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Great Expectations

Part Two: Expert Issues

So, what about the other side of the story? What issues do experts experience on commissions that create problems?

Information

The issue I and other experts regularly see that dramatically affects commissions is information - what is provided and when it is provided.

The what - either too much or too little, or, in the worst cases, too much irrelevant information.

The when - an expert's planned schedule for a report will require receipt of information by a certain point. Often pertinent information is not provided until much later than expected.

- An expert report was planned over a two-month period including:
- a week for conflict checks, review of brief, initial meetings and project set up;
- three weeks document review;
- three weeks analysis and drafting;
- one week for clarifications, finalisation, editing, and peer review; before
- issue.

There was a one-month delay in receiving the information which adversely impacted the schedule of all the following tasks. There was no court deadline in this case, however, the expert had another commission that was due to start immediately after, which did have a court deadline.

Regardless of procedural deadlines, this is unnecessary pressure to add to the expert - it could affect the outcomes of the final report if there has not been enough time to filter pertinent information.

Neither is it as simple as extending the deadline - experts could have other commissions due to start which clients should be aware of. Expert fee budgets usually include a period for document review - in practice experts are usually required to review multiple document dumps which drives up fees. Often a client will dump any and all documents on the expert for them to go through - that is fine, but is it not cost-effective!

An expert was instructed to provide a report on a matter for use in negotiation prior to commencement of formal proceedings (so it had to be CPR 35 compliant just in case) - the client wanted to understand their prospects of success. A fee budget considered appropriate for the task was provided by the expert.

The information was first provided as a hard drive information dump. The expert's support team went through everything to find the pertinent information. The records were not very good (e.g. a lot of emails skirted around the edges of issues and there were large information gaps). An RFI was issued asking for the key missing information, this was continually updated and re-issued.

New information was provided progressively by email from different people, leading to a huge amount of duplicated information. Astoundingly there was still a lot of crucial information missing. This

continued during the report drafting phase and key records were still missing right up until its issue. This meant that the biggest task on the commission was actually document control and review rather than analysis. The huge administrative burden delayed the issue of the report.

Simply put, too little information leads to an inconclusive or a heavily caveated opinion, which would have little or reduced weight with a tribunal. Too much information is akin to searching for a needle in a haystack which takes time, resource and consequently costs more.

Provided the client knows what quality information is, (which is not always the case), experts prefer quality over quantity in their documentation - and the sooner the better.

Sensitivity

Clients and in particular their on-site staff, can feel scrutinised and defensive about information requested until they realise why it is needed and what for. In these cases, a site visit can be crucial to build a good working relationship with the client. In the current COVID climate, that is either not possible or extremely problematic which adds another layer of difficulty to the extraction of relevant information.

The project concerned multiple adjudications spanning various issues encountered on a framework contract. The majority of the information was kept on site with the personnel or in their site office archives. Accounting information was held separately at another office. The main barrier to getting the information required was finding the right person in the right location with the answers to where the information was and how to locate it.

Emails and calls were not very productive, either the wrong person was contacted, or the person contacted was unwilling to provide the information, and so site visits were necessary.

It became apparent at the initial site meeting that some of the staff had negative feelings towards the expert who was seen as someone 'telling them how to do their job.' After a number of discussions to explain why the information was needed and the expert showing the site staff that they were actually human and just trying to find answers, rather than a fault-finder apportioning blame, it became much easier to find the right people and information.

Without this personal contact, it is unlikely that crucial information would have been provided. If this project had been running in a COVID climate, it would likely have had a very different outcome.

It can be daunting for site staff when faced with an expert if they are not familiar with disputes or do not appreciate the value of particular documents in a dispute context. Once this is explained, the information gathering process is usually much more efficient.

Timeframes

Very often experts are appointed late in the process with short timeframes to complete their reports. This can be for a number of reasons: client strategy, client funding, another party producing experts last minute, or late client instructions. This can be problematic for the expert because it reduces the time for in depth analysis.

There are preliminary tasks that can be done much earlier in the process, and which are advisable to do at an early stage such as conflict checks and initial reviews for documentation requirements.

Believe it or not, experts usually plan their holidays and other commitments around commissions. Pushing a timetable out a week or so might not seem too serious, but if the expert has got other commissions backed up it can become a problem.

Delays

As well as the delay in information provision considered earlier, 'Down Tools' instructions can add time and cost to the commission. Downing tools while waiting for information, particularly for extended periods, means additional reading in when it is finally provided. This translates as additional time and cost.

A report was due within a month on a strict budget.

It was substantially completed on time and on budget apart from one section for which the information had not been provided. A small amount of the budget was reserved for completion once it was received. The report could not be issued without the outstanding information. The client gave a down tools instruction until the information could be collated.

Over six months passed, and the expert completed several other commissions in the intervening period. When the information finally arrived, the remaining budget was insufficient as it did not include for re-familiarisation with the project. There were also the usual partial and missing information queries to be resolved.

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Scope Creep

An expert fee budget is usually prepared on a conservative basis, dictated to some extent by the client budget and the competitive market. Where scope is uncertain, it will usually affect the budget.

Some clients like to try and shoe-horn extra issues in for the same cost and timescale. Sometimes this is tactical, sometimes they are unaware, but if happens it is wise to expect additional fees. New issues usually mean more time and resource are required. Clear communication from both sides is required.

Much like the converse problem discussed in the fees section of the first article, clients or experts trying to take advantage of scope creep (either getting more work for the same money or expanding on a low original bid) is counter-productive to the working relationship. It is better to be clear at the outset and avoid unwelcome surprises.

Communication

In addition to the communication issues covered in article one, there are two other communication related topics that affect the expert.

Firstly, vague and ambiguous instructions. These are often provided for tactical reasons: wanting the expert to encompass as much as possible; or waiting to see what the other party produces before narrowing the scope; or wanting the expert to help formulate the scope. Whilst this may be helpful to the client at the outset, it could be counter-productive, especially for tight budgets or timeframes.

Secondly, instructions asking for opinions outside the experts remit or expertise. An example is being asked to comment on liability, which is an issue that experts shouldn't be willing to tackle, as this is the tribunal's domain.

Technology

It's either a blessing or a curse! Some platforms make it easy to search and find things, others seem to make finding documents much more time consuming and problematic.

Really good technology is usually found on the bigger budget disputes which have a separate department for document control or even outsource it to a specialist company.

Really bad cases are where there is simply a data dump; documents are not linked by category and the search tools are clunky so finding documents takes an inordinate amount of time. Often, the restricted search access is labour intensive, affecting costs.

Court referencing is not always user friendly and it can take a long time to find something as simple as a practical completion certificate. In addition, downloading tends to be time-consuming and a huge task in itself. Many experts have commented that going back to old fashioned document files would be preferable in some cases!

Read through to Part 3 [here](#)

If you require any further information, please contact Rhiann Storey at rhiannstorey@hka.com.