

Hybrid Webinar

When Projects Go Nuclear by Dr Gill Hunt 24th June 2025 at 6:30pm



The role of expert witnesses and consultants in managing the legal and contractual fallout

Jointly brought to you by the BCS

- Consultancy,
- Project Management &
- Law Specialist Groups

When Projects Go Nuclear



Dr Gill Hunt – Expert Witness



Questions for you

Why do projects go wrong?

Clients say...

- Oversold
- Under-staffed
- Poor technology
- Poor quality of deliverables/staff
- Lack of supplier commitment

Suppliers say..

- Client staff not committed
- Development didn't deliver
- Unrealistic expectations
- Scope creep
- Price squeezed too hard

Sometimes the problems can't be fixed

- Negotiations fail
- One party won't budge
- Political manoeuvring
- Company policy
- Can't afford to carry on
- Calculated gamble
- Emotional involvement
- Accident

How bad can it be?

 Slow – 2.5 yr project typically would take 4-5 years to fully resolve in court

 Expensive – recent £100M each way dispute, £30M total costs, end result a 'win' of £5M

 Distracting – management time, staff time & anxiety, adverse publicity



Might it affect you?

Accenture
Atos
BT
Cap Gemini
Capita
CGI
Cognizant
DXC
Fujitsu
HCL
IBM
Infosys
Sopra Steria
TCS
Wipro



Might it affect you?

Bank

Charity

Ferry Service

Government Department

Healthcare provider

Hospitality Services

Insurance Company

Local Authority

Manufacturer

Oil Company

Police Force

Retailer

Telecoms Provider

University

Utility Company

Why do you need to know how it works?

S - Understanding the legal process will help you avoid disputes (or at least minimise their impact)

W - Ignorance of the process leads to poor decision making

O – Well-informed technical & legal input puts an organisation in the driving seat

T – In a worst case scenario disputes can destroy organisations (and occasionally careers)

Applies whatever your role, you may become involved in decision making, as a factual witness or as an expert













Caveats

- Civil not Criminal
- England & Wales not the US or EU
- Courts not Arbitration

Details differ but principles are the same in any common law & adversarial system

- Common Law based on judicial decisions not statutes
- Adversarial opposing parties put their case,
- Judge decides but does not investigate

