

Report Writing
Rachel Barnes, August 2010

A consultant can become liable in respect of a report he has written. The cases have established that a consultant, in writing a report, should display and apply reasonable care and a reasonable standard of professional competence but this does allow for a margin of differing opinion and even a degree of error. Evidence of what is acceptable practice with the relevant profession or what standards are laid down by the relevant professional bodies will be crucial in determining the standard of care necessary for a consultant to exercise.

The case of *Watts and Watts v Morrow* 1990 provides a useful illustration. In this case the plaintiffs wished to purchase a second home and so arranged for a full and detailed survey to check that no unexpected major expenditure would be required. The report was generally reassuring, recommended only minor repairs, and contained no warnings that heavy immediate expenditure would be required. On the basis of the report the plaintiffs bought the house and subsequently discovered that there were a number of serious defects requiring some heavy expenditure. The plaintiffs therefore sued the surveyor for preparing his report negligently. It was held that the surveyor had not displayed and applied reasonable care and a reasonable standard of professional competence in preparing his survey report and was therefore liable for the loss in value of the house suffered by the plaintiffs. Against his professional body's practice, the surveyor had dictated his report while walking around the site which led to a lengthy and diffused report with a totally incorrect conclusion. The report failed to deal with its specific purpose: 'Will we have any unexpected major expenditure?', gave no warnings about this and in fact only dealt with the need for minor repairs.

The consultant should make the report as self-contained as possible. If a claim arises against a consultant, it is the report itself that will be scrutinised by the court, possibly many years later, when some of the details of what happened at the time have become vague, warnings or discussions with the client may not have been recorded, a covering letter forgotten or misplaced, and so on. It is on the report itself that the consultant might be judged and it is therefore vital that it is comprehensive. Any pressure from the client to put any matters in a separate letter or document should be resisted.

Some matters that should be included in a report are listed below. They may overlap and are not exhaustive because this will depend very much on circumstances.

- (1) Identify the client for whom the report is prepared and its purpose, so there is no doubt to whom it is addressed and who should be using it.
- (2) State the scope of the report as defined by the brief or terms of reference, including any limitations or restrictions on that brief. In particular, the specific transaction or transaction type in connection with which the report is being prepared should be identified. So, make sure there is no doubt or ambiguity about the scope, or any likelihood that it could be interpreted more widely than was intended.
- (3) State what was done, what was not done, and what could only be done to a limited extent. If something further should be done to check and/or assess the risks, this should be set out.
- (4) Describe the data and information received from the client or others, the nature of it, its adequacy or otherwise and say what effect it has had on the work undertaken and what reliance has been placed on it. Set out, if relevant, what information others are, or should be, providing.
- (5) State what has not been received or what could not be obtained, and if and where this has been requested or promised.

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- (6) Record any restrictions imposed on the consultant or the consultant's enquiries by the client, outside agencies or circumstances.
- (7) State the limitations on the information/advice contained in the report if, for example, it is preliminary or based on limited information. Spell out any risks inherent in the advice or in any reliance that is placed on it. Put in all necessary caveats and limitations. Expressly state any warnings.
- (8) Detail any assumptions implicit in the report and/or its conclusions.
- (9) Do not be generally reassuring. Be specific.
- (10) Qualify any conclusions appropriately within the report and not in any accompanying letters. Do not assume that any limitations, warnings or qualifications given to the client about the report will be remembered or recorded elsewhere.
- (11) Make it clear that the report is not for the use of, or reliance on, by third parties
- (12) Prohibit any copying of the report for third parties without express consent. Then, if the client says it is needed for a third party, the consultant can discuss the terms on which a copy of the report is released and whether any further caveats or limitations are needed so that the third party does not use it for purposes for which it was not intended.
- (13) Date it so that anyone reading it later can be alerted to the fact it may be out of date.

The object is to make the report's purpose, the limitations of any advice or conclusions and the nature of that advice or conclusions, so clear that no one reading it could possibly mistake its purpose, content or rely on it for things that it simply was not reasonable for them to do.

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