

# TEN TIPS FOR EXPERTS WRITING A JOINT EXPERT REPORT (JER)

## Ten tips for experts writing a Joint Expert Report (JER)

1. You are not an advocate. Remember, your primary duty is to the Court.
2. Make sure that the facts and assumptions on which you base your opinion are/can be supported by evidence. If you refer to, or rely on, facts that are not part of the joint brief to experts, give your opposite expert the evidence to support those facts. “Facts” includes documents that you have sourced or produced, conversations with third parties to obtain extra information about the subject matter, peer reviews etc.
3. If there is extra information that you think will help your report writing, or you want to consult with experts in another field:
  - a) If you are in a CMEE, and all experts in your field of expertise (group) agree, use the CMEE Convenor to ask for that additional information. If not all experts in your group agree that the information is necessary, the CMEE Convenor will guide discussions to resolve that conflict.
  - b) If you are not in a CMEE process, and all experts in your group agree, you should jointly ask the lawyers for that information. If you don’t agree on the request for further information, jointly write to the lawyers stating your disagreement.
  - c) All approaches or requests must be a joint approach. You should not approach an expert in another field without notice or consultation. Doing so will mean that the other experts in your group will also want to consult “their” expert. This may result in the experts in your field having different information. Cross-checking that information, and determining its importance, will slow down the meeting process.
4. You must consider:
  - a) the alternative viewpoint. “If the court does not accept..., then...”; and
  - b) the methodology of your opponent. “I disagree with the methodology of ... but, if the Court accepts it, then...”
5. Stay within your own area of expertise. For example, do not comment on traffic/town planning/economics unless you are also an expert in that area, even if those issues are important to your report and you have views about them.
6. You do not decide the law; that is a matter for the Court. If there are two possible legal interpretations, you should consider both: “if the court finds this, then... if the Court finds that, then...” Extensive legal debate in a JER is unhelpful and unnecessary.

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7. We recommend that you meet to discuss the matter before you start exchanging drafts by email. Talking face-to-face may prevent misunderstandings and solve seemingly intractable differences.
8. The JER should:
  - a) detail those matters on which you agree;
  - b) detail those matters on which you disagree but the disagreements are not material;
  - c) detail those matters on which you disagree which are material;
  - d) include, where possible, a table that summarises the position of each expert;
  - e) be written so that each point is the subject of a new numbered paragraph; and
  - f) be paginated, including attachments and appendices.
9. Avoid:
  - a) Uncertain language such as “may”, “could” and “might”. If possible, assign a factor of probability (in percentage terms, or within a range, or “more likely than not”, or by level of risk – low, medium, or high).
  - b) Emotive language. Emotive language will make it appear that you are taking your instructor’s position, even though you are writing as an independent expert.
  - c) Editorial comment. You do not need to “enhance” your opinion with gratuitous or unnecessary comments if they do not affect the substance of your opinion.
10. The Court discourages further reports after the JER because the JER should be comprehensive. One option is to explain the agreements and disagreements in the JER in a concise form and attach a more detailed individual report. If one expert has not had an opportunity to consider important information, do not sign a JER just to meet a deadline. Tell the CMEE Convenor of your difficulty. If you are not in a CMEE, jointly approach the lawyers, explain the difficulty and ask for more time.