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Keeping disagreements out of court:

New problems with expert determination clauses (UK)

A very common clause used to establish the value of shares or other assets is defective, according to a recent High Court decision¹.

Contracts and company articles of association often refer share valuation issues to an independent expert accountant. Similar forms of clause are used to settle the accounts of a business, and in property documents to refer valuations or rent reviews to an independent surveyor. The usual form of clause says that an independent expert is to be agreed or, if not agreed, chosen by the President of the Institute.

In this case the court held that both parties have to agree not only to the selection of the expert, but also to all the terms of the appointment, even if he is chosen by the President. So by withholding agreement to the engagement letter, a party could bring the whole process to a halt. The court said the process should be “formal and precise” and, in litigation that had already lasted three years, would only help by declaring that the parties could not unreasonably withhold consent. This case potentially gives the whip hand to the truculent and unreasonable.

I have devised wording to avoid the effects of this case and keep disputes out of court. Anyone who might need to rely on an independent expert clause should have it reviewed before a dispute arises.

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Clarity and experience in corporate structures

I've been handling UK share transactions and valuation and accounting issues for over 25 years. Give me a call on +44 7770 601840 or visit my website www.clarityincorporatelaw.co.uk

¹ *Cream Holdings v Davenport*

[2010] All ER (D) 100 (Nov) (6 November 2010)

This article in shorter form was originally written for the [Excello Law Limited](#) newsletter and website

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