

From Hired Gun to Lone Ranger

The Evolving Role of the Party-Appointed Expert Witness

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Introduction

In this brief review of the evolution of the party-appointed expert I will set out a short account of the history of expert witnesses (seven centuries in no more than three paragraphs), cover the modern development of party-appointed experts in a little more detail, look at some of the lessons that have been learned along the way and then deal with some of the key aspects of the (relatively) new Chartered Institute of Arbitrators Protocol for the Use of Party Appointed Expert Witnesses in International Arbitration.

History

The historical origins of the use of expert witnesses are shrouded in the mists of time. However, as it was only in the fifteenth century that oral evidence started to be used in court, that is probably a good starting point. Prior to then, if the court needed expert assistance, it seems that juries of specialists were used, not to provide evidence to the court but to act as assessors.

One of the earliest cases where something akin to expert evidence was used is the 1493 case of *Buckley v Rice Thomas*² where experts were used to help the court interpret a passage of Latin in a statute, and in *Willoughby's Case*³ physicians gave evidence to the court of the likely legitimacy of a child born 41 weeks after the death of the husband. The use of such “skilled persons” to assist the court became more common.

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² .1493, Y.B.9.H.VI.16, 8.

³ (1597) Cro. Eliz. 566.

Thereafter, as the use of oral evidence increased further the ability of parties to examine the expert seems to have come in and the courts started to clearly define the distinction between factual evidence given by witnesses with actual knowledge of the events and opinion evidence to be given by experts with a particular opinion on scientific, technical and other matters, thus paving the way for the use of party-appointed expert witnesses.

Modern Development

In the last 20 years the role of the party appointed expert witness, both in litigation and in arbitration, has evolved from that of being an advocate for the party paying his⁴ fees to that of advisor to the court or arbitral tribunal.

That, at least, is the theory and although great strides have been made there are still a number of factors which can drive a party appointed expert towards conscious or, even, unconscious favouritism for the party appointing him.

In 1990, what was to become an infamous article was written in the *Journal of the Chartered Institute of Arbitrators*. It was called “*The Expert Witness: Partisan with a Conscience*” and it described the role of a party appointed expert, amongst other things (and I shall quote extensively from the article later) to “*with appropriate subtlety, be almost ‘a hired gun’*”

Although that view was becoming rapidly out-dated, even at that time, it was the practice adopted by many experts and was what was hoped for, if not expected, by many legal representatives when looking for an expert. There were other problems as well. These were succinctly described by Dyson J.⁵ in an article in *Construction Law Journal*⁶

“A number of problems with expert evidence were identified by Lord Woolf in his reports. These included insufficient observance of the confines of expert evidence, and a tendency to expand into the realms of rival submissions, as well as an unwillingness to agree issues, and limit the battle to the really essential questions. All of these problems were caused by experts having departed from the traditional role of

⁴ I use the masculine throughout to refer to an expert whether male or female. It saves constant typing of “his/her”, “he/she” etc.

⁵ As he then was, (at the time he was Judge in charge of the Technology and Construction Court)

⁶ (1999) 15 Const.L.J. No.5

the expert witness, and having become “a very effective weapon in the parties’ arsenal of tactics””.

So far as civil litigation in England and Wales is concerned these issues were attacked and largely defeated by the new Civil Procedure Rules which Lord Woolf ushered in during 1999. The CPR provides detailed rules⁷ for the giving of expert evidence in civil proceedings in High Court. This has been reinforced by the “*Protocol for the Instruction of Experts to give Evidence in Civil Claims*” published in 2005 by the Civil Justice Council. This was published to replace the earlier Codes of Guidance on Expert Evidence produced by the Expert Witness Institute and the Academy of Experts and gives guidance to experts and those who instruct them in order to remain compliant with the requirements of the CPR.

However, so far as arbitration was concerned there was little or no specific guidance. So far as UK domestic arbitration was concerned, that was perhaps not so much of a problem because, in the absence of any other guidance, reference could be had to the CPR despite the fact that the CPR has no place in arbitration, whether domestic or otherwise. In any event, there was no real consistency of approach.

In international arbitration, however, the problem was much more acute. The idea of a party-appointed expert who is supposed to demonstrate some semblance of independence is a peculiarly common law invention. Our civil law friends find great difficulty in understanding how somebody can be instructed by one party, have private and privileged discussions with that party and its lawyers, produce a report which is put forward in support of that party’s case, appear as that party’s witness and be paid by that party and still be independent. Perhaps they have a point!

