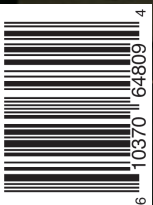


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Issue 65 February/March 2026

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Welcome to the Expert Witness Journal

Hello and welcome to the 65th edition of the Expert Witness Journal, the main focus of which is forensics.

Forensic expert witnesses play a crucial role in legal proceedings by providing specialized scientific testimony and analysis, bridging the gap between technical evidence and courtroom understanding.

In this issue Forensic Access discuss the importance of fingerprint evidence – ‘How fingerprint experts can make their mark on your defence case’, Fiona Hotston Moore and Tom Arnold, forensic accountants at FHM share their predictions for 2026, we have an informative article from Paul Burchett at Crowe U.K on partnership disputes ‘Till death do us part ...?’, David Waddle discusses the impact of disruption in the world of construction, Expert Evidence comment on the major decision in SKAT v Solo and Tim Davies, Chartered Building Engineer assists Merseyside Police in the respect of a suspicious death.

Also included is the launch of Report Fraud by the City of London Police, a new national service designed to transform how victims and businesses across England, Wales and Northern Ireland report cyber crime and fraud, a University of Wolverhampton senior lecturer brings her forensic expertise to a True Crime Documentary series and we celebrate Professor Lorna Dawson being named in the New Year Honours List.

Other articles featured include birth injuries and expert evidence, dental implant failure, an ex-footballers medmal claim and the expectations of AI for expert witnesses.

Our next issue will be published in April 2026 and it will have a medical negligence focus. If you would be interested in submitting an article, please feel free to get in touch.

Nigel Hector

Publisher

nigel@expertwitness.co.uk




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Rae Denman is a highly experienced Medical Tattooist with over 13 years of expertise in scar camouflage and facial feature redefinition. Her advanced scar re-pigmentation techniques restore natural skin tones on the face, torso, and limbs after trauma or surgery. She specialises in realistic hair-stroke techniques for eyebrow restoration, subtle shading for eye definition, and lip symmetry correction following scarring or skin grafts. Rae's expertise attracts international patients seeking specialist care in the UK.

Rae has completed Inspire MediLaw's Expert Witness Training, accredited by the Royal College of Surgeons, and Bond Solon Report Writing Training, ensuring excellence in medico-legal reporting. She accepts instructions for clinical negligence cases as well as condition and prognosis reports.

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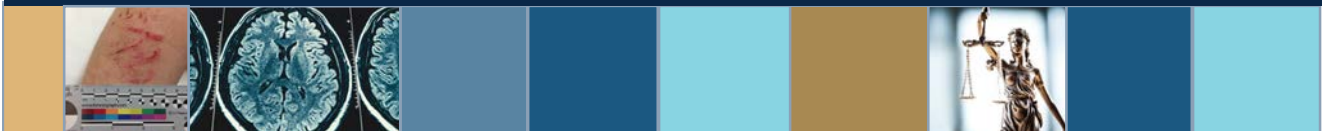
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Professor Ascanio Tridente

Consultant in Critical Care and Consultant Physician. Clinical Director & Chair of Research, Development & Innovation. Expert in acute general internal medicine and critical care medicine.

DMS(Hons), MRCP(AIM), MSc CT, EDIC, FFICM, FRCP(London), PhD

Professor Ascanio Tridente is a Consultant in Intensive Care Medicine and Acute (Internal) Medicine since 2013, the former Clinical Director of Intensive Care (2018-2022), including the COVID-19 pandemic; and current Clinical Director of Research, Development & Innovation (RDI), Mersey & West Lancashire NHS (MWL Trust), WSN site.

He has vast experience in acute general internal medicine and critical care medicine. With specialist interests in the pathophysiology of critical illness, resuscitation and management of critically ill and injured adults.

