

# Experts must be independent and have relevant experience

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**A recent case has re-iterated the need for expert witnesses who come before the courts to have more than general knowledge or experience of the matters on which they give evidence and not to be too closely connected with their instructing parties.**

The case of *Proton Energy Group –v- Orlen Lietuva* (2013) concerned an oil contract and the practices of the oil industry, but the comments of the court on the two experts that gave evidence are of relevance to surveyors and valuers who give expert evidence in rent reviews, lease renewals, dilapidations, enfranchisement matters and other disputes.

Proton's expert was said to be straightforward and honest, but forthright. However, he had known the partner at Proton's solicitors dealing with the matter for 18 years. For 12 years, the partner had been involved in commercial conferences and seminars, which the expert's company put on for profit. The partner and the expert referred to their connection with one another on their websites, and the partner had been paid by the expert's company for some of his workshops.

The court said that this was not the worst of failures to disclose an interest it had come across but that the connection in this case, which included money, was a closer one than usual and should have led the partner's firm to choose another expert or at least make full disclosure of the link.

Orlen's expert was said to be a good witness in that he was honest, highly qualified in the oil industry in general and detached and straightforward in his answers. He had however never concluded a trade for crude oil mix – or for any products. He had never worked for a trading company. His evidence was hypothetical, and he gave views on market principles which were said by the court to be no more than a set of impressions, not based on firm evidence or solid experience, which he then applied to the facts of this case to reach conclusions. His evidence was found to be of little assistance.

The court concluded that the market principles of Orlen's expert were not made out by supporting evidence and that the views of Proton's expert, despite his dismissive tone and the limits on his independence, were more consistent with logic and the experience of the court.





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