Notwithstanding the cynicism of civil lawyers, the use of party-appointed experts in international arbitration has increased and, whilst it is still not unusual to see a tribunal appointed expert, and many of the international arbitration rules provide for such,⁸ party-appointed experts are now increasingly commonplace. Indeed a civil lawyer⁹ invented the idea of witness conferencing of party-appointed experts¹⁰ so that both could be asked questions by the arbitral tribunal, be required to give answers to those questions in the presence of the other and each be allowed the opportunity to comment on, and debate, those answers.

⁷ CPR Part 35, Experts and Assessors.

⁸ See, for instance, Article 27 of the UNCITRAL Arbitration Rules

⁹ Wolfgang Peter

¹⁰ Increasingly referred to as “hot-tubbing”

Until recently, the only guidance and attempt at uniformity on the use of experts in international arbitration was to be found in passing references in the various institutional rules and in The IBA Rules of Evidence¹¹. In September 2007, the Chartered Institute of Arbitrators published its Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration which is intended to provide a complete regime for the giving of party-appointed expert evidence in international arbitration in an efficient and economical manner.

The Protocol is not without its detractors, and some provisions of it have certainly been the subject of heated debate. Nevertheless it remains the sole source of detailed guidance in this area.

Before turning to the protocol in detail, however, I want to look briefly at some of the cases over the last 15 or so years in which experts and expert evidence have featured in order to glean some do's and don'ts in the realm of party-appointed expert evidence and to put the CI Arb Protocol into context.

Lessons Learned

1. The Past Will Always Haunt You

Whether it is something the expert wrote many years previously, or expert evidence he gave in a previous case, it is likely always to be held against him. This is demonstrated in two cases from 1995.

The first is *Cala Homes (South) Ltd and Others v Alfred McAlpine Homes East Ltd*¹². This was a dispute over copyright in drawings during which an architect, Mr Francis Goodall gave expert evidence.

Those on the other side had, however, done their homework and had found the article that Mr Goodall had written in the *Journal of the Chartered Institute of Arbitrators* called "*The Expert Witness: Partisan with a Conscience*". In that article he had said the following:

¹¹ IBA Rules on the Taking of Evidence in International Commercial Arbitration

¹² 1995 CILL 1083

“How should the expert avoid becoming partisan in a process that makes no pretence of determining the truth but seeks only to weigh the persuasive effect of arguments deployed by one adversary or the other?”

“...the man who works the Three Card Trick is not cheating, nor does he incur any moral opprobrium, when he uses his sleight of hand to deceive the eye of the innocent rustic and to deny him the information he needs for a correct appraisal of what has gone on. The rustic does not have to join in: but if he chooses to, he is ‘fair game’.

If by an analogous ‘sleight of mind’ an expert witness is able so to present the data that they seem to suggest an interpretation favourable to the side instructing him, that is, it seems to me, within the rules of our particular game, even if it means playing down or omitting some material consideration. ‘Celatio veri’ is, as the maxim has it, ‘suggestio falsi’, and concealing what is true does indeed suggest what is false; but it is no more than a suggestion, just as the Three Card Trick was only a suggestion about the data, not an outright misrepresentation of them”

“Thus there are three phases in the expert’s work. In the first he has to be the client’s ‘candid friend’, telling him all the faults in his case. In the second he will, with appropriate subtlety, be almost what the Honorary Editor’s American counsel called ‘a hired gun’, so that client and counsel, when considering the other side’s argument can say, with Marcellus in *Hamlet*. Shall I strike at it with my partisan? The third phase which happens more rarely than is acknowledged in much of the comment on expert witness work, is when the action comes to court or arbitration.

“Then, indeed, the earlier pragmatic flexibility is brought under a sharp curb, whether of conscience, or fear of perjury, or fear of losing professional credibility. It is not longer enough for the expert, like the ‘virtuous youth’ in *Mikado*, to tell the truth whenever he finds it pays’: shades of moral and other constraints begin to close upon him.”

