Pleadings: dos and don't

Don't:

1. List every document you're relying on. Your pleadings must contain every necessary element of your cause of action and the relief you are seeking. It is not a recitation of evidence.

   E.g. "On 1 September 2013, Ms Robertson emailed Mr Holden…On 2 September 2013, Mr Holden replied…"

   Ask yourself if those emails are an essential part of your case. If, say, they contain a representation you rely on, plead the representation you rely on and then say in particulars the time and date of the email. If they don't contain anything specific that you need, don't plead it.

   A lengthy statement of claim containing a recitation of every single relevant email helps no one.

2. Include irrelevant/scandalous material (or at least advise your client against it)

   It doesn't endear you to the judge and it draws focus away from the legitimate parts of your claim.

3. Leave the other parties (and the Court) guessing. In a contract claim, set out the terms you rely on and what you say they mean. In a tort claim, plead the duty you say is owed. Why do you say the defendant is liable? If you can't link the loss to the "why", you've done it wrong.

4. Make sure you understand what happened, not what you think happened, or even what your client thinks happened.

   What do the contemporaneous documents say? If you have to persuade a Court that the documents don't reflect the intention of the parties or the real arrangement, you already have a mountain to climb.

   If you are relying on documents in another language, make sure you know what they mean.

   Get a good translator. Get it checked by a native speaker. Make sure you understand the nuances because you will likely have to explain them either in submissions or have someone explain by way of evidence.

As a defendant

5. Dealing with lay litigants: address the case being brought best you can. This may involve assisting the Court in identifying the legal claim.

   The claim may not have an identifiable cause of action or it may not identify what causes of action each allegation relates to.

   Think about strikeout but beware the hidden cause of action.

The approach isn't to be led by the thinking of the plaintiff. Is there an obligation? What is the source of that obligation?

6. When should you request particulars?

   Ask yourself if you run the risk of helping the plaintiff put together their case. But if you cannot plead because the SoC does not inform you of what the claim against your client is, or you want to nail the plaintiff down to a position and avoid being taken by surprise, then it might be a good idea to ask.

7. Bare denials: are tempting especially when time pressured, but unhelpful. Pleadings are a chance to identify the real issues in dispute. Even as a defendant you should make sure the Court understands your case.

   If you disagree with the plaintiff's interpretation of the contract, plead what you think it means. See HCR 5.19.

   In a tort case, do you say there is no duty? (Could be easier if you don't know the situation well enough.) Or if you say the scope of the duty is different, then what is it?