He receives instructions from courts, and both claimant and defendant organisations for Catastrophic Injury, Personal Injury and Negligence cases pertaining to the areas of;

- Adult critical care / intensive care medicine
- Adult acute general internal medicine
- Sepsis / Severe infections
- Resuscitation
- Critically ill Burns patients / Inhalational injury
- Catastrophic injury
- Toxic syndromes / poisoning
- Transfusion
- Organ Donation

Prof Tridente has completed the Cardiff University Bond Solon Civil Expert Witness Certificate

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Mr Adam Ross Consultant Ophthalmic Surgeon

MBChB, FRCOphth, FHEA, PGC MedEd, MBA

Adam Ross is a Consultant Ophthalmologist with a sub-specialty interest in cataract surgery, including micro-incision and complex cataract surgery, medical retina and uveitis. He has over 15 years experience in medicine, and was previously the lead for the medical retinal service at the Bristol Eye Hospital, as well as being exceptionally active in clinical research, as the principal and chief investigator on a variety of trials. He carried out his training in Bristol and Cheltenham, as well as visiting fellowships in New York and Washington. He further completed various post-graduate qualifications.

Mr Ross is a fellow of the higher education academy, and continues to be actively involved in teaching of ophthalmologists in addition to allied health professionals.

He has an extensive background in teaching and was the Ophthalmology Postgraduate Training Director and Head of School for Ophthalmology in the Severn Deanery, as well as an Honorary Senior Clinical Lecturer at the University of Bristol.

His expertise lies in cataract surgery, complex cataracts, premium multifocal and toric intraocular lenses, as well as retinal disease. Mr Ross is also involved in research within the subspecialty of retina at Boehringer Ingelheim, and sits on the board of trustees for the charity SRUK (Sight Research UK).

Dr Ross has vast experience in acting as an expert witness. He is familiar with my duties as an expert witness under Part 35 of the CPR and is happy to be instructed as a joint expert witness. He currently prepares expert reports for a number of reputable medical agencies who are members of the Association of Medical Reporting Organisations.

Dr Ross now has a dedicated medico-legal service with turnaround of reports of 4 weeks with competitive quotes from the outset of instruction.

Dr Ross regularly publishes in ophthalmic literature.

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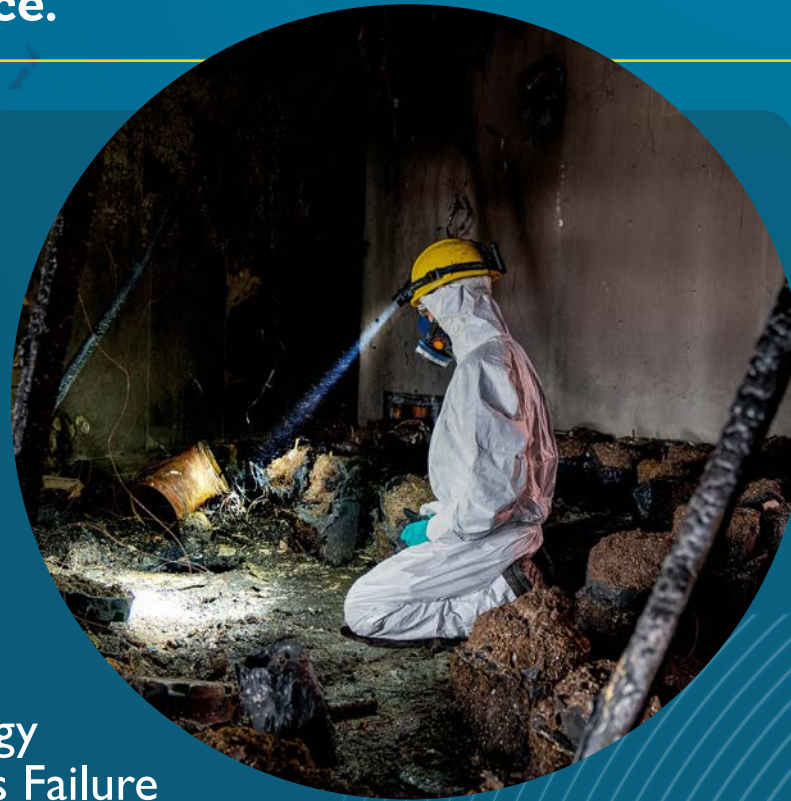
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University Lecturer brings forensic expertise to acclaimed True Crime Documentary Series

by University of Wolverhampton

Filming has wrapped at the University of Wolverhampton for two upcoming episodes of the internationally acclaimed documentary series *Britain's Most Evil Killers*, featuring one of the University's own experts in forensic science.

