

# HOW TO PICK THE RIGHT FORENSIC ACCOUNTANT

**deans**  
forensic accounting  
your expert witness



## **Any accountant can act as an Expert Witness, can't they?**

Well technically the answer is "yes". In fact, there is nothing to stop someone calling themselves a forensic accountant or an expert witness in the UK even though they may have no qualifications and no experience.

## **Surprising, isn't it?**

Given this odd state of affairs it creates a difficulty for anyone who is looking to employ a forensic accountant since there is no single body you can go to which lists them. And even if there were, differentiating between them is impossibly difficult since there are no official standards to judge them against.

## **So, if you are looking for an Expert Witness Forensic Accountant how do you choose the right one?**

Let's start with the obvious - a quick search on Google. If you type in "Forensic Accountant" you get 10.8 million results. The first page lists 7 adverts, 3 definitions and 6 job posts - you get the picture. If you type in "Expert Witness" you get a whopping 165 million results! The first page lists 7 adverts, 1 generic search engine, 5 definitions and 2 institutes. This really isn't helping you make a choice!

Compare that to a quick search for “Accountant” on The Academy of Experts website below. This search generates a list of only 109 accountants in the UK who have gone through the vetting procedure to become members of the Academy. Now there will be others who aren’t on the list, but this gives you an indication that the ‘right’ expert witness is going to come from a very limited pool.

*The Academy of Experts is a professional society and accrediting body for expert witnesses of all disciplines. It is independently run by experts for experts and those using them. To become a member of the Academy applicants must undergo a thorough and rigorous vetting procedure, which includes being able to demonstrate a certain level of experience and quality. A number of top-quality references are also needed from instructing solicitors that have worked with the applicant.*

[www.academyofexperts.org](http://www.academyofexperts.org)

So, up to now, when you have been working on a case and the Judge has ordered the appointment of a Forensic Accountant as an Expert Witness, what have you done? Contacted the nearest accountant? Resorted to using the incumbent company accountant? How do you know what quality you are getting? This court order is your one opportunity to appoint a quality Expert Witness that will provide you and your client with the information required to help the case progress. There will not be a second opportunity. What happens if the Expert’s evidence is poorly substantiated, hard to understand or lacking in sound reasoning? Worse still what if the Expert is called to give evidence in court and they have no experience or perform poorly when under cross examination?

All of these outcomes could be catastrophic for your client and leave you let down and disappointed (not to mention the professional ramifications).

In this document we will walk you through the process of identifying and selecting a quality Expert Witness accountant and what you need to look for. Imagine being able to say to your client that they need a Forensic Accountant and / or Expert Witness and you know exactly the right person for the job?



# HOW TO CHOOSE THE RIGHT FORENSIC ACCOUNTANT FOR YOU

As the appointing lawyers you are investing considerable faith in an expert; a poor appointment can cost you and your clients dearly.



## Roll and Duties of an Expert

A landmark case for Expert Witnesses was the Ikarian Reefer case from 1993. This was a case relating to the loss at sea of the Ikarian Reefer, which had run aground and then caught fire. The case involved a number of Expert Witnesses giving evidence covering a range of specialisms. The Judge in the case, as part of his judgment, set out a number of duties for an Expert Witness that apply to Experts from all disciplines.

This judgment has stood the test of time and this case is often referred to by Expert Witnesses and The Academy of Experts. The Judge set out the following duties and responsibilities of Expert Witnesses:

- 1 Expert evidence presented to the Court should be, and should be seen to be, the independent product of the Expert uninfluenced as to form or content by the exigencies of litigation.
- 2 An Expert Witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise.
- 3 An Expert Witness in the High Court should never assume the role of an advocate.



- 4 An Expert Witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.
- 5 An Expert Witness should make it clear when a particular question or issue falls outside his expertise.
- 6 If an Expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one.
- 7 In cases where an Expert Witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.
- 8 If, after exchange of reports, an Expert Witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the Court.
- 9 Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.

### ***What to look for:***

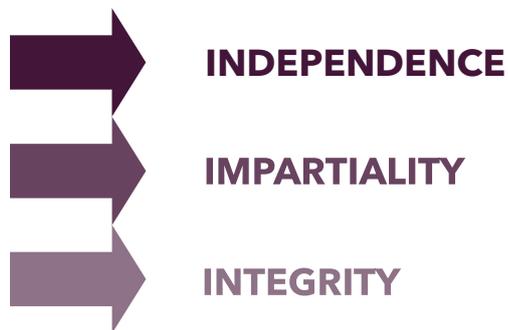
1. *Independence*
2. *Unbiased opinions*
3. *Not an advocate*
4. *Expert that sticks to their area of expertise*
5. *Good quality, clear reporting*



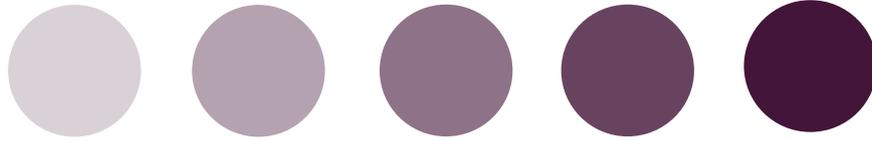
## WHAT EXACTLY IS AN EXPERT AND WHAT DO THEY DO?

