

EXPERT DETERMINATION “TOP TIPS”

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What?

- Expert Determination is a contractual process.

Who?

- Anyone can be the expert!

How?

- Unless otherwise specified in the contract, the expert will carry out his own investigations and reach a decision based on his own knowledge and expertise, regardless of the parties' submissions.
- No crystallised dispute may be necessary – the parties can use the expert whether or not a claim has been made and rejected.
- An expert has no obligation to give reasons for his decision unless the contract says otherwise.
- The expert's decision will generally be final and binding rather than interim binding like in adjudication.

Good or Bad?

- Good - the procedure is flexible and final - there may be no need for submissions or a hearing, and therefore a final and binding decision can be reached very quickly.
- Bad – very difficult to overturn an expert's decision, as long as he has followed his instructions and decided what he was told to decide – unless the contract provides otherwise, even a manifest error by an expert may not affect his decision.

These top tips are correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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