Senior Lecturer Rebecca Flanagan, a former Crime Scene Investigator, Crime Scene Co-ordinator, and Forensic Manager with West Midlands Police, was interviewed as a forensic expert for two cases in the series' tenth season. The episodes were filmed on campus in the MI Building, showcasing the University's facilities as a backdrop for the production.

Produced by UK-based Woodcut Media, *Britain's Most Evil Killers* is a long-running true crime series broadcast on Sky Crime and international platforms. The series explores high-profile murder cases with a focus on justice, impact, and forensic truth - avoiding sensationalism in favour of thoughtful storytelling. Each episode follows the timeline from crime to conviction, with expert commentary from detectives, criminologists, and forensic specialists.

Rebecca, who spent 20 years with West Midlands Police, was involved in coordinating forensic responses to major crime scenes, working closely with homicide teams. Her insight into the forensic breakthroughs that helped solve the cases will form a key part of the episodes.

"It was a privilege to contribute to a series that takes such care in telling these stories with integrity," said Rebecca. "It's also a great opportunity to highlight the role of forensic science in securing justice - and to do so from our own University campus."

Woodcut Media Producer Imogen McKay said:

"We're committed to helping viewers understand the deeper context of each case, especially the forensic evidence that led to convictions. Rebecca's expertise brought real depth to the episodes, and we're grateful for the University's support in hosting the filming."

The University plans to share further updates and behind-the-scenes content when the episodes air in the coming weeks.



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We are instructed by claimant and defendant solicitors, as well as directly by various insurers and reinsurers seeking to mitigate long term, high value, neurological related claims.



How fingerprint experts can make their mark on your defence case

by *Forensic Access*

When shopkeeper Thomas Farrow and his wife Anne were murdered in 1905, a bloody thumbprint found at the scene made this the first British murder to be solved and prosecuted using fingerprint evidence.

This case seemed to herald a new dawn of evidence. One where anyone who left a fingerprint at a crime scene could be caught and prosecuted. However, the reality is somewhat different. This article is drawn from a Forensic Access webinar exploring the use of fingerprint evidence in criminal proceedings. During the session, fingerprint expert Alan Gore examined how marks are captured, analysed and interpreted, and highlighted the limitations of fingerprint evidence and the opportunities for challenge within the criminal justice system.

As we explore in this in-depth article which covers:

- How fingerprint evidence includes more than fingerprints
- Capturing the fingerprint
- The importance of fingerprint quality
- Analysing fingerprints - opinion not fact
- Opportunities to challenge fingerprint evidence
- What can influence fingerprint analysis outcomes?

More than fingerprints

Did you know that fingerprint evidence can include more than prints of your fingers? The term 'fingerprint' actually covers a wide range of areas which includes

- The entire palm surface from the wrist to the tips of the fingers.
- The pieces of skin between the fingers.
- The friction ridges along the inner surface of the fingers and thumbs (known as phalanges)

The arrangement of friction ridge details, which make up fingerprints, are unique to each individual. They are made from raised areas of skin called 'ridges' which are separated by depressed areas called 'furrows'. Fingerprints - as in the arrangement of friction ridge detail patterns - remain essentially unchanged throughout life. And no two people have been found to have the same arrangement of friction ridge detail, including identical twins.

Prints from toes and feet can also be used to identify someone as everyone has individual arrangements of friction ridge detail - as with fingers and hands, prints can be taken from the heel to the tips of the toes. This uniqueness and the persistence of fingerprints - as well as palm, toe and footprints - means these marks provide a useful way to identify someone.

Capturing the fingerprint

Watch any police drama on TV and you'll have seen the basics of gathering fingerprint evidence. Black carbon powder is dusted onto surfaces, sticking to the sweat left by the friction ridges of the fingerprint. These marks are then photographed or lifted using DCF tape which is fixed to a plastic sheet so it can be stored as evidence.

If the prints are on a movable item, they can be developed using specialist fingerprint enhancement equipment and techniques. The context in which a fingerprint is found is important. Which is why it's good practice to record the location and position of the fingerprint to support later analysis.

