

# Q&A

## Expert Witness Standards Webinar

12 March 2024

Who is the target audience of the Practice Alert?

The audience is wide, and the practice has gone out globally.

How has the RICS communicated the existence of the Practice Alert to RICS members in the first place?

As part of the strategy to reduce emails to members - the Practice Alert was part of the regular all profession emails. The Practice Alert is also published on our website - [Regulation Practice Alerts \(rics.org\)](https://www.rics.org/Regulation-Practice-Alerts)

Is there a particular area of practice where the majority of complaints have been raised?

No – it has covered a varying array of practice areas.

Is there a pattern to the concerns raised, e.g. a high number of concerns raised about a particular firm or individual?

No. No pattern or isolated to a particular member or firm. All concerns relate to different firms and members in the data.

What was the figures in numbers rather than percentages please?

In 2021 we received 15 reported concerns relating to expert witness. In 2022 we received 45, in 2023 we received 73. In January 2024 we received 9 and have been contacted by another regulator relating to investigations that they have which relate to RICS members, which will significantly impact our number of reported concerns.

How many of these "concerns" were found to be substantiated?

The stats relate to concerns that are escalated to investigation. Investigations may close with advice or confidential consent orders. Investigations in relation to expert witness are difficult where matters do not progress to contested litigation / tribunal phase and a judgment /

outcome may indicate criticism of the expert. Where matters settle - it is often difficult to progress an investigation – especially in the absence of the court / tribunal dealing with the matter. We believe that many concerns about the quality of expert witness reports are not reported to RICS.

In 2018 the Upper Tribunal highlighted concerns about out the guidance to EW standards. Why has it taken so long for RICS to not only progress the concerns arising from Gardiner & Theobald and why was not a practice alert issued then rather than an extraordinary delay in addressing this issue until now?

In 2018 RICS began to revise its practice statements and guidance in response to concerns and we hope it will be finalised before the end of 2024. Practice Statements are relatively new to RICS Regulation and haven't been used extensively in the past. However this alert was issued due to the uptick in concerns received to draw attention to the RICS guidance.

Should there also be guidance given to the market that the appointment of the right Expert is very important.

This is a good point but it is a question of resource. Giving guidance on a wider level other than to the members costs a great deal of money and resource and is this the wisest use of limited resources at RICS and the priority of spending. We must wrestle with this – but yes in principle, but it turns it into practicality.

Please could we be provided with anonymous EW reports that are of a poor standard and good - say one of each?

We must be cautious about sharing expert reports into general circulation, even when redacted, as they are often confidential and we would require permission from all parties concerned. However, as a training exercise it can be useful to compare the strengths and weaknesses of examples reports and this is one of the exercises undertaken in the RICS Expert Witness Certificate training course.

Is it not time to make the RICS EW training course or one of those provided by other reputable providers mandatory?

These are matters which the RICS DRS team will raise with the RICS Standards & Regulation Board for consideration as part of the work being done on reviewing of regulatory schemes. We are wary about jumping to this option. Our view is that we have well written guidance in the form of mandatory guidance in the practice statement and as best practice in the guidance note. Making training mandatory would introduce a huge amount of regulation onto RICS

members acting as experts and could result in unintended consequences. We are instead working to increase the awareness of the already existing guidance encouraging members to read and be aware of it. Training is available as optional.

#### Are we heading towards a Registration scheme along the lines of VRS?

See above. The RICS Standards & Regulation Board receives regular reporting and information relating to complaints, trends and regulatory risk. This will be considered as part of the work being done on reviewing regulatory schemes.

#### Is it the case that the guidance is not regulation and that all experts should be regulated by RICS on a mandatory basis?

All individual members (and candidates) as well as registered firms are regulated by RICS. We do not have a separate register or scheme of members who may be undertaking Expert Witness instructions. All members are required to be fully compliant with all RICS' Rules, Standards and Guidance.

#### Do RICS recommend that the Experts meet and try to agree on matters/issues?

The courts/tribunal directions will usually state surveyors need to meet and try to agree as many issues as possible to then leave the tribunal to concentrate on the matters that are in dispute.

#### It does make me wonder how many concerns are being raised by the payee?

Very few - which potentially raises further concerns about aspects relating to independence.

#### If there are members acting outside of their expertise or knowledge ie without knowledge of GN then should Regulation not be addressing it under Rule 1 of conduct?

Yes - we do. Like all UK regulators, we are reliant on the receipt of concerns from consumers or other members etc to investigate the concerns. Where we receive intelligence we also initiate investigations.

#### Are expert witness reports not public documents after they have been presented in open court?

Unfortunately, not all make it to open court. Litigation often settles early. The Practice Alert was intended to make all members aware of their obligations and to raise awareness on other members to report non-compliance should they encounter it in practice.

Do the RICS liaise with the Legal profession in terms of setting standards of solicitors instructing Expert witnesses. In a high proportion of cases solicitors instructions are brief and the timescale set for delivery of an Expert report do not allow sufficient time to undertake all necessary enquires. Solicitors will place experts under extreme pressure to meet Court directions and deliver a report rather than apply to the Courts to vary a timetable.

We would be happy to provide the comments relating to challenges with solicitor instructions to our counterparts at SRA

When and to what extent should we: "Explain previous expert evidence which has been rejected/criticised".

The aim of this point is to alert members to the possibility that cross-examining council may seek to undermine the credibility of an expert witness by drawing the tribunal's attention to previous testimony the expert has given which was rejected and/or criticised.

Also, if a member is currently instructed to provide written testimony where their previous testimony on the same subject has been rejected, the member may be wise to act proactively. E.g. they may refer in their report to their previous conclusions and state whether and to what extent they have, or have not, moderated their opinions, and explain why.

How concerned is RICS about the rising use of AI by lawyers to appoint Experts that display bias towards the appointing party?

Technology is moving at a fast pace and RICS must remain cognisant of the challenges that it brings to the professional workplace. We believe AI can be a tremendous benefit in many areas of professional work. In relation to the role of expert witnesses, we believe AI should be used as a tool not as a substitute for personal expertise and knowledge.

We are confident in any case that judges and other tribunals, whose decisions are informed by expert testimony, will continue to disregard, or give less weight, to purported expert evidence which they consider to be biased.