

RAMSKILL MARTIN

Expert Opinion

1. Introduction

Dispute resolution can be, at the best of times, complex. The complexity is not only caused as a result of the issues involved, but can be further complicated by poor or lack of clear communication and in many instances the individuals involved.

What is meant by these comments is that when individuals become involved with confrontation, communication is often not clear or accurate. Often the introduction of a third party expert opinion can unlock any entrenched or deadlocked positions which have been taken.

2. What is an Expert Opinion?

An Expert Opinion Report is similar in some ways to a report produced by an Expert Witness. It is ordinarily however far less detailed and less expensive to that produced in a traditional Expert Witness Report.

The Expert Opinion is usually prepared by way of a formal report and is normally prepared in respect of only a few issues or even a single issue. Examples of issues include, but are not at all limited to, the interpretation of and meaning of a valuation clause; the valuation of particular variations; arguments relating to the interpretation of schedules or Bill of Quantities and other such documents; whether or not a Contractor or Sub-Contractor is entitled to an extension of time; whether or not the parties have entered into a contract and whether that is a simple or formal contract.

3. What is its purpose?

The purpose of the Expert Opinion is that it introduces the opinion of a third party, and if presented in the appropriate manner will usually be received by the recipient in a none confrontational manner.

The third party's opinion, presented in this way, will very often lead to further negotiations and settlement, without the need for formal proceedings.

4. Benefits of the Expert's Opinion

The Expert Opinion will very often be a catalyst to the opening up of negotiations leading to the successful settlement or agreement of the issues or even the whole account.

The Expert Opinion is prepared as a professional opinion and not that of a 'hired gun.' As a result, the opinion may conclude that a client does not have a case to be answered, or that its case is not as clear as it initially thought or it has a different case to that originally believed to exist.

In these circumstances, a client is armed with quality information to make sensible commercial decisions such as whether or not to pursue its case, or perhaps to focus on attaining a negotiated settlement rather than allowing the differences to be resolved by way of an inappropriate formal process.

In the event that there is a case to be answered, but the parties have been unable to reach a negotiated settlement, then the Expert Opinion can be used and/or adopted in the formal pursuit of a clients' entitlements. The Expert Opinion will therefore serve its purpose whichever route a client ultimately takes.