



Rules for Expert Determination



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Expert Determination

Expert Determination is one of the many forms of dispute resolution that is available to disputants. It has many advantages including that it is speedy; cost effective and final. Expert Determination can be agreed when a 'problem' arises or it can be expressly catered for in the original contract. There are many possibilities.



The Academy Determination Rules are a clear easy to follow set of Rules for those who do not have already agreed Rules. They are equally suitable for adoption as the 'agreed Rules' in the original contract. The Rules adopted for the Determination give the framework and required timetable for the process.



Although many trade and professional bodies publish Expert Determination Rules they are not necessarily appropriate for all disputes which might arise. The Academy Rules are a focused set of independent procedures designed for use in virtually any dispute in virtually any part of the world.

Unless the parties are in agreement valuable time and resources can be wasted in trying to agree who shall be the expert appointed to make the Determination. Unfortunately where there is no quick agreement the erosion of goodwill is not uncommon.

As the professional body for Experts The Academy of Experts acts as an appointing authority irrespective of the Rules chosen for the Determination. This efficient service removes what is often a stumbling block and enables all concerned to concentrate on the Determination secure in the knowledge that the Expert is not only knowledgeable but also totally independent.

To ensure the highest standards and to enhance the skills of Expert Determiners, The Academy through its educational services organises training programmes for Expert Determination.

Further information on Academy services can be obtained from the Secretary General.

For the appointment of an Expert Determiner application should be made in writing to:

The Secretary General
The Academy of Experts
3 Gray's Inn Square
London
WC1R 5AH

www.academy-experts.org

Rules for

Expert Determination

Part I: General Rules & Principles

Rule 1: Interpretation

1. “The Academy” refers to The Academy of Experts, 3 Gray’s Inn Square, London, WC1R 5AH.
2. References to the “Procedure” are references to an expert determination conducted in accordance with the rules in Parts I & II.
3. The “Expert” is defined in Part I, Rule 4.
4. Words used in the singular include the plural and vice versa as the context may require. The masculine is taken to include the feminine.

Rule 2: Scope

Where an expert determination agreement provides for expert determination under The Academy’s Rules, the Rules in force at the time the agreement is entered into shall be deemed to form part of that Expert Determination agreement.

Rule 3: Services of Notices, Communication and time calculation

1. Unless the parties have agreed otherwise, any notice or other communication that may be or is required to be given under these Rules shall be (a) in writing and delivered by first class post or transmitted by fax or email and (b) copied to the other party and the Expert.
2. For the purpose of calculating a period of time under these Rules, in the case of delivery by first class post, such period shall begin to run from 48 hours after the notice or communication is sent; in the case of a fax or an email sent after 4pm, such period shall begin to run from the following day.
3. Any reference to “days” in this agreement means working days and does not include weekends or public holidays.

Rule 4: Appointment of the Expert

The parties shall agree to the appointment of an expert (“the Expert”). If the parties are unable to agree on an Expert, The Academy will nominate 3 experts and the parties shall endeavour to choose the Expert from the 3 nominations within 14 days. If the parties are unable to agree on the identity of an Expert after 14 days, The Academy shall nominate the Expert. Either party may object to The Academy’s first nomination by sending the reasons for his objection to The Academy in writing within 7 days of receipt of the notice of nomination. The Academy shall consider the reasons for the objection and may in its absolute discretion nominate another Expert. The parties shall accept the second nomination of The Academy or The Academy’s decision not to nominate a further Expert as final.

Rule 5: The Expert

1. **Function:** the Expert shall act as an expert and shall determine the dispute before him. The Expert shall not act as an arbitrator or adjudicator, nor as an expert witness. The parties agree that the expert determination process is not an arbitration or adjudication within the meaning of any statute.
2. **Role:** the Expert shall adopt procedures suitable to the circumstances of the particular case so as to provide an expeditious, cost-effective and fair means of determining the dispute between the parties.
3. **Neutrality:** the Expert must act with impartiality, must have no vested interest in the outcome of the dispute and must not be biased in any way towards or against either party. If the Expert becomes aware of any circumstance which might reasonably be considered to affect his ability to act impartially and disinterestedly, he must inform the parties and The Academy immediately. The parties must then inform the Expert and The

Academy within 10 days whether or not they agree that the Expert should continue the determination. If either party considers that the Expert should withdraw, The Academy will decide whether the Expert is to withdraw. The Academy's decision will be binding. A new expert will be appointed under Rule 4 of Part I.