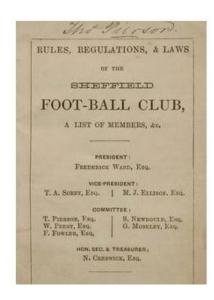


2 Sets of Rules

Contract & Law

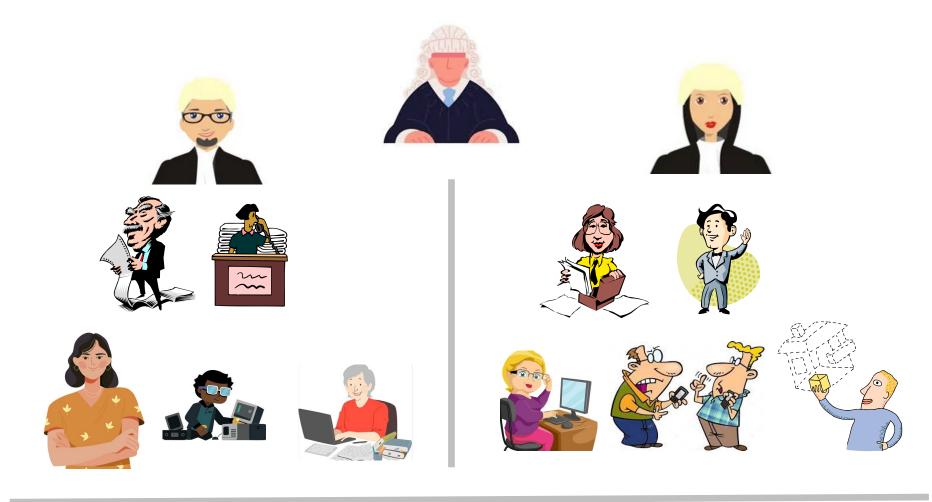


Civil Procedure Rules





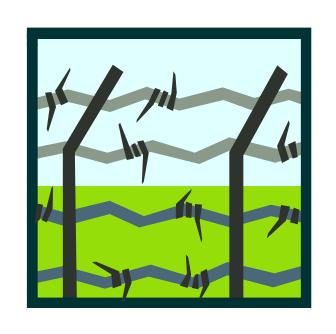
An Adversarial System





Expert Witness







Expert 2

...overriding duty to assist the court



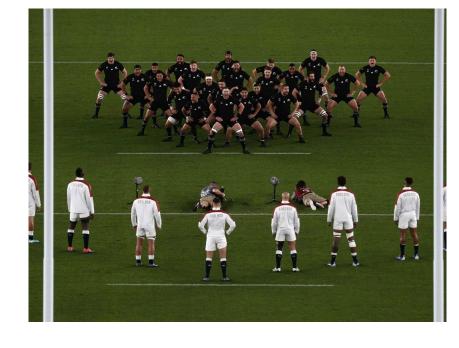
The Legal Process

- Pre-action
- Pleadings
- Disclosure
- Witness Statements
- Expert Reports
- Joint Expert Statement
- Trial
- Judgement



Pre-Action

- Legal Letters and more letters
- Negotiations usually Without Prejudice
- Consultant reports/project audits deployed
- Offers and counter-offers
- Legal Privilege may apply, or it may not..





Consultant v Expert Witness

Consultant

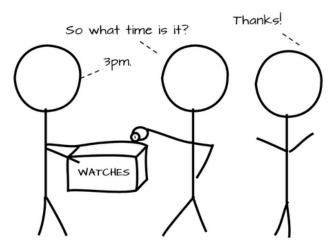
- report on client's questions
- has no duty to the court
- may be given a lop-sided view of facts/documents
- may be looking for further work or have a long-standing relationship with client
- reports and draft reports are typically disclosable
- appearance in court very unlikely

Expert Witness

- report on issues before the court
- overriding duty to court, independent and objective
- has access to both parties' views of facts/documents
- must have (and be seen to have) no conflicts
- draft reports covered by legal privilege (usually)
- can be publicly cross-examined

Examples

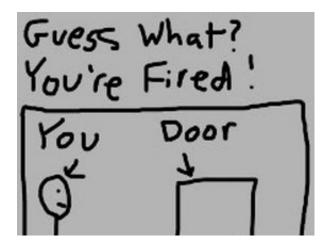
Code Reviews	Where the consultant has been asked to take over development there is a risk problems will be over-stated. May not discriminate between severe and less severe problems
Governance Reviews	Often focus on process rather than underlying causes of problems (eg unrealistic plans) and/or technical issues. May suggest contractual changes that are not feasible.
Project Audits	Focus on how to fix a project as a whole rather than trying to understand who is responsible for the problems and who can or should fix them.





Termination





Your password has been changed.

Keep Current Password

Your password has been changed, as you asked.

If you didn't ask to change your password, we're here to help keep your account secure. Visit our support page for more info.





Pleadings

- Statement of Claim how you breached the contract and you owe us £xxx
- Defense oh no we didn't
- Counterclaim you were just as bad, if not worse, you owe us 2x £xxx
- Reply and Defense to Counterclaim oh yes you did (and no we weren't)
- Reply TO Defense to Counterclaim you definitely were just as bad





Pleaded Issues



- Legal is this contract the right one to argue about?
- Factual did you actually change the contract on X date?
- Contractual who was the SI and what does that mean?
- Technical was the system defective or 'not fit for purpose'?
- Quantum how much would it cost to fix the problems?