The judge¹³ clearly did not enjoy being considered a “rustic”. His response to this was to say:

“The whole basis of Mr Goodall’s approach to the drafting of an expert’s report is wrong. The function of a court of law is to discover the truth relating to the issues before it. In doing that it has to assess the evidence adduced by the parties. The judge is not a rustic who has chosen to play a game of Three Card Trick. He is not

¹³ Laddie J.

fair game. Nor is the truth. That some witnesses of fact, driven by a desire to achieve a particular outcome to the litigation, feel it necessary to sacrifice truth in pursuit of victory is a fact of life....

An expert should not consider that it is his job to stand shoulder-to-shoulder through thick and thin with the side which is paying his bill. 'Pragmatic flexibility' as used by Mr Goodall is a euphemism for 'misleading selectivity'”

The judge then read from the beginning of Mr Goodall’s report where Mr Goodall had said

“I believe that the inspection I have made and the graphic and other material that I have seen are sufficient to enable me to reach an informed opinion on the matters in dispute in the present action that fall within my discipline. I have no connexion with either of the parties in this action, nor have I any prior acquaintance with instructing solicitors or Counsel. I have no pecuniary or other interest in the outcome of the current litigation.”

The Judge then concluded

“ In the light of the matters set out above, during the preparation of this judgment I re-read Mr Goodall’s report on the understanding that it was drafted as a partisan tract with the objective of selling the defendant’s case to the court and ignoring virtually everything which could harm that objective I did not find it of significant assistance in deciding the issues I should point out that there is no material before me which suggests that defendants’ solicitors or counsel, or the defendants themselves, were aware of Mr Goodall’s attitude to-the drafting of his report.”

2. Be Consistent

Rather as in the case of the past coming back to haunt you in the shape of ill considered statements in public, previous expressions of opinion, in what you thought was private, may also lead to problems. Here the supposed confidentiality of arbitration is no protection. In 1995 in *Leeds & London Estates v Parisbas (No.2)*, a subpoena was issued against an expert who was to give evidence in a rent review arbitration, seeking disclosure of his evidence in two previous, but unrelated, rent reviews. The aim was to show that the evidence in the current rent review was contrary to that given in the earlier ones. The court allowed production of the earlier evidence given by the witness and for the witness to be cross-examined on it, saying:

“If a witness were proved to have expressed himself in a materially different sense

That would be a factor which should be brought out in the interests of the litigants and in the public interest”.

3. Don't Believe What you are Told

Although the party-appointed expert is, inevitably, instructed by one party to the dispute, the right level of enquiry and cynicism has to be maintained by the expert and he should be careful simply to assume that the description of the facts he receives from those instructing him is the right one.

In *Great Eastern Hotel Company v Laing*¹⁴ the judge¹⁵ criticised the expert there as having an approach which was “*fanciful*”, “*naïve*”, and “*broadbrush*”. He felt the expert had only really listened to one side of the story and he rejected the expert’s testimony saying:

“I reject the expert evidence of Mr Caletka as to the performance of Laing as contract manager. He has demonstrated himself to be lacking in thoroughness in his research and unreliable by reason of his uncritical acceptance of the favourable accounts put forward by Laings”.

4. Know Your Report

Complex cases involving mountains of documents will often not require just a single expert, but a team of people to support him in order properly to evaluate all the material, analyse it and produce conclusions as a result. However, that team of people cannot give evidence in the arbitration hearing. There is almost always just one front man: one expert who has to justify to the tribunal the contents and conclusions of the report and be subject to cross-examination on it. Tough though it is, if that expert is going to satisfy the tribunal as to the conclusions reached in that report he has to know it backwards, even if there are large chunks of it prepared for him by others.

¹⁴ [2005] EWHC 181.

¹⁵ His Honour Judge David Wilcox

Thus in *Skanska Construction v Egger (Barony) Limited*¹⁶ the judge¹⁷ commented as follows in respect of the unfortunate expert in that case:

“Mr Pickavance produced a report of some hundreds of pages supported by 240 charts. It was a work of great industry incorporating the efforts of a team of assistants in his practice. It profits from Mr Pickavance’s input based on his practical experience...It was evident that the report did not cover all the aspects of Mr Simpson’s evidence, was largely based upon factual matters digested for Mr Pickavance by his assistants....There were times when the impression was created that Mr Pickavance was not entirely familiar with the details of the report which he signed and presented....There wer pressures of time upon him. This and the extent of reliance on the untested judgment of others in selecting and characterising the data for input into the computer programme, adversely affects the authority of the opinion based upon such an exercise”

