

Dear Experts,

I'd like to take a few moments outside of the appeal to express my disappointment with the process so far. I won't name names as this is an open letter and I'm not seeking retribution against any individual. My concerns are about process, not individuals.

I have serious concerns about the ease with which someone's character can be attacked publicly by a DRS Expert when no opportunity is available for the individual concerned to respond. This isn't about me – it is about complainants and respondents in any DRS.

I am aware that a previous Expert in DRS25766 expressed the view that my company may have weaponised the process. I have no issue with anyone who holds that opinion, and they are welcome to express it.

This Expert has gone much further. He has publicly accused me of being misleading and of having "must have known" certain facts – which in combination comes not far short of an accusation of knowingly deceiving a process in order to obtain property. That is close to an accusation of fraud. Which part of that should someone operating a regulated financial services business not be concerned about? Let's be honest, would he repeat what he has on an open forum outside of this dispute and not expect a letter before action? There was zero opportunity to address these defamatory remarks without paying £3,600 in appeal fees. Whilst my company is fortunate enough to be able to pay those fees, many complainants and respondents are not – and for them to have no opportunity to respond is simply not right.

He has also publicly overturned in principle a previous DRS decision, DRS 25512, without ever having seen the evidence on which it was based. What would normally take three of Nominet's most experienced and respected experts has been conducted by one individual, without a mandate and without seeing the original DRS pack. How can that ever be proper? DRS25512 involved entirely different evidence and entirely different arguments.

Misleading? I was the one who submitted the documents about DRS25512, where the Expert said the complaint was weak and would likely have been defended had someone replied. I never hid that – I submitted it myself. I also disclosed that a third party had objected to my Class 36 trade mark application. None of these things were hidden from the Expert, nor did he stumble across them through his own research. Far from being misleading, I could not have been more open about aspects which may have negatively impacted the decision.

Regardless of whether the Expert has gotten his facts right or wrong, the privileged position and partial immunity from defamation proceedings that both complainants and respondents agree to when entering this process is one that should not be abused. These accusations carry real world consequences. At the very least, where an Expert feels confident enough to make them, the individual concerned should be given an opportunity to respond. In a normal DRS that opportunity exists – the opposing party files a response, points are tested, and there is a natural check on what can go unchallenged. None of that happened here. The Expert proposed his own theories, reached his own conclusions about the Complainant's honesty, and marked his own homework. That is fundamentally unfair – and it is unfair not just to this Complainant but to anyone who enters this process in good faith.

I would note the Expert's use of the phrase "supernatural ability" in the decision. The tone was sarcastic, and I do not think that is the standard that someone bringing a complaint in good faith deserves. I am not someone who is free from mistakes, and I have learned from experience in most processes. I would hope that a nudge in the right direction from more experienced experts is sufficient to address this.

I believe some of this Expert's reasoning can only be explained by opinions formed outside of the evidence submitted in this case. DRS25766 is, to the Complainant's understanding, a well-known dispute within expert circles and discussed at expert events. It would be almost impossible for anyone familiar with it not to have formed a view about what happened in the earlier DRS25512, it's only human.

I hold a portfolio of domain names, mostly .co.uk and .uk and some quite valuable. If the prejudices I believe influenced this decision are more widely held among Experts, I would rather address that now, in a dispute that has little financial value, than have it affect something more significant later.

Hopefully, even if you don't agree with my concerns, you can see why I am concerned going forward.

Graeme Wingate
Quick Loans Ltd