The importance of fingerprint quality

Finger and palm prints are usually left at a crime scene by chance which can often result in a limited number of prints of varying quality. This frequently leads to partial marks, like the side or tip of a finger,

being deposited. However, all is not lost, as low quality and partial prints can be used to establish someone's identity - as long as the recovered print contains enough information.

Analysing fingerprints - opinion not fact

Although fingerprint evidence was presented in court for many years as fact, the forensic regulator now classes the evidence as expert opinion. Even when experts work in the same organisation and use the same equipment, techniques and approaches, they can make different judgements on the same evidence.

When fingerprints are analysed and compared, the outcomes can be classified into four different groups:

1. **Identified** - the mark can be confidently attributed to a particular individual as there is sufficient quality and quantity of fingerprint detail for the fingerprint practitioner to assess and match.
2. **Excluded** - enough fingerprint features do not match to conclude that marks did not come from the same person.
3. **Inconclusive** - the fingerprint mark does not contain enough and/or sufficient quality detail for a viable comparison and gives inconclusive results.
4. **Insufficient** - the fingerprint mark contains such low quantity and/or poor-quality detail that a reliable comparison cannot be made. The detail is not clear enough or it has been so compromised by external forces that the evidence is unreliable.

A specialist should be able to explain the limitations of fingerprint evidence to a legal team or jury.

Opportunities to challenge fingerprint evidence

When you receive a streamlined forensic report (SFR) issued by a fingerprint bureau, it will report initial fingerprint evidence findings. However, because different bureaus record different information, the information on the SFR can vary and may not give you the full picture.

Information you might expect to see includes:

- Which finger, thumb or palm print at the crime scene has been identified as the crime scene mark.
- The origin of the crime scene mark - this is not always clear, but it should include a crime scene number.
- Details of other marks previously identified in the case - you'll likely find these on later pages of the SFR.

You may also find you have additional SFRs to deal with if other marks are compared at a later stage. These additional marks are often relied on if an individual enters a not guilty plea.

When fingerprint evidence is classified as inconclusive, legal teams can bring in a fingerprint expert to carry out their own analysis of the marks. The SFR is only ever a starting point. It provides basic information that can be explored and potentially challenged by a fingerprint expert in two common ways.

Context

Marks used to identify the presence of someone at a scene. For example, someone who lawfully visited the scene could have left a finger, thumb or palm print in a location and at an orientation that eliminates them from the inquiry.

Length of time

The moisture content of a fingerprint can have a major impact on the length of time the mark lasts upon a surface. Watery sweat typically evaporates fairly quickly, whereas fatty sweat - or sweat which combines water and fat - can last longer. Sometimes this can be weeks or months rather than days depending on the level of disturbance (like cleaning or movement of material against the print).

Once a fingerprint is deposited, the length of time it persists on a surface is influenced by:

- Its composition
- The amount of matter deposited
- The physical properties and condition of the surface
- The degree of handling or disturbance
- Its position
- The environmental conditions

As each of these factors are variable there is currently no reliable technique to accurately determine the age of a latent fingerprint.

What can influence fingerprint analysis outcomes?

A fingerprint identification is open to challenge and can occasionally be found to be wrong. As in the case of a fingerprint found at the scene of a serious terrorist incident in the US. The print was matched to one on a computer database and the match verified by three experts. However, this was later found to be wrong. So, although rare, misidentifications can happen.

Why don't we use probability to match fingerprints?

Attempts have been made to introduce fingerprint analysis technology using statistical models that aim to predict whether there's a strong, moderate or weak likelihood of a fingerprint being a match. However, all these models have failed, in part because they do not take into account the wealth of friction ridge detail which experts include in their analysis and comparison.

How fingerprint experts ensure their opinion is valid

Independent analysis

For an expert's opinion of a fingerprint to stand up in court, the analysis needs to be undertaken independently. Contemporaneous notes made by the previous expert should not be shared with the specialist or it risks jeopardising the results of their review. The independent fingerprint expert will make their own notes and will only view the original notes if there is a difference of opinion.