4. **Evidence:** the Expert is not bound by the rules of evidence and may at his discretion receive and take into consideration any information submitted to him by either party in such manner as he thinks fit and may give such weight to the same as he considers appropriate.
5. **Final and binding:** the Expert's determination shall be final and binding on the parties. It shall be made in writing.
6. **Interest:** the Expert has discretion to award simple interest at such a rate and for such period as he thinks fit on any amount in dispute or any part of it and he may also award interest for late payment of the award.
7. **Payment:** unless otherwise expressly agreed in writing by the parties any amount payable under the determination shall be paid within fourteen days of the determination.
8. **Liability:** the Expert shall not be liable for any act or omission arising from the Expert Determination under these Rules unless such act or omission is shown to have been fraudulent or deceitful. The Academy and any officer, or employee or agent or authorised representative of The Academy shall not be liable for any such act or omission of the Expert unless it is shown that it was a party to fraudulent or deceitful conduct by the Expert.
9. **Indemnity:** the Expert shall not voluntarily (a) provide oral evidence or (b) divulge, produce or disseminate or provide details (in whole or in part) of any documents or information arising from the Expert determination to any person or body other than the parties. The Expert will only be released from the requirements of this sub-Rule where he is under a legal obligation to provide oral evidence or other details, including where he has been ordered to do so by a Court of competent jurisdiction.
10. **Incapacity, inactivity, resignation or death:** if the Expert is unable to reach a determination in accordance with a timetable acceptable to the parties or otherwise set out in Rule 1 of Part II, due to sickness, other incapacity or a conflict of interest arising after his appointment, the Expert shall withdraw from the determination, retain any interim payments that have been made in the course of the Procedure, forego the rest of his fee and arrange for the documents to be returned to the parties. The Academy will then appoint another Expert, if the parties wish. If the Expert is unwilling to reach a determination he shall withdraw from the determination, forego his fee and repay any interim payments already made in the course of the Procedure and arrange for the documents to be returned to the parties. The Academy will then appoint another Expert, if the parties wish. If the Expert dies during the course of the determination, the Academy will use its best endeavours to ensure that the parties' documents are returned and will appoint another Expert if the parties wish.
11. **Discretion:** at the request in writing of either party, and either with the agreement of all other parties or of his own motion, the Expert shall have discretion (a) to amend the time limits set out in Parts I and II of these Rules and/or (b) to amend any of the Procedural Rules in Part II of these Rules. The Expert's decision as to his exercise of this discretion shall be final.
12. **Consultation:** unless otherwise determined by the Expert and agreed with the parties, no one party or anyone acting on one party's behalf shall communicate with the Expert in the absence of the other party. The Expert must not consult with a party other than in the presence of the other party except where a party, having received a notice under Rule 6(1) of Part II, has failed to make a written submission or appear at a meeting.
13. **Disclosure:** except as provided in Rule 5 of Part II, the Expert must disclose all information and documents received from any party to all other parties.

Rule 6: The Determination

1. **Law:** English law applies to the determination.
2. **Language:** the determination shall be conducted in the English language and the parties will provide to the Expert, at their own expense, translations into English of any documents and communications in a foreign language, if requested by the Expert.
3. **Confidentiality:** each person involved in the expert determination shall maintain the confidentiality of the expert determination and may not use or disclose to any party the determination or any information concerning, or obtained exclusively in the course of, the expert determination except to the extent that: (a)

the parties have agreed otherwise in writing (b) the information is already in the public domain (c) disclosure is necessary in connection with legal proceedings relating to the expert determination or (d) disclosure is otherwise required by law.

4. **Slip rule:** where the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a miscalculation of figures or a mistake in the description of any person, thing or matter, or a defect of form the Expert may correct the determination.
5. **Costs:** unless otherwise agreed between the parties, each party shall pay its own costs of or incidental to the Procedure. Unless otherwise agreed in writing between the parties, the parties shall be jointly and severally liable for the costs of the Procedure, and shall pay those costs in equal shares.