5. Choose the Right Expert

To bring us right up to date, issues of expert evidence arose in *McCartney v McCartney* where expert accountants were involved in valuing Paul McCartney’s business assets at the date of marriage and the date of separation. It seems Paul McCartney chose the right expert for this task and Heather Mills did not. In specialist areas choosing the right expert is crucial. The judge,¹⁸ in comparing Paul McCartney’s expert to that of Heather Mills said, of McCartney’s, he was :

“in a different league of expertise [with] 25 years of experience in musical and media work”

Whereas he said Mills’ expert was:

“mainly concerned with claims for damages and with share valuations, [and] candidly admitted that he had never valued a [music] catalogue”

It was not surprising he preferred the evidence of Paul McCartney’s expert.

¹⁶ [2004] EWHC 1748

¹⁷ Again His Honour Judge David Wilcox

¹⁸ Bennet J.

Chartered Institute of Arbitrators Protocol for the Use of party-Appointed Expert Witnesses in International Arbitration

1. Introduction

The first thing to say about the Protocol is that it is intended only for the use of party-appointed experts. It does not cover single joint experts or tribunal appointed experts. It is an amalgam of concepts from both common law and civil traditions as well as incorporating what seems to be increasingly common practice in international arbitration.

There are some bits of it which go further than current practice in international arbitration, particularly the section dealing with meetings of experts, their content and timing, but that is based on increasingly successful and common practice in the English Technology and Construction Courts and seemed appropriate to include. Especially where the Protocol makes clear that although it is intended to be a complete regime it can also be used in part and cut and pasted into a tribunal's directions as appropriate.

As the preamble to the Protocol makes clear:

“The preparation and giving of expert evidence in accordance with this Protocol is intended to give effect to the following principles:

- *each Party is entitled to know, reasonably in advance of any Evidentiary Hearing, the expert evidence upon which the other Parties rely;*
- *experts should provide assistance to the Arbitral Tribunal and not advocate the position of the Party appointing them;*
- *there should be established before any hearing the greatest possible degree of agreement between experts.”*

The Protocol consists of eight Articles. Article 1 is the definitions section. Many of the definitions here have been taken from, or are deliberately consistent with the IBA Rules on the taking of Evidence in International Arbitration.

The IBA Rules, which were first published in 1999 have become increasingly accepted as a guideline for use in international arbitration, especially where both common law and civil law parties are involved. Article 5 of the IBA Rules does, in fact, deal with party-appointed experts, but does so in six short paragraphs which provides a short list of what an expert report should contain, gives the tribunal the ability to order a meeting of experts (but only after reports have been submitted) and provides that, if an expert does not appear at the hearing without agreement of the parties and leave of the tribunal, his testimony shall be disregarded (save for exceptional circumstances).

The Chartered Institute felt more was needed and set about producing the Protocol with the aim of being as consistent as possible with the IBA Rules, with other rules generally in use in international arbitration and with what the Institute considered to be best practice.

I will turn now to deal with each of the substantive Articles of the Protocol.

2. Use of the Protocol

The Protocol can be incorporated lock, stock and barrel by parties in their arbitration clause or arbitrators in their directions using the wording:

“Expert evidence shall be adduced in accordance with the CI Arb Protocol”

There should be no conflicts arising from use of the Protocol and any mandatory provision of law applicable to the arbitration because Article 2.2 makes it clear that, in those circumstances, the mandatory provision of law prevails.

Equally, if there is a conflict with the procedural rules of the arbitration, or both the Protocol and the procedural rules are silent on a particular matter, then the Protocol provides that the tribunal directs whatever it thinks appropriate.

3. Permission to Adduce Expert Evidence

This Article has caused a little controversy not only with continental lawyers but also with some US lawyers. Article 3 provides:

- 1 *Where the Protocol is to apply, the Arbitral Tribunal shall, in consultation with the Parties and in timely fashion, direct:*
 - (a) *the issue or issues in the Arbitration in respect of which expert evidence shall be adduced;*
 - (b) *the number of experts in respect of each issue that shall be permitted to give evidence in the Arbitration;*
 - (c) *what tests or analyses shall be required.*
- 2 *Expert evidence shall be adduced in the manner provided for in Articles 6 and 7.*

As is apparent, the Article gives power to the tribunal to state which issues shall be the subject of expert evidence and how many experts shall give it. This has been criticised as removing the freedom of parties to provide whatever evidence they wish in support of their case and to produce as many witnesses as they think necessary to do so. However, it is part of the tribunal's duty in most laws and most procedural rules to manage the arbitration efficiently and cost-effectively and this Article is entirely consistent with that approach. The Article provides for consultation with the parties before any definitive direction is given as to the issues to be covered by expert evidence and in most cases an accommodation between excessive use of expert witnesses and the need for the arbitration to be managed will be reached, but it is submitted that, in the face of the unreasonable and time and money wasting party, such a power is valuable to have.

