



Case Study – Claims Audit – Expert Witness Evidence in High Court Action

Claims Consultancy – Expert Witness

SX3 Audit results are rarely challenged by our clients, who are, after all, experienced and understand what we are doing for them – providing independent evidence that they can then use as they need.

When it comes to acting as an expert witness, things are different – to quote Kimberly Owen from Stewarts Law in a recent blog [Potential pitfalls when providing expert evidence in personal injury cases](#) :

“The primary duty of an expert witness is to the court, and this duty overrides any obligation to the party instructing or paying the expert. Expert evidence must be objective, independent, unbiased and based on all material facts.”

The blog goes on to specify common pitfalls for the inexperienced expert witness.

SX3 uses proven, robust procedures for ensuring independent assessment in its audits but we still had to go further to meet the needs of the court.

The Brief

The SX3 client had provided capacity to an MGA. That MGA outsourced their claims handling to a TPA with delegated authority to handle and settle the claims. The insurance account was loss making and the arrangement had ceased.

The capacity provider blamed the losses primarily on poor claims handling by the TPA, so it commenced a Commercial Court action in the High Court seeking millions of pounds in damages.

Audits carried out prior to the legal action were considered by the court to be inadequate and indeed provided conflicting results. SX3 were instructed by the court, on behalf of the Claimant, to provide an independent, objective and detailed assessment of the claims handling performance by the TPA and to quantify any losses arising from failures of the claims handling.



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Working closely with Client to Ensure most effective outcome

Assessing and quantifying performance on claims handling is always likely to involve a degree of opinion, so is somewhat subjective. SX3's existing methods are designed to remove as much of that subjectivity as possible to deliver objective and transparent results.

Therefore, to ensure stakeholders to the process, including those less familiar with assessing claims performance, SX3 created a detailed assessment manual that the court and parties involved in the case could understand and follow the assessment processes used by the SX3 audit team.

The results we produced could therefore be tested against defined assessment criteria. The detail of that assessment manual was shared with the instructing lawyers and their client to ensure understanding and to invite any additional criteria to be included.

38 separate tests were developed to assess the claims handling performance. If any failure was identified in these tests, the auditor then would consider if any losses (leakage) arose from that failure.

Given the fundamental allegations in the legal case, the assessment of claims handling performance was set against the following criteria in descending order:

1. Was there a relevant process or service standard contractually agreed by the TPA?
2. If not, was there an industry practice / legal precedent / FOS decision in place to use as a benchmark?
3. If not, apply an SX3 assessment, based on the detailed assessment manual produced.

SX3 already had well established criteria for calculating and removing subjectivity from a leakage calculation. But to support this process further, average market settlement data was obtained from Verisk to create benchmarks for some of the more common negotiated settlement areas. Any other areas, the auditors provided clear calculations and rationale for each failure and any leakage arising from that failure.

One added complication to the project was that the book of claims was at some point transferred from the defendant to a TPA chosen by the claimant. The auditors therefore had to determine if any errors by the handling of the claimants TPA impacted adversely the outcome of the claim.

During the auditing, daily query sessions were conducted with the TPA to ensure data and handling methods were understood – nothing was left to interpretation. Weekly updates were provided to the claimant's legal representatives.



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Outcome

Recognising the implications of the results being produced by this review, every effort was taken to avoid overstating any failures or losses, whilst still ensuring all performance areas were fully assessed and quantified to help ensure parties had a clear understanding of the extent of potential failures and losses.

There was a substantial number of quantifiable failures. SX3 had quantified the extent and financial amount of those failures, providing written and verbal opinions on the degree of tolerance to be allowed within the results and citing a number of key examples to bring the data to life.

The evidence produced by SX3 convinced the claimant to continue to pursue their claim. Within 3 months, the Claimant and Defendants reached a negotiated settlement bringing early closure of what was likely to be a costly and protracted legal process.

SX3 Case Studies – are published to help prospective clients understand how value opportunities for the use of our services may be found and to give an insight as to how SX3 works with clients. All projects are unique and have more detail than can be expressed here.