

# Expert Report Writing – The Do's and Don'ts



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**The best experts make complex matters simple and easy to understand for those that do not work in their field of expertise.**

Having spent over a decade in contract administration and quantity surveying in both contractor and client roles, I was looking for a new challenge; a role that would test my technical ability and develop my report writing and analytical skills. Fast forward 2 years, I have gained invaluable experience supporting our quantum experts in the preparation of their opinion for formal dispute resolution proceedings.

For those that have an interest in expert witness work then the following article provides some insight into best practice report preparation. As a quantum analyst I typically assist the expert by undertaking the analysis of cost data alongside associated correspondence and other relevant information. This analysis is then used as the basis for the drafting of the expert witness report. Some common do's and don'ts are outlined below.

## The Do's

### Duties

- Make sure that written instructions have been obtained and the scope thereof is clear and unambiguous. Resist pressure to influence or extend your opinion beyond the extent of your instructions or expertise.
- Follow the procedural rules and any specific code of conduct that apply. It is imperative to apply due diligence in ensuring the appropriate statements and declarations are included in your report. Failure to do so may result in your report being discounted outright. To state the obvious, this has career limiting implications.
- Carefully check and comply with the procedural timetable.
- Follow the instructions provided by the lawyer with full impartiality and discharge the questions you are asked to answer.
- Be prepared to challenge any assumptions instructed by the lawyer that show stark contrast to industry accepted benchmarks. For example, if you are instructed to “assume that Joe Bloggs’ profit margin is 200%”. If a typical profit margin is between 10% to 20%, then this should be raised. The best practice is to take the time to consider where the instructed assumption will take you. If it is absurd, it is likely that others will hold a similar view, subsequently discrediting both your reasonableness and your impartiality.
- Provide an independent expert opinion. As an expert witness your overriding duty is to the court (or another tribunal). This is absolute.
- Support your opinion with reasons. It is not sufficient to say you hold a view without explaining the basis of that view.
- State clearly the basis of your analysis and the assumptions, considerations and documents that you have relied on to form your opinion.
- Include confirmation of those who have provided assistance in the investigation, analysis and presentation of the opinion(s).

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**An expert is engaged to provide their opinion on a matter in their chosen field of expertise. An expert's report is often subject to heavy scrutiny, so it is imperative to know the report back to front.**

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## Methodology

- If the documents in your brief provide multiple outcomes, seek clarification from your instructing lawyer or consider all outcomes in your report.
- Provide a statement of the methodology adopted in forming your opinion.
- Keep it simple. The best experts make complex matters simple and easy to understand for those that do not work in their field of expertise.
- Be clear and absolute in terms of the matters that fall within your expertise and more importantly, those that do not.
- Explain what the Expert has done to check the validity of the facts within the report.
- Ensure the report, analysis and supporting data is accurate, clearly articulated and free from error.

## Presentation

- To the extent it is appropriate to do so, adopt the capitalised terms and references included in your instructions.
- Write the report in neutral language and in the first person.
- Apply correct tense. For example, your instructions are the present. The contemporaneous project records are the past.
- Include source data. If you have relied on a rate or price you have sourced from the market, include a properly referenced extract of the document in your report.
- Include a list of the documents referred to in forming the opinion.
- Provide, as footnotes, the references to source documents. Cross check the references before submission.
- Explain all technical terms and abbreviations used.
- If appropriate, include diagrams and appropriate graphs/charts. "A picture paints a thousand words".
- Number diagrams, tables, graphs and charts.
- Continue the page numbering of the report narrative through the attachment documents.
- Include the report title as part of the header or footer of each page of the report.

## The 'Don'ts'

- Do not accept assumptions unequivocally on the lawyer's instruction.
- Stick to your field of expertise and avoid offering advice or opinion on areas that fall out of your remit. This includes more than providing legal opinion i.e. interpretation of contract clauses.
- Do not be an advocate for the party paying your fees. Be mindful of conflicts, both legal and perceived. If in doubt, discuss with your instructing lawyer.

- Do not make expressions in the report that cannot be supported by analysis. If you have formed an opinion, explain your reasoning.
- Do not go to war with the opposing expert. You are to help the court come to a decision, not hinder the process.
- Do not seek to negotiate with the opposing expert when drafting a joint statement in conclave. You are to determine matters upon which you agree and do not agree.

## Conclusion

An expert is engaged to provide their opinion on a matter in their chosen field of expertise. This may be quantity surveying 'quantum', project planning 'delay', technical, medical or other specialist fields. An expert's report is often subject to heavy scrutiny, so it is imperative to know the report back to front.

One of HKA's strengths is that it provides a multi-disciplinary offering, QED+ (being quantum, engineering and architecture, delay and damages) with top quality experts in each of these disciplines across the globe. Working alongside a global network of experts has certainly helped me accelerate my philosophy around clear and concise report writing. Being able to adopt a multi-disciplinary approach, working with experts across disciplines has also added greater insight into the value of integrated expert services.

*Tom Kennedy is a Senior Consultant with HKA. He regularly assists the appointed quantum expert on matters determined in formal dispute forums. Tom holds a BSc (Hons) in Quantity Surveying. His experience spans numerous geographical locations, including Ireland, UK, Middle East and Australia. Tom has worked on disputes and live projects in the oil & gas, infrastructure, residential, construction, and aviation industries.*

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