4. Independence, Duty and Opinion

Much of this Article will be familiar from the statements of Cresswell J. in *The "Ikarian Reefer"*¹⁹.

The Article makes it clear that the expert's opinion must be "*impartial, objective, unbiased and uninfluenced by the pressures of the dispute resolution*

¹⁹ [1993] FSR 563

process or by any Party". It also makes it clear (largely for the benefit of civil lawyers) that the fact that one party is paying the expert does not, of itself, vitiate the expert's impartiality.

Finally, on the subject of independence and duty, it plainly states that the expert's duty is to assist the tribunal.

There, then, follows a list of 12 items which the expert's opinion should contain. This is in comparison with 5 items in the IBA Rules. The aim of this list is to ensure some consistency with the approach of experts to producing their reports and to make the reports easier to understand and follow so far as the tribunal is concerned.

The list is:

"An expert's written opinion should:

- (a) *contain the full name and address, background, qualifications, training and experience of the expert;*
- (b) *state any past or present relationship with any of the Parties, the Arbitral Tribunal, counsel or other representatives of the Parties, other witnesses and any other person or entity involved in the Arbitration;*
- (c) *contain a statement setting out all instructions the expert has received from the appointing Party and the basis of remuneration of the expert;*
- (d) *only address the issue or issues in respect of which the Arbitral Tribunal has given permission for expert evidence to be adduced.*
- (e) *state which facts, matters and documents, including any assumed facts or other assumptions, have been considered in reaching the opinion;*
- (f) *state which facts, matters and documents, including any assumed facts or other assumptions, the opinion is based upon;*

- (g) *state the opinion(s) and conclusion(s) that have been reached and a description of the method, evidence and information used in reaching the opinion(s) and conclusion(s);*
- (h) *state which matters the expert has been unable to reach an opinion on;*
- (i) *state which matters (if any) are outside the expert's area of expertise;*
- (j) *adequately reference all documents and sources relied upon;*
- (k) *contain a declaration in the form set out in Article 8; and*
- (l) *be signed by the expert and state its date and place."*

It can be seen that list covers issues such as the expert's qualifications to give an opinion, conflict of interest, what the expert has looked at, what the expert has relied upon (which will usually be less than what he has looked at), what he has not been able to reach an opinion on and what is outside his expertise.

5. Privilege

This is another potentially controversial area in the field of international arbitration because of the different approaches taken to privilege around the world.

Most civil lawyers would view any exchanges with their expert as privileged, whereas most US lawyers would expect to be able to demand disclosure of draft expert reports. In England, under the CPR the instructions to experts are discloseable, but draft reports are considered not to be and that compromise is what the Protocol has largely incorporated in Article 5.

Instructions to experts and their terms of appointment are discloseable if the tribunal so orders, but the tribunal needs to be satisfied there is good cause to order such disclosure. It is not automatic. Equally, the tribunal will not allow cross-examination of the expert on his instructions or appointment unless the tribunal considers there is good cause to allow that.

Finally, it is made very clear that "*drafts, working papers or other documentation created by an expert for the purposes of providing expert evidence in*

the Arbitration shall be privileged from production and shall not be discloseable in the Arbitration.”

6. Expert Evidence

This Article sets out the procedure by which expert evidence is to be adduced in the arbitration proceedings.

Controversially, but as mentioned earlier, in line with directions often given in the TCC in England and Wales, the experts meet first, before they have produced a report for the purposes of exchange. The meeting is a without prejudice meeting and only the agreed product of the meeting, referred to below, is produced in the arbitration.

There are several reasons for this, all related to saving time, cost, and controversy.