An "Expert" is someone who is instructed by the court to prepare expert evidence to assist in proceedings. Lawyers understand the law but need help in understanding what is good practice and procedure in other professions. They may also need help in putting together the evidence to explain what has happened. That is where Expert Witnesses come in.

In UK litigation even though the lawyer might appoint an Expert Forensic Accountant their ultimate responsibility lies with the court. This enables the Expert to remain impartial and independent at all times. They are there to explain the issues to the court. The Academy of Experts refer to "the three i's"



The three i's are essentially the over-arching qualities of any good Forensic Accountant acting as an Expert Witness. The problem is that they are quite intangible in nature. The best ways to identify these traits in Experts is to either go for an Expert who is referred or recommended to you by other solicitors or to pick one who is a member of an accredited institute such as The Academy of Experts.



The Academy assesses these qualities during their vetting processes for taking on members and they also integrate these three traits into all of their Expert Witness training.

Ultimately, any Expert that does not follow these three i's is likely to be severely criticised by Judges and in more serious cases their evidence may be so tainted that it is thrown out.

It is important for Forensic Accountant Experts to remain within their area of expertise. (The court takes a dim view of Experts who stray beyond their specialism.)



Once appointed, the Expert will be asked to investigate the evidence. There may also be a meeting of Experts, if there are more than one, to discuss the issues and identify the points that are agreed and remain in contention. The Expert Forensic Accountant will write a report of their findings. This will demonstrate good industry practice and will follow a form that is compliant with the jurisdiction of the case.

An Expert report from a Forensic Accountant must be evidence-based and separate statements of opinion from the rationale on which it is based. Findings should be presented logically and clearly so that a non-expert can follow them.

Although most cases settle out of court a Forensic Accountant can be requested to attend court where they will be questioned and cross examined on the content of their report and their conclusions.

### ***What to look for:***

- 1. Independence*
- 2. Impartiality*
- 3. Integrity*
- 4. Recommendations/Referrals*
- 5. Member of The Academy of Experts or other recognised institute*

# SOME KEY QUALITIES OF AN EXPERT

The context in which Experts practice is one of a dispute. This can often be stressful and consequently many accountants don't relish the opportunity of placing themselves in such a situation. However, professional Expert Forensic Accountants recognise this and are prepared and experienced at dealing with these circumstances. In other words, it helps to choose someone who is objective, analytical, cool-headed and familiar with the combative arena and not intimidated by the experience.



Equally important, they must be able to communicate their findings and reasoning to a non-expert audience - both in writing and verbally. A good Expert clarifies the issues. You want your Expert Forensic Accountant to be confident and competent on the stand and able to stand up to cross-examination. An Expert that is inclined to use broad-brush statements and unsupported generalisation is likely to find cross-examination an unpleasant experience.

Ideally you want an experienced Forensic Accountant Expert who has handled a case precisely the same as that before you. Such people are not always available. Therefore, you want to look for Experts who have relevant academic qualifications or memberships such as being a Member of the Academy of Experts (someone with an "MAE" after their name). Practical work experience and knowledge also go a long way. Someone who has acted in many cases across lots of sectors proves that they have the ability to apply their skills to a whole range of client scenarios.

## ***What to look for:***

- 1. Experience*
- 2. Objective*
- 3. Analytical*
- 4. Cool under pressure*
- 5. Familiar with court procedure*
- 6. Good oral and written communications*
- 7. Qualifications such as "MAE" - Member of The Academy of Experts*

# A REPORT IS A REPORT?

Not quite. The quality of an Expert's report is one of the key considerations for legal teams as their quality can sometimes be variable.

A good Forensic Accountant will follow the guidelines and templates suggested by The Academy of Experts. (In our practice we have further refined the report by applying some of the guidelines from NIFA (Network of Independent Forensic Accountants).

These reports should be 'court ready' and set out in a logical format. Generally speaking, a good report follows the following structure:

- ➔ Instructions and Disclosure of Interest
- ➔ Background to the Dispute and the Issue
- ➔ Technical Investigation
- ➔ The facts on which the Expert's Opinion is based
- ➔ The Expert's Opinion
- ➔ Summary of Conclusions
- ➔ Expert's Declaration and Appendices

If you're curious to see the detail of a report you can download a sample from our website here: <http://www.deansforensicaccounting.com/copy-of-business-valuations>



## **What to look for:**

1. *Well structured reports that follow the template designed by The Academy of Experts or other relevant bodies such as NIFA.*

# OTHER CONSIDERATIONS

## Single Joint Expert or Party Appointed Expert?

Careful consideration should be given to the type of Forensic Accountant Expert appointed. A Single Joint Expert will be instructed jointly by both parties. A Party Appointed Expert will be instructed by just one side.