Technical Issues

- Technical language has it been used properly
- Contractual language what does it mean from a technical POV
- Technical was the system defective or 'not fit for purpose'?
- Quantum do the technical claims link to cost claims?



Disclosure – CPR 31

- The purpose of "disclosure" is to make sure that both or all parties know of all documents that have a bearing on the case.
- Lawyers have a duty to disclose +ve and –ve documents
- Documents potentially includes; systems, photos, texts, WhatsApp, Slack, JIRA etc
- Issues with confidentiality, relevance, legal privilege





Witness Statements

- Set out facts from their point of view
- Explain their role, what they did and when
- Explain business or technical impact of issues







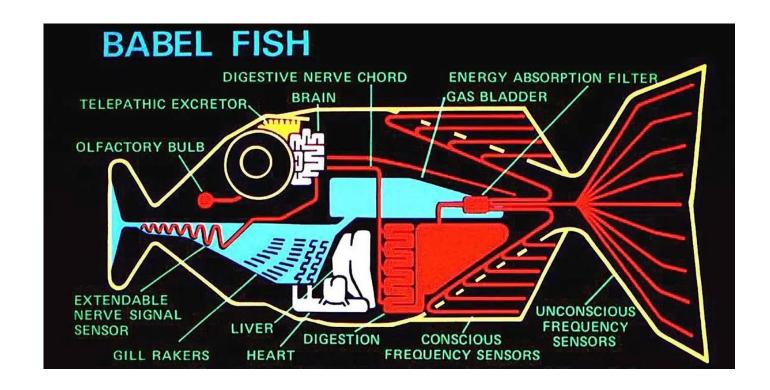








2-Way Babel Fish



expert helps translate what witnesses are saying to lawyers and vice versa – also to test for technical 'smoke screens'

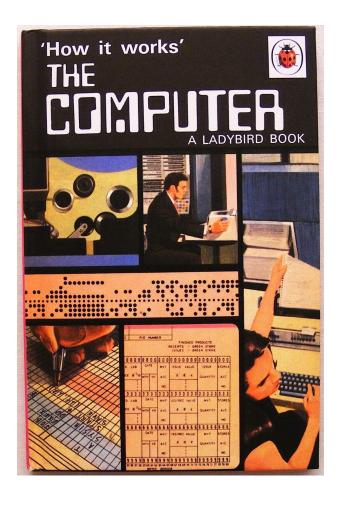


Expert Reports

- Explain the technical background so lawyers and judge can understand
- Set out technical facts, results of tests
- Provide independent, objective opinion on the pleaded issues



Technical Background



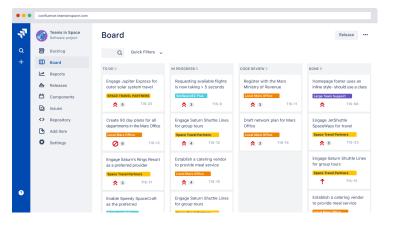


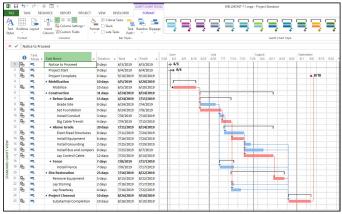


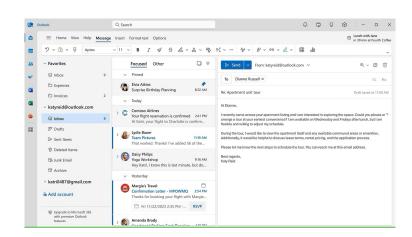
Technical Facts













Expect the Unexpected





Technical Opinion

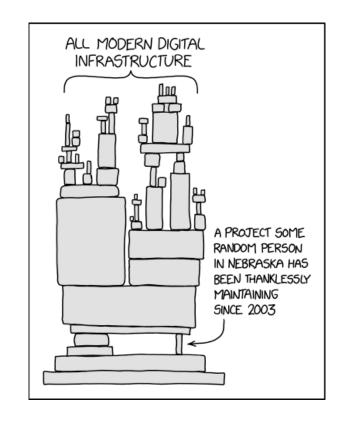
- Define a standard good /bad, high/low, difficult/easy
- Where on the range does this artefact, process, defect etc sit
- What impact does that have on the pleaded issue





