

EXPERTS: TRY BEFORE YOU BUY?

- ▶ The Courts crack down on "expert shopping."
- ▶ Permission to adduce replacement expert evidence is usually conditional.
- ▶ Important to instruct the right expert at the outset.

What's it about?

The Courts are increasingly intolerant of "expert shopping" - where a party, having obtained an unfavourable opinion, then seeks to change its appointed expert, in an effort to acquire a report which better supports its case.

To discourage this practice, the Courts will usually, as in *Coyne v Morgan and another (t/a Hillfield Home Improvement)* [2016] EWHC B10, permit a change of expert (even where there is no evidence of "expert shopping" as such) conditionally on the disclosure of draft reports or other materials containing the substance of the original expert's opinion.

The Court's discretion is wide and extends, where there is strong evidence of "expert shopping," to ordering the disclosure of solicitors' attendance notes with the original expert.

Why does it matter?

Given that permission to adduce replacement expert evidence is usually conditional on the disclosure of the original expert's opinion, a party cannot simply "shop around," without the risk of adverse, or even self-defeating, consequences.

If, for any reason a party proposes to replace his appointed expert, he should be alive to the strong probability that leave will be given only on condition that the substance of the original expert opinion be disclosed, together with, in extreme cases, other documents such as notes of discussions with the original expert, with damaging consequences for the case.

Now what?

Good expert evidence can make or break a case. It is therefore critical to find the right expert, with the required specialisms, early on.

Whilst parties who seek to change experts after they have been appointed face possibly unattractive consequences, as outlined above, that does not stop parties from doing their research at the outset.

Parties should therefore invest the time required to obtain recommendations, interview candidates, and interrogate their past experience, to ensure that the individual appointed in the first instance is appropriate, available and reliable.

Wherever possible, this should be done, and a preliminary report obtained from the expert, before preparing the Pre-action Protocol letter of claim.

The team at Addleshaw Goddard LLP will be happy to discuss the above with you. Please contact Joe Wilkinson or Jennifer Laws.

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