Rule 7: Procedure

1. The Procedure will be as specified with the Rules listed in Part II.
2. The Rules set out in Part II may only be varied by the written agreement of (1) all the parties to the dispute and (2) the Expert as provided for in Rule 5 (11) of Part I.
3. A party who becomes aware of any non-compliance with the Rules in Part I or II must object in writing within 14 days of the time at which he became aware or should have been aware of the non compliance, or he will be deemed to have waived his right to object.

Part II: Procedural Rules & Requirements

Rule 1: Timetable

1. The following timetable is subject to Rule 5(11) of Part I: the timetable shall be variable at the discretion of the Expert.
2. Within 14 days of the date on which the Expert accepts appointment, the claimant shall provide the following to any other party and the Expert: (a) a written document setting out the nature of the dispute, the legal and factual issues involved, his submissions in relation to those issues and the quantum of his claim; and (b) all documents and other evidentiary material on which he relies ("the Claim").
3. Within 14 days after receipt of the Claim, all other parties shall provide any other party and the Expert with: (a) a written document indicating whether or not he agrees with the claimant's description of the dispute and, if not, his statement of the nature of the dispute (including any cross claim), the legal and factual issues involved in the Claim and any cross claim, his submissions in relation to those issues, and the quantum of any cross claim and (b) all documents and other evidentiary material on which he relies ("the Response").
4. Within 7 days after receipt of the Response, any party may provide to the Expert and the other party: (a) a written document indicating whether he agrees with the Response and if not why he disagrees; and (b) any documents or other evidentiary material in reply to the Response and/or the cross claim ("the Reply").
5. If a cross claim is made under Rule 1.3 of Part II then the cross claimant may serve a reply to the written material served in response to such a cross claim under Rule 1.3. Such reply shall be served within 7 days of receipt of the Response under Rule 1.4.

Rule 2: Meetings/hearings

1. If he considers it necessary, the Expert may at any stage hold a meeting or teleconference/web conference with the parties to clarify the issues in dispute and make such orders as he considers necessary for the fair and expeditious determination of the dispute.
2. All parties will be given at least 7 days notice that such a meeting/teleconference/web conference is to be held.
3. At least 3 days before such a meeting or teleconference/web conference the Expert must inform the parties in writing of any specific matters to be addressed at the meeting.
4. The Expert may also hold a substantive hearing if he considers it necessary to determine the dispute.
5. All parties will be given at least 10 days notice that such a substantive hearing is to be held.

6. At least 5 days before such a substantive hearing the Expert must inform the parties in writing of any specific matters to be addressed at the hearing.

Rule 3: Expert evidence

Where a party or both parties has considered it desirable to engage an expert, the Expert may, if he considers it appropriate, direct that the party's or parties' expert(s) attend a meeting with him so as to narrow the issues in dispute. The Expert shall have total discretion over the procedure adopted and the recording of any decisions made at such a meeting.

Rule 4: Powers of the Expert to seek further evidence

1. The Expert may at any time, on his own motion or at the request of a party, allow or require further evidence, including the submission of documents or other information in a party's possession or control.
2. The Expert may, on his own motion or at the request of a party, require statements or appearances by witnesses for either party.
3. The Expert may, on his own motion or at the request of a party, inspect or require the inspection of any site, property, product or process as he deems appropriate.
4. The Expert may, on his own motion or at the request of a party, carry out such non-destructive tests as he deems appropriate.

Rule 5: Withholding information by reason of confidentiality.

A party may invoke the confidentiality of information it wishes or is required to submit for expert determination. The party shall submit the information to the Expert stating the reasons for which it considers the information to be confidential. If the Expert determines that the information is to be classified as confidential, he shall decide under what conditions and to whom the confidential information should be disclosed.

Rule 6: Power to impose sanctions

1. Where a party has failed to provide the Expert with information which he has requested or has failed to attend a meeting, the Expert may serve on the party a notice stating that unless the information is served within 7 days or the party attends a meeting on a set date he will proceed to determine the matter in the absence of the information/the meeting.
2. The Expert is entitled to draw adverse inferences, where appropriate, from the non-production of information or non-attendance at a meeting.
3. The Expert shall determine the dispute on the basis of the information that is before him.

