern requests and responses is often the responsibility of team members rather than that of lead counsel). This conferral may then be followed by the setting of a virtual case management conference (document CMC) at which lead counsel explain to the tribunal their respective positions on any differences which survive the conferral process. This has the advantage in many instances of

narrowing the contested requests and ensuring that the tribunal's decision on the remaining issues is a fully informed one.⁹ So far as expert requests are concerned, it is often the case that counsel team members who draft these requests translate the experts' needs with a view to ensuring that nothing is omitted, leading to more extensive requests than are actually needed by the experts. This may also contribute to the frequent failure addressed in the survey to provide the experts with the documents they need in a timely fashion.

When considering expert requests, a useful process is to require a clear statement from the experts in each discipline confirming that the requests made are agreed jointly to include the documents proportionately required by them to do their work, or, where they may have different views of the documents required, a short statement explaining why they have a difference of view. The experts themselves should then present at any document CMC to assist in resolving any substantial differences that remain.

ii Procedural framework for party appointed experts

Whilst international dispute resolution benefits from uniform, accepted guidelines in areas such as disclosure and conflict of interest, there is a lack of accepted principles governing how experts are appointed and instructed, the procedural framework within which they should work, or the nature of the reliance placed on them by tribunals and courts. Guidelines that do exist often tend towards broad brush strokes or addressing only certain components of the expert process. For example, the IBA Rules focus on appointment, and do not seek to establish a procedure dealing with expert evidence.¹⁰

Clarity for this throughout the arbitration process is required to ensure an effective process. As this survey has identified, a sizeable number of experts are not consistently provided with written instructions, the questions they

7 Australian Centre for International Commercial Arbitration, 2023 Evidence in International Arbitration Report (Report, 2023) 30 ('Jones shares procedural approaches'); Ineffective Use of Expert Evidence (n 1) 29.

8 Doug Jones, 'Redefining the Role and Value of Expert Evidence in International Arbitration' (2023) 17(2) Journal of American College of Construction Lawyers 1, 41 ('Redefining the Role and Value of Expert Evidence').

9 Jones shares procedural approaches (n 1).

10 Redefining the Role and Value of Expert Evidence (n 3) 7.

are required to address, the applicable procedural rules, or the text of the declaration they are required to make. In light of this, and absent effective case management, experts may be sailing on different oceans, providing evidence on different questions and relying on different databases. My experience is that proactive case management of an agreed process by the tribunal is required to obtain the real value from the expert evidence.

To address some of the key concerns noted in the research, I have found the following six case management steps to be effective ways of managing the efficiency and effectiveness of expert evidence.¹¹



First, identify at an early stage the disciplines in need of expert evidence and the identity of the experts. Parties are best placed to identify the experts and the disciplines in need of expert evidence, and should do at an early stage of proceedings. As indicated by the survey, 42.5% of experts feel they were appointed late in the proceedings with foreseeable implications on the depth and quality of analysis.

Secondly, establish a list of common questions within each discipline. The tribunal should confer as early as possible with the parties and the experts to develop a common list of questions, amended as necessary as the arbitration develops, on which each discipline's experts are to opine. This ensures both

parties' experts are on the same page, and that their disagreements reflect genuine difference in opinion rather than different and incompatible lines of inquiry. As indicated by the research, only 26% of experts are involved in the development of areas of investigation and questions on which they will need to opine, emphasising the need for a proactive approach to these first two steps.

Thirdly, defer the production of expert reports until sufficient common factual evidence is available so that experts opine on a useful common data set. As this survey has found, a sizeable minority of respondents have experienced the opposing expert having access to documents they did not have access to. Deferring the production of expert reports until a useful common base is established prevents an asymmetry in opinion that will need to be remedied in subsequent disclosure, discovery, and in cross examination. Moreover, it prevents inequality by virtue of the parties' differing access to the relevant evidentiary material.

Fourthly, experts within each discipline first produce joint expert reports identifying areas of agreement and disagreement on the common questions. Where there is agreement, there will be no further need to ventilate the issue. The research compiled by HKA and The Academy of Experts indicates that 88% of the time, the procedural timetable does not require experts to meet in advance and prepare a joint statement setting out matters agreed and disagreed before their first expert report. However, in my experience, when experts meet, ideally in camera without counsel present, to share their preliminary analyses with one another in a professional and considered manner, and exchange 'without prejudice' draft opinions, they are encouraged to be less unrealistic and adversarial. This also accords with the findings of this survey that just over 60% of experts have found joint discussions before formulating opinions to be of benefit.