Whichever type of Expert you appoint, and most Forensic Accountants are happy to perform either role, they will (or should) always demonstrate the qualities previously discussed in this report. So, to be clear, even a party appointed Expert will still demonstrate the three "i's" - Independence, Impartiality and Integrity. They will never be an advocate for the one side.

Often it will be the Court that directs on the type of Forensic Accountant, but this will be based on the submissions from both sides. Cases involving either type of Expert can go all the way to Court, however, it is more common for party appointed Expert cases to lead to Experts appearing in court as those cases can often be more contentious and / or acrimonious.

## Instructions

Once you have identified your Expert, work with them to formulate what is needed of them. They can help you make sure the right questions are asked of them. It is not uncommon for Expert Witnesses to go back to instructing solicitors to clarify the requirements or to propose amendments or additions. You can easily avoid this loss of time by involving your Expert early.

Experienced Forensic Accountant Experts will speak up if they believe something is missing from their instructions.





## Other observations

Furthermore, experienced Experts will flag up issues they spot during the course of their work (while still within their area of expertise) that may be outside of the requirements of the instructions. This can be very helpful as they may have identified previously unknown issues which may need to be explored under separate instruction. Isn't it better to be told of these issues so that you can make a judgment on whether or not they are relevant? Inexperienced Experts are more likely to stay rigidly within their instructions and not even flag up these other observations.

## Timescales

Timescales are always challenging in the court arena. Your Expert will be aware of this and they should keep you up to date of progress and they should flag early any foreseen problems with deadlines etc. When these do occur, it is often due to the lack of data being generated by your end client in response to Expert requests. Knowing early will enable you to nudge your client to get the information sent across.



## Information requests

Experts should be able to provide the legal teams with detailed information requests. In many cases these can be produced at an early stage - even where you are still formulating the letter of instruction. The earlier these information requests are received the sooner the Expert can complete their work and issue their report so, get them involved right at the early stages.

## Shadow Expert?

Have you ever considered a Shadow Expert? This is an Expert appointed by one side of the dispute to help the legal team on that side by providing an independent review of the report produced by the Single Joint Expert or two Party Appointed Experts.

Many Forensic Accountant Experts are happy to perform this role. They will be under your instruction and their role will be "internal" in the sense that their reports will be produced to aid the submissions of the legal team appointing them. The Shadow Experts' reports are rarely seen by the courts or opposing legal teams.

These appointments are often really useful to help legal teams get a second opinion on whether the main Expert(s) conclusions are reasonable and whether or not something is worth challenging. They can also help in complex cases where they can aid in the understanding and interpretation of the main Expert(s) reports.

# EXPERT FORENSIC ACCOUNTANT

## WHAT TO LOOK FOR:

- ➔ *Single Joint | Party Appointed | Shadow*
- ➔ *Independent | Impartial | Integrity*
- ➔ *Not an advocate*
- ➔ *Avoids bias and conflict of interest*
- ➔ *Confident*
- ➔ *Calm under pressure*
- ➔ *Analytical*
- ➔ *Qualified*
- ➔ *Accredited - ie a member of The Academy of Experts*
- ➔ *Knowledgeable and experienced*
- ➔ *Clear communicator - verbally and written*
- ➔ *Good people skills, personable*
- ➔ *Recommended | Referred*
- ➔ *Understands process | familiar with court procedure*
- ➔ *Courtroom experience*
- ➔ *Aware of specialism boundaries*
- ➔ *Agrees timescales and sticks to them*
- ➔ *Can use judgement to flag other issues*
- ➔ *Produces a well-structured report*



# IN CONCLUSION

We hope that this report has helped you understand what to look for in a Forensic Accountant to ensure your case runs smoothly. You'll find that top quality Expert Witnesses are those Forensic Accountants who have gone above and beyond, they have endeavoured to obtain accreditations (such as from The Academy of Experts), they have a wealth of experience in dealing with similar cases and / or they have obtained quality training. Their reports are clear, concise and follow a court ready format, they follow the three "i's" of Independence, Impartiality and Integrity, they are not advocates and they understand the legal and court processes. And finally, they are professional, good communicators and personable.

If you have found this information helpful, then please visit our website, where there is lots more useful information: <http://www.deansforensicaccounting.com>.



Gibson House | Hurricane Court | Hurricane Close | Stafford | ST16 1GZ

Tel: 01785 258311

[www.deansforensicaccounting.com](http://www.deansforensicaccounting.com)