

Expert Evidence in International Arbitration: Limiting the Differences

Academy of Experts, London
12 February 2020

Presented by
Professor Doug Jones AO

www.dougjones.info

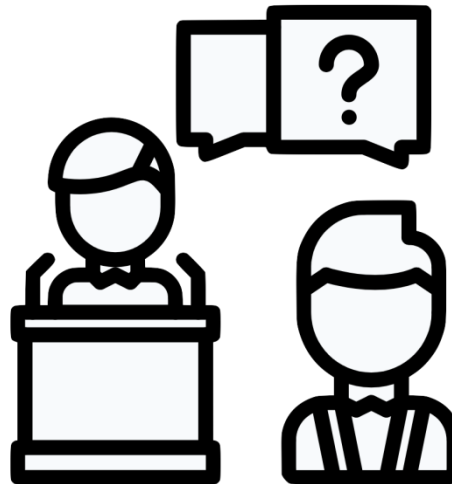


Overview

- ▶ The role of the expert witness
- ▶ Reform in UK courts
- ▶ Current practice in international arbitration
- ▶ Proposed best practice directions

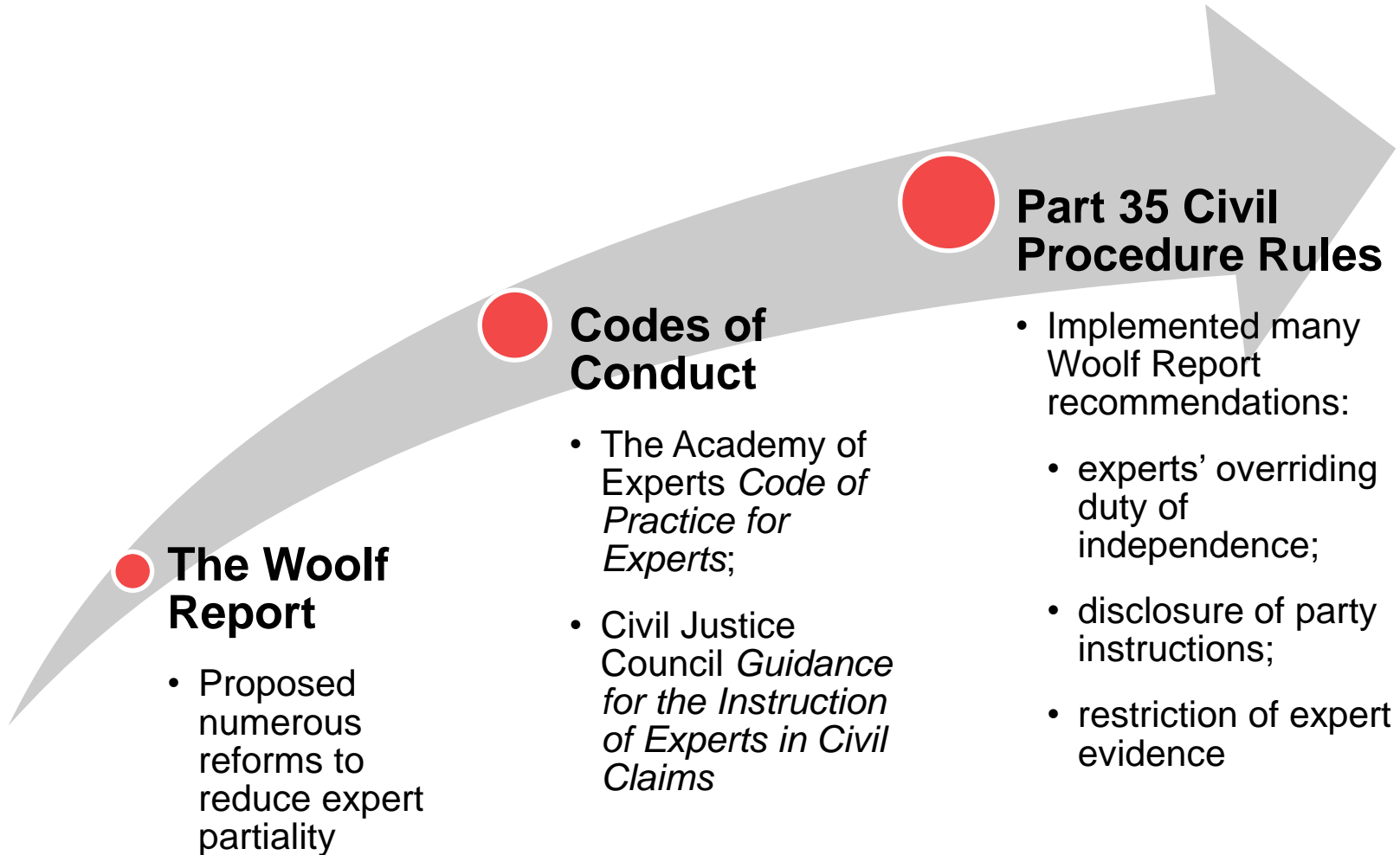
The role of the expert witness

Provide opinions based on witness evidence and documents



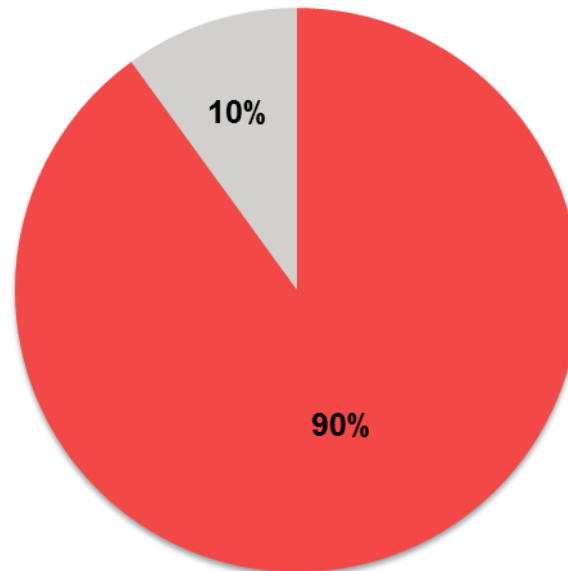
Party or tribunal appointed experts
Common law versus civil law tradition

Reform in UK Courts



Issues in International Arbitration

- ▶ Party-appointed experts overwhelmingly common in IA
 - » 90% of all experts used in arbitrations are party-appointed



Friedland and Brekoulakis,
*2012 International Arbitration
Survey: Current and Preferred
Practices in the Arbitral Process*

■ Party-appointed experts

■ Tribunal-appointed experts

Issues in International Arbitration

1

Concerns in common law translated to IA

- Bias of party-appointed arbitral experts

2

Challenges for arbitrators and counsel from civil law backgrounds

- Inexperience with problems requiring reform in common law jurisdictions

3

Current practice in IA

- IBA Rules on Taking of Evidence 1999
- CIArb Protocol 2007

Proposed Best Practice Directions

The Challenge: inefficient evidentiary hearings
and expert bias

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The Solution: limiting the differences

Proposed Best Practice Directions

1. Identification of disciplines
2. Establishment of common list of questions
3. Deferral of production of expert reports until factual evidence is available
4. Production of joint expert reports identifying areas of agreement and disagreement
5. Production of individual expert reports on areas on disagreement only
6. Production of "reply" expert reports that conduct a "figures-as-figures" analysis

Hot-tubbing and witness conferencing

- ▶ Only after applying the proposed directions will the hot-tubbing process be most effective



Expert Access Protocol

Delivering the experts to the Tribunal





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