Rule 7: The Determination

1. As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties under Rule 1 of Part II, the Expert shall determine the dispute between the parties and notify such determination in writing to the parties.
2. Unless otherwise agreed by the parties and communicated to the Expert in writing at the time of his appointment, the Expert will not give reasons for his determination.
3. The determination shall be delivered to the parties upon payment in full of the Expert's outstanding fees and expenses. If one party pays the Expert's fees and expenses when the other party should have paid all or part of that sum, then such amount shall be recoverable forthwith by the paying party from the other party, unless otherwise agreed in writing by all the parties.

THE ORGANISATION

The Academy of Experts (formerly the British Academy of Experts) was founded in 1987 with the objective of providing, for the first time, a professional body for experts to establish and promote high objective standards.

Since its establishment The Academy (TAE) has become an international centre of excellence for experts with a substantial multi-disciplinary membership. It acts as both an accrediting and a professional body.

As well as acting as a representative voice for experts The Academy publishes guidance of a technical nature on a number of issues for experts in both Civil and Criminal cases. For example, The Academy's 'Model Form of Report' and 'Guidelines for Forensic Scientists' are widely used by both members of The Academy and other experts and recognised by the legal profession. The promotion of 'cost efficient dispute resolution' is extremely important to The Academy. This has led to the establishment of the Faculty of Mediation & ADR. The Academy is now a leading proponent of the development of Alternative Dispute Resolution (ADR) in the UK working with the Civil Mediation Council of which it is a member.

The Academy works strongly to liaise with other institutions in both the UK and internationally. In particular it was instrumental in the foundation of EuroExpert, the European Union Organisation for Expert Associations which was formed in 1998. The Academy of Experts now represents the UK and has held the presidency of EuroExpert.

ACCREDITATION OF EXPERT WITNESSES

All applicants to The Academy who wish to become Accredited Practising Expert Witnesses undergo a rigorous vetting procedure to ensure standards of excellence are maintained. This leads to the recognised full accreditation as a Practising Expert. Those achieving it are awarded the designatory letters MAE.

Ethical and professional standards are governed by Codes of Practice and enforced by disciplinary procedures.

WORKING WITH THE JUDICIARY

The Academy has a Judicial Committee which is chaired by a Law Lord, and consists of Lords Justice of Appeal and other Senior Judges from the UK and other jurisdictions. The committee is responsible for:

- The Model Form of Expert's Report (commended by Rt Hon Lord Woolf)
- Guidance Notes on The Meetings of Experts
- Guidance Notes on Contingency Fees

APPLICATION FOR MEMBERSHIP

An application for membership (by a suitably qualified individual) as a practising expert is judged on the basis of an applicant's experience as an Expert Witness. The Academy recognises that the skills of an expert are separate from those required by an applicant's primary profession and awards different grades of membership:

- Associate Membership is for those starting out their Expert Witness careers.
- Full Membership is awarded to experienced Expert Witnesses who show an appropriate level of skill and understanding of the work of an expert.
- Fellows are those experts who demonstrate an exceptional level of skill and experience as an Expert Witness and must be Full Members of at least two years standing.

TRAINING & DEVELOPMENT

The Academy offers a comprehensive range of training programmes to enable members and non-members to develop their expert skills, and undertake Continuing Professional Development (CPD).

Courses range from the basic role and responsibilities of the Expert Witness through to the requirements of appropriate legislation (eg the CPR) and the giving of evidence in the witness box.

ALTERNATIVE DISPUTE RESOLUTION

The Academy is also a training and accreditation body for ADR Neutrals, including Mediators, Conciliators and Expert Determiners. It publishes and maintains the Register of Qualified Dispute Resolvers and awards the designatory letters QDR to those on the register.

Standards are enforced in the same way as for experts.

RANGE OF SERVICES

To Members:

The Academy of Experts provides a full range of services to its members including:

- Helpline
- Technical meetings and training
- Regular magazine and newsletter
- Detailed handbook for practical guidance
- On-line information resources
- Experts fee survey

To the Legal Profession:

The Academy of Experts provides a number of services which also assist the legal profession:

- On-line Registers
- ExpertSearch
- SJE Select
- Mediator Appointment Service
- Membership

A class of membership is open to the legal profession to enable input and involvement with the work and development of The Academy.

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