Fifthly, individual expert reports will then address areas of disagreement only. This stage is typically at the greatest risk of being commandeered by counsel or by partisan bias on the part of the expert. By limiting the report to areas of disagreement only, the opportunity to crystallise the reasons for differences is greatly enhanced.

¹¹ Ibid 36–9.

Finally, the experts within each discipline produce reply expert reports which contain views in the alternative that show what their conclusion would be if the other expert's factual assumptions and methodologies were accepted by the tribunal. These reports should be limited to existing issues already raised by the other party's expert and genuine difference of opinion rather than differences in factual assumptions or methodology.

These six steps should be explained to the parties, the experts, and counsel as early as possible in proceedings and incorporated into the procedural timetable. While the discretion of arbitral tribunals to manage the procedure under most sets of rules is broad, there is of course need to encourage party consent in establishing the procedural timetable that follows these six steps.

iii Selection and instruction by parties

If there is one issue that underlies all other areas of concern in the expert process, it is the capacity for party-appointed experts to act as hired guns due to the structural incentives that are created by the choice of, and remuneration flowing from, the appointing party.¹²

Several statistics from the report support these concerns. For example, 18% of experts are asked to demonstrate their expertise in connection with a matter by giving an unpaid preliminary opinion or presentation on key issues. This raises obvious concerns about parties shopping for experts, and there is a real risk that an expert will be pressured to provide a favourable opinion in order to win the contract. In addition, more than one in five experts are asked to provide a draft joint statement to instructing lawyers before agreeing to the content, indicating possible involvement of lawyers in the interim stages of drafting in a substantial minority of cases.

In my experience as an arbitrator, three practical measures can be adopted to minimise these risks. First, experts should be appointed early in the process, giving the tribunal the opportunity to clearly establish with them their role and responsibilities as explained above.

Secondly, tribunal appointed experts represent an underused alternative to the party-appointed approach typically favoured in the domestic common law tradition.¹³ Despite some recent attempts to revitalise the use of tribunal-appointed experts, there remains an overwhelming party, and tribunal, preference for party-appointed arbitrator experts.¹⁴ This reality needs to be recognised and accepted.

Thirdly, while courts and tribunals can do little to change the intramural discussions between parties, counsel and experts during the process of appointment, award preparation, and to some degree in hearing preparation, an increasingly common strategy to obtain impartial expert assistance in quantifying damages is a Post-Hearing Expert Access Protocol.¹⁵ This involves a tripartite agreement between the tribunal, parties, and relevant experts to facilitate assistance by experts to the tribunal in calculating amounts to be awarded in the final award after the hearing. The tribunal has confidential access to the experts, pursuant to an agreement between the parties, strictly for calculation purposes (as opposed to the provision of any further substantive opinions), which is particularly useful in construction cases with complex factual disagreements and alternative analyses. The tribunal does not meet with the experts during this process but provides them with clear written instructions to complete the calculations. Both the instructions given by the tribunal and the resulting calculations are then provided to the parties following the final award. This gives parties the opportunity to apply for corrections under the applicable slip provisions if there are any calculation errors and also promotes transparency and accountability between the tribunal and the parties.

12 Doug Jones, “‘Hired Guns’ Modern Solutions to Ancient Problems’ (2024) 3(1) *Supreme Court Cases* 6, 11 (‘Hired Guns’).

13 Ineffective Use of Expert Evidence (n 1) 24.

14 See Klaus Sachs and Nils Schmidt-Ahrendts, ‘Protocol on Expert Teaming: A New Approach to Expert Evidence’ in Albert Jan Van den Berg (ed), *Arbitration Advocacy in Changing Times* (Kluwer Law International, 2011) 135; *Rules on the Efficient Conduct of Proceedings in International Arbitration* (Prague Rules) (2018) (‘Prague Rules’).

15 Redefining the Role and Value of Expert Evidence (n 3) 40.

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