

# Shadow forensic experts

**Rakesh Kapila** considers how forensic accountants can play a very useful role as shadow experts in many types of case

## IN BRIEF

- ▶ Benefits of instructing shadow experts.
- ▶ Examples of work undertaken by forensic accountants as shadow experts.

A 'shadow expert' advises one of the parties in a case as part of the legal team and is not approved or endorsed by the court. Forensic accountants can play a very useful role as shadow experts in many types of case, including commercial disputes, matrimonial cases, personal injury claims and employment disputes.

Solicitors may wish to instruct shadow experts for a number of reasons. For instance, they may want assistance on specific matters outside their expertise, they may be seeking ongoing advice on accounting and financial matters throughout legal proceedings or they may want to obtain 'second' opinions on reports prepared by single joint experts. This article highlights the benefits of instructing forensic accountants as shadow experts, sets out the key features of the types of case on which they may be instructed as shadow experts and provides examples of the type of work they undertake.

## Benefits of instructing shadow experts

Although shadow experts will only be instructed where it is considered to be proportionate, the benefits associated with the involvement of shadow experts include the following:

- ▶ Shadow experts do not have an overriding duty to the court; their duties are to the parties being advised.
- ▶ They can be instructed on issues of concern throughout the proceedings and not be restricted to time frames or rigid instructions applicable to experts preparing reports for disclosure.
- ▶ Shadow experts are able to provide candid advice to instructing solicitors and can often inform the tactical approach to be taken.
- ▶ The costs of shadow experts can be better managed because they are instructed for specific tasks.

## Examples of work

Shadow experts can assist with the provision of clients' financial disclosure and can review the relevance, completeness and accuracy of other parties' financial disclosure. They can also attend meetings with instructing solicitors and their clients to explain complex financial issues.

Shadow experts can assist in deciding whether expert evidence is required, in reviewing single joint experts' reports and in identifying questions to be put to experts. They can also offer ongoing advice to counsel and attend court to highlight pertinent issues when experts are being cross-examined.

## Case studies

Examples of forensic accountants' involvement as shadow experts include the following:

- ▶ Shadow experts were instructed by solicitors representing one of the parties in a shareholders' dispute. They considered the financial aspects of the dispute, assisted in the subsequent identification of a single joint expert to consider key issues including a valuation of the business, assisted in drafting instructions to the single joint expert, provided views on the expert's report and suggested detailed questions which were subsequently raised with the expert.
- ▶ Forensic accountants were instructed by solicitors representing the husband to review a single joint expert's valuation report on a facilities management business. They listed questions for the expert, who admitted, when giving evidence, that the valuation was at the higher end of an appropriate range and that her consideration of liquidity had not taken adequate account of the business's working capital needs.
- ▶ Shadow experts were instructed by solicitors representing the defendant to review a single joint expert's report on the lost earnings attributed to a claimant with a wood recycling business following the loss of a local authority

contract alleged to have resulted from a back injury. Their research, suggesting that the contract may have been terminated owing to a downturn in the market for woodchip rather than the claimant's inability to work, assisted the defendant's solicitors in reaching settlement at a much lower sum than the expert's quantified amount.

- ▶ Expert accountants were instructed by a partner who had retired from a medium-sized solicitors' firm to review financial aspects of the partnership agreement and to compute the amount owed to him on retirement. Their 'hand-holding' role included evaluating the firm's work-in-progress and accounting records to compute the partner's outstanding profit-share on retirement. They were subsequently involved in a mediation hearing at which it was agreed that the firm owed an amount to the retiring partner and that he had no liability to the firm.
- ▶ Forensic accountants were instructed by a specialist firm of family lawyers on behalf of a wife to consider the husband's Form E with particular regard to his valuation of £50,000 in respect of a 5% shareholding in a private engineering company which was likely to be sold within a few years. Their advice suggested that the husband's interest could exceed £1m, based upon which the parties agreed to instruct a single joint expert to value the husband's shareholding. In addition to assisting with points to be included in the letter of instruction to the single joint expert, the expert accountants' advice resulted in the settlement proposals incorporating 40% of the proceeds arising on a sale of the husband's interest within four years.

## Conclusions

The expertise and the prospective cost of shadow experts are critical issues to be considered before instructions are issued. However, our involvement as shadow experts shows that forensic accountants can be important members of clients' advisory teams in the right circumstances. **NLI**

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