First, much time and cost can be wasted by experts of the same disciplines writing vast tracts in their initial reports which they actually both agree upon. It is often harder to confirm that agreement after pen has been put to paper as the lawyers will start to parse the individual words used by the respective experts to show why they disagree rather than why they agree.

If the experts can sit down first and talk about things in general which they are both agreed upon, a lot of time and money can be saved. This is an unpopular concept with many lawyers, because they feel they are losing “control” of the proceedings and, in an attempt to maintain that control they will either demand to come to the meetings themselves or instruct their expert to agree nothing.

As for the former, the Protocol does not ban lawyers from attending these meetings, but, frankly, they are usually much more productive without lawyers, and as for the latter, such an instruction would, in my opinion at least, be good cause for the tribunal to allow cross-examination of an expert as to his instructions pursuant to Article 5.

If going to such a meeting without having put pen to paper at all is too disconcerting for the experts, or their lawyers, Article 6.2 does allow the tribunal to order the experts to prepare and exchange “*draft outline opinions*” for the purposes of

the meeting and makes it clear that these drafts are privileged from production in the arbitration.

Following the meeting or meetings (if more than one is necessary) the experts are required to prepare and send to the parties and to the tribunal a statement setting out:

- (i) *those issues upon which they agree and the agreed opinions they have reached on those issues;*
- (ii) *those tests and analyses which they agree need to be conducted and the agreed manner for conducting them;*
- (iii) *those issues upon which they disagree and a summary of their reasons for disagreement; and*
- (iv) *the tests and analyses in respect of which agreement has not been reached as to whether they shall be conducted and/or the manner in which they should be conducted, and a summary of their reasons for disagreement.*

After that, if they have agreed that tests and analyses are necessary those are carried out in the manner agreed. If they have agreed that tests and analyses need to be carried out, but not how then they each conduct the test/analysis in the manner each considers appropriate in the presence of the other. If they have not been able to agree both which tests and analyses are needed or their manner of conduct then each conducts whatever tests/analyses he thinks necessary in the manner he thinks fit in the presence of the other expert.

They then get onto producing their report, which is to be limited to those things which they agreed that they disagreed upon. Reports are exchanged simultaneously and rebuttal reports are provided for if necessary

Finally, when it comes to the hearing, if an expert doesn't turn up without agreement of the parties and leave of the tribunal (as the tribunal may want to question him even if the parties do not), then his evidence is disregarded unless, in exceptional circumstances, the tribunal determines otherwise.

7. Testimony by Experts

This Article deals with the hearing itself and the manner in which expert evidence is to be given at the hearing.

It reinforces the fact that the expert is there to help the tribunal and gives the power for the tribunal to order the experts to confer and, if necessary, provide further reports.

Of particular importance for the expert in giving his testimony (or in producing his report), if the tribunal does not consider that the evidence is in accordance with the expert declaration contained in Article 8 of the Protocol, the tribunal can disregard the expert's report or testimony in whole or in part as it considers appropriate.

8. Expert Declaration

This is self-explanatory and is required to be included in every expert report. Again the aim is to get the expert to focus on his duty to assist the tribunal, to stay within the realms of his expertise and to confirm that the report really does set out his independent professional opinion.

It reads:

“(a) I understand that my duty in giving evidence in this arbitration is to assist the arbitral tribunal decide the issues in respect of which expert evidence is adduced. I have complied with, and will continue to comply with, that duty.

(b) I confirm that this is my own, impartial, objective, unbiased opinion which has not been influenced by the pressures of the dispute resolution process or by any party to the arbitration.

(c) I confirm that all matters upon which I have expressed an opinion are within my area of expertise.

(d) I confirm that I have referred to all matters which I regard as relevant to the opinions I have expressed and have drawn to the attention of the arbitral tribunal all matters, of which I am aware, which might adversely effect my opinion;

(e) I confirm that, at the time of providing this written opinion, I consider it to be complete and accurate and constitute my true, professional opinion.

(f) I confirm that if, subsequently, I consider this opinion requires any correction, modification or qualification I will notify the parties to this arbitration and the arbitral tribunal forthwith.”

Conclusion

Experts are being used more and more in arbitration, both domestic and international and the Protocol is a valuable collection of all those aspects of the giving of evidence by party-appointed experts that parties and arbitrators need to consider and account for.

In most instances, adoption as a whole will be appropriate, but even if not adopted as a whole it provides invaluable detailed guidance in an area where there is very little else.