

## Co-Testifying: Bridging the gap between expertise and experience

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As I settle into my second week at MCMS, I want to start by thanking the team for the very warm welcome and to so many of you for your kind messages of congratulations as I begin this exciting new chapter in my career as an expert witness and adjudicator.

I've been set the challenge of contributing to the MCMS Blog as part of my induction — so here goes ....

It's no secret that Matt and Jonathan are active supporters of the adjudication pupillage, and having been a pupil of Matt's, it feels appropriate for my first blog post to consider what else we should be doing to support new talent in the wider area of construction law. After the comprehensive coverage of adjudication pupillages in their book, *Adjudicating Construction and Engineering Disputes*, I'd be a fool to try to find anything else to add so instead, I'm choosing an untrodden path - at least for the MCMS team anyway!

Encouragingly, we are beginning to see a more structured pathway for junior professionals to grow and develop but, given the traction has only started to develop in more recent years, there is room for improvement. I'd like to explore one area that remains relatively underutilised: co-testifying experts. This is a practice which, I consider, has huge potential to shape the next generation of expert witnesses.

### **Double the experts. Double the value**

Co-testifying has been used in arbitration in instances where the complexity of the dispute matter can make it beneficial for two experts to testify for all relevant issues on an in-depth basis, or where the testifying experts have different areas of expertise, which may overlap, but for which it is beneficial to have one expert report instead of two.

For the purposes of this current blog post, I am primarily interested in the practice of co-testifying for assistant experts. This may be where the report has been co-authored by the lead expert and assistant expert, or where the assistant expert is afforded the opportunity to testify in respect of the work carried out as part of the team involved in providing the expert report.

It's common knowledge that in complex and large disputes a lead expert will use a team to produce the expert report, but rather than the assistant expert remaining behind the scenes, they could, and I would suggest, should be given a defined role in the actual hearing process.

**It's not just for juniors ...**

The benefits of making allowance for this process are invaluable to an assistant expert allowing involvement and experience not only in the actual testifying portion of the arbitration, but also participation in preparation for the hearing itself, strategy and cross examination of the opposing expert(s).

With that being said, the benefits of assistant experts co-testifying are not exclusive to the assistant, and whilst this provides a platform for knowledge transfer of the hearing process, and valuable experience in testifying, the tribunal could also benefit from a streamlined process and improved clarity. Particularly given that the assistant expert that prepared the relevant section of the report is providing direct testimony for that element of the works.

### **Experience required - but gained how?**

We're all well versed in the chicken-and-egg scenario and this is one that again plays out in the expert world. It is, of course, imperative that an expert is just that; an expert, but I have known extremely competent colleagues to have decades of experience and still have not been able to successfully obtain an instruction for expert evidence in an arbitration or litigation, having been given feedback from potential instructing solicitors that this is, unfortunately, solely due to a lack of testifying experience.

I must at this point highlight that there are initiatives, such as the **Equal Representation for Experts**, (and I would encourage you all to take the pledge) actively looking to improve provision of experience and support to experts. A **2024 survey** carried out by the ERE demonstrated that of the 68% of expert respondents that had answered positively to providing oral or written evidence, 26% had never provided oral evidence. Interestingly, of the overall respondents, 58% were aged 30 to 49. This demonstrates my point exactly; there is a real need to find ways to provide advanced experience to the next generation of experts in their respective fields.

### **Mentoring is great, but co-testifying? Even better**

I think that the wider industry needs to more readily adopt ways of providing exposure to, and experience of, hearings and proceedings for experts. The introduction of co-testifying is a mechanism that can be encouraged and led by expert firms as part of investment into growth of the next generation and is therefore not dependent upon external or instructing parties for instigation.

It's understandable that instructing solicitors and the respective clients wish to retain an expert who is well-versed in providing testimony, given the importance of this to the success (or failure) of a case, but co-testifying could be a solution to providing experience to experts yet to provide testimony without posing risk to overall success of the parties' case.

And so, I believe that when we, as an industry, are considering how to support the next generation of experts, co-testifying is one of the few tangible mechanisms to be used to move beyond mentoring and into a practical, supervised experience. As we know too well, such mechanisms are essential for the long-term health and diversity of the industry as a whole and I'm not alone in this thinking; the third highest ranked solution for increasing diversity in the expert industry was voted by experts as being the introduction of mentoring schemes.

### **My own journey (so far)**

Reflecting on my own journey, whilst co-testifying is not something I have had personal experience of, I have benefited from working closely with and receiving mentoring and guidance from industry renowned experts working on highly complex and high value disputes. This provided me with invaluable experience in expert work in a variety of sectors all over the world. I therefore followed the more traditional experience route of mentoring and providing assistance to the lead expert.

I started my career in the construction industry in 2007 discovering, largely by accident, the quantity surveying career path. After completing my undergraduate degree, and having a keen interest in construction law, I undertook a post graduate diploma in construction law and adjudication which allowed me to transition into full-time expert work.

My background in contracting, consultancy and expert work collectively provided an instrumental and beneficial foundation for my work as an adjudicator. Not only do I have technical and practical experience from my years as a quantity surveyor, but expert work also allowed me to develop skills in critically assessing submissions, evaluating evidence and maintaining a balanced, impartial viewpoint.

### **Looking ahead: Trust, transparency and transformation**

As mentioned previously, I have been helped along the way by mentoring, being afforded opportunities to gain valuable experience and assisting in large disputes. Throughout my career, I have seen the introduction of more structured training and mentoring, and the industry is beginning to recognise and accept similar initiatives in adjudication, such as mentoring schemes. This is encouraging and means that, generally, the industry should be open to accepting new forms of professional development.

So far, I have received the benefit of mentoring systems in both my expert and adjudicator pathways, and I really do believe it is not only necessary, but extremely important in providing the next generation with the skills and tools needed. But we can do more, particularly in specialist areas.

Therefore, as the construction and legal sectors continue to evolve, so must the ways we train and develop our professionals. Co-testifying isn't just a development tool for junior and assistant team members, it's an opportunity for the industry to embrace a culture of collaboration, transparency and future-focused thinking.

And so, if you've made it this far, here's my final thought to take away: if we trust assistants to draft reports, participate in strategy and carry out the complex assessment process, why not trust them to speak to it in the forum where it matters most?



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