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Biography

Neil Ashton is a partner in StoneTurn's London office and has approximately 25 years of experience working in practice, in industry and in expert witness and litigation support work. He is a chartered accountant and focuses on quantification of damages in complex business disputes. Neil is commonly involved in claims for breach of contract and in post-acquisition disputes and contentious business valuations. He also has significant experience in matters involving major business interruptions.

How has the dynamic between arbitral tribunals and experts changed over the years?

It is difficult to make generalisations as so much depends on the individual arbitrator or members of the arbitral tribunal. That said, it is probably fair to say that tribunals have – rightly – become more demanding of experts and have started to show some greater willingness to engage with technical expert issues.

As a quantum expert in particular, I have in the past been used to evidence being squeezed into the final few hours of a long hearing; however, I sense that this is perhaps happening less and the process is being better managed.

Whether the increasing use of tools such as opening presentations and witness conferencing has helped in allowing arbitrators to engage with the detail of expert evidence is an interesting question. Such tools can cut either way and it really depends on the way in which these are used (or abused) in practice by the arbitrator(s).

What advantages accompany introducing experts early in the disputes process?

While it may appear somewhat self-serving, getting involved early is a mantra that most experts never tire of repeating to clients and lawyers (albeit they in turn may tire of us saying it!). Advantages include:

- Timely identification of areas of strength and weakness in a client's position as it relates to quantum and what this means for the overall case strategy.
- Consequent weeding out of weaker elements of a claim that may 'infect' other (stronger) elements and avoiding the risk of entrenching such weaker points early in proceedings.
- Understanding those areas of the claim which may require significant resources and time and/or particular focus in terms of further information gathering.
- Identifying up front documents and information that will need to be preserved.
- An old chestnut for a quantum expert: identifying overlaps and double-counting between different potential heads of loss.

These advantages are generally more immediately applicable when instructed on the claimant side. However, on the respondent side, it can be equally beneficial to be instructed at an early stage. This may be as simple as being sure that the expert is in a position to pick up a claimant's expert report as soon as it is filed: I have experienced cases where weeks of time have effectively been lost due to delays in getting instructions. Another noteworthy aspect on the respondent side, is having sufficient time to develop and work on any counterclaims available to the client. Analysing and developing counterclaims can be more complex to deal with than the claimant's claim, so leaving such matters to the last minute can create major headaches.

Of course, there may be a perceived downside on the part of clients and legal teams relating to the cost of involving experts early and that is always going to be an important consideration. However, for the reasons set out above, such concerns may be outweighed by the arguments in favour, especially in more complex cases.

Some practitioners have argued that tribunals should demand more of quantum experts in reaching a consensus on the outcome value. To what extent do you share this view?

Sometimes the assumptions that different experts are instructed to adopt make reaching direct agreement difficult. That said, in many situations experts should at least be able to agree on the value outcome (and each other's maths) under different assumption scenarios. That must be helpful for the process and something the arbitral tribunal should reasonably expect, where appropriate.

Otherwise, I am not sure it is the job of a tribunal to 'demand' that experts reach a consensus, or more of a consensus. After all, the experts' job is to give their independent view and, if this means that there is little or no consensus, then so be it. Nonetheless, it is clearly beneficial if the experts are in a position to reach agreement on relevant issues, where possible. To that end, it is important that experts are open to such consensus and use the expert meeting and joint report process constructively. Sometimes this means putting egos aside, which does not necessarily play to all experts' strengths!

How do you effectively prepare for cross-examination and/or hot-tubbing?

To state the obvious, the key starting point is knowing your report(s) and the supporting detail. Being able to identify questions under cross-examination which contradict or maybe twist what you have said on the record is a key skill. Similarly, knowing your report inside-out can provide an anchor such that questions can be answered by referring back to specific paragraphs or analyses.

In certain cases, preparation can be streamlined where there has been a joint expert report and certain issues already agreed. That can really help. An example to the contrary: I recently gave evidence in a case where the opposing side decided not to serve expert evidence in response to my report, but they still chose to cross-examine me. While I was starting from a position of strength in some ways, the absence of any opportunity to discuss and agree aspects of my report with another expert meant that I had to be ready for questions on any aspects. Given the complexity of the report and voluminous financial data involved, it did not make for a particularly time-efficient process.

Do you have any tips for counsel on how to use an expert team effectively?

Simply to involve us consistently through the process, including keeping us informed as regards changes to timetables and such like. That way, we are in the best position to assist at every stage.

As quantum experts we recognise that we sometimes only get to see the tip of the iceberg in terms of all the issues being dealt with in a case. That said, we really notice when a counsel team involves us and ensures we are kept in the picture regarding any issues that may affect our evidence or quantum issues in general. And it's not all just about our report(s), but also how we can input in other areas such as upfront strategic issues, document production requests, preparation for hearing etc.

Picking up on the latter point, we can (and want to) assist counsel prepare effectively for the cross-examination of the other side's expert, but this is often not done or lip service is paid to it. There is little more frustrating as an expert than to see an opposing expert being allowed to side-step or completely avoid key issues that could have been addressed effectively with a little more up-front communication.

Peers and clients say: *"Neil is extremely rigorous and thorough in his approach"*
"I felt confident that he had considered all material facts and issues in our case"
"He is solution oriented, and not only good on paper as he can support his views under cross-examination"