Fit for Purpose

- Architecture is 'wrong'
- OOTB fit much less than expected
- Product does not do what was promised
- Experts unlikely to be impressed if;
 - There's no/minimal documentation of architecture
 - Client has driven architectural/product decisions
 - Supplier bid review identifies poor fit
 - There's no record of architectural/design decisions

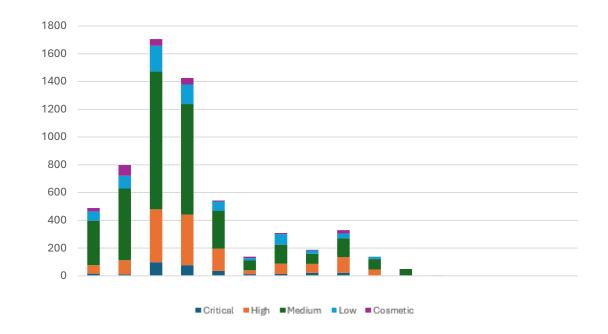




Change or Defect

- Specifications
- Change requests
- Severity definitions
- Defect reports/resolution
- Experts unlikely to be impressed if;
 - There's no proper defect log, reports or RCAs
 - Testing is informal with no scripts and no notice taken of specs
 - Suppliers issue a blizzard of CRs for every tiny issue
 - Clients rate spelling mistakes as Sev 1

Plodding through all defect reports is tedious but often very illuminating





Delay

- Measuring delay in IT projects is hard
- Working out who's to blame is even harder
- Experts unlikely to be impressed if;
 - there's no PID, plans, RAID log
 - no action is taken to mitigate risks, fix issues
 - suppliers issue endless vague relief notices
 - clients sit on key document approvals for weeks on end

Actions are important, clear but not excessive documentation helps





Good Industry Practice

- Agile v Waterfall
- Requirements Processes/Document Quality
- Code Reviews
- Security issues
- Experts unlikely to be impressed if;
 - Agile but no backlog or sprint reviews
 - Documents 90% boilerplate
 - Coding standards written down but not followed
 - ITHC's uncover basic security issues





Expert Meeting

- Without Prejudice
- Discuss Technical Issues
- Produce a Joint Statement
 - Agreements
 - Disagreements



There are challenges if experts have different approaches/backgrounds or have been instructed differently



Mediation

- Without Prejudice
- Can happen at any time
- Can be ordered by the court
- Structured & facilitated negotiation
 - copious quantities of coffee required
 - experts may be asked to produce reports and/or speak briefly
 - mainly commercial





Trial

- Barristers submit initial arguments
- Factual witnesses for both sides
- Experts usually at the end
- Barristers submit their final arguments

Then everyone waits..... sometimes for months before a Judgement is issued

https://www.bailii.org/





Cross Examination

- Expert reports are your evidence
- Designed to prove the other side's case
- Can be combative, but fine as long as;
 - You know your subject
 - You've done your homework
 - You are honest and objective



Being an expert?

Pros

- See a wide variety of technology/projects
- Intellectually challenging
- Help people resolve tricky situations
- Provide a technical voice

Cons

- A lot of reading and report writing
- Timetables can be challenging
- Hard to keep up with new tech
- Risk of appearing in court

How to become an expert?



- https://academyofexperts.org/practising-as-expert/
- Training courses Fundamentals, Into Court
- Accreditation join as Associate and progress to Practising Membership
- Member meetings meet other experts
- Follow us on LinkedIn (the-academy-of-experts)

Or if you'd rather not, but think your organisation needs an expert https://academyofexperts.org/search-register/



