

Shadow forensic accountants

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. This newsletter highlights the benefits of instructing forensic accountants as shadow experts, provides examples of the type of work they undertake and sets out the key features of cases on which we have been instructed as shadow experts.

Benefits of instructing shadow experts

Benefits associated with the involvement of shadow experts include the following:

- 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 issues when experts are being cross-examined.

Examples of our involvement as shadow experts include the following:

- We were instructed by solicitors representing one of the parties in a shareholders' dispute. We considered 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.
- We were instructed by solicitors representing the husband to review a single joint expert's valuation report on a facilities management business. We 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' working capital needs.
- We 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. Our 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.
- We 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. Our "hand-holding" role included evaluating the firm's work-in-progress and accounting records to compute the partner's outstanding profit-share on retirement. We 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.

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 forensic accountants shows that we can be important members of clients' advisory teams in the right circumstances.

To obtain further details of our activities or to benefit from the firm's experience and expertise, please contact Rakesh Kapila or George Sim.

Please note that this newsletter has been written for the general interest of readers and is intended for guidance only. It is therefore essential to take specific professional advice before taking any action.

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