Objectivity

Fingerprint experts also need to ensure they remain as objective as possible in their analysis. The Forensic Science Regulator recognises that cognitive bias - including cultural and contextual biases - have the potential to influence fingerprint decision making. To prevent outcomes being based on assumptions over evidence, fingerprint experts mitigate biases by following the relevant cognitive bias guidance and undertaking training.

Contact Forensic Access

Effective use of fingerprint evidence depends on expert interpretation, clear instruction and independent analysis. Our casework management team supports legal professionals in instructing appropriately qualified fingerprint experts and maximising the evidential value of forensic material in criminal proceedings.

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Predictions from the FHM forensic accounting experts

by Fiona Hotston Moore & Tom Arnold

Our experts, Fiona Hotston Moore and Tom Arnold, share their predictions for 2026.

Fiona and Tom are forensic accountants at FHM and regularly write expert reports in financial disputes. Here they share their predictions for their area of expert witness work.

Business valuations

As valuation experts we value businesses relating to financial disputes but also to assist business owners in strategic planning.

We anticipate a relatively benign economy in the start of 2026 with an expectation of two further small cuts in interest rates and modest cost inflation. This should help smaller businesses and tends to result in more consistent trading performance. In valuing businesses, we will typically review historic accounts to assess the value that the business will generate in the future to its shareholders. Valuation is inherently subjective and becomes more so in periods of uncertainty or fluctuating financial performance.

Typically, in more volatile economic times, we will receive more instructions for updating business valuations to address a perceived change in the fortunes - and therefore the value - of a company.

In 2026, we expect an uptick in business owners looking for an exit or a partial exit. In light of recent tax changes they may be considering alternatives to Employee Ownership Trusts (EOTs). We are often asked to give an independent view on company valuation before the business owner starts a sale process or undertakes succession planning. We anticipate succession and associated family tax planning will stay on the agenda for business owners.

Shadow Experts/Advisers

We expect to see greater use of shadow advisors to, for example, assist in assessing financial disclosures, reviewing Single Joint Expert or Party Expert reports and giving independent tax input on settlement proposals.

As Shadow Expert we can help solicitors review the opinion of the court-appointed expert(s) explaining the key assumptions and sensitivities.

The impact of AI on tax compliance

Over the next few years, we anticipate that HMRC will be making greater use of technology and AI to identify tax evasion. This will result in focused tax investigations and the need for experts to consider the impact of tax disputes on company valuations and personal financial disputes. This can be trickier where the tax investigation is ongoing; tax disputes can take years to resolve. As financial experts we will be required to give an independent view on the contingent tax liability.

Business fraud and fraud on charities

Reported fraud is increasing and we expect this to continue. In our experience, all too often simple controls and checks would have picked up internal frauds. Fraud within charities and family businesses are particularly stressful for all involved. We advise management and those charged with governance to get an independent review of internal checks and to act on any concerns expeditiously. Furthermore, if you have a feeling that there might be an issue, we recommend getting an independent view as early as possible.

Tax issues in settlements of financial disputes

In our experience, there is often insufficient consideration of the impact on tax on financial settlements. The maximum tax rate on dividends is 39.35% compared to a tax rate on capital gains of 24% (ignoring Business Asset Disposal Relief and annual exemptions). Structuring a lump sum payment in a shareholder or matrimonial matter using a Company Purchase of Own Shares could make a significant difference to the after-tax sum received. In any event, clients need to appreciate the tax costs of capital extraction which can otherwise mean the cost of a proposed settlement is substantially more than anticipated when the deal is being struck.

In some corporate matters it may be tax advantageous to restructure a group or shareholdings. To optimise the tax outcome, it may be advisable to obtain tax clearances from HMRC. Such clearances can take several weeks so early consultation with tax experts is recommended.

In disputes generally, such as partnerships, shareholder and employment disputes, there can be opportunities to mitigate the tax costs of a settlement and so find a resolution that is acceptable to the parties.

Unfortunately, our experience is that tax is often considered very late in a negotiation. Tax is rarely straightforward and tax input at an early stage of negotiations is advisable.

Estimating the likely quantum of a business loss claim

As forensic accountants we recommend obtaining an independent view on the available published accounts early on in a dispute. Published accounts often contain limited information on the trading performance of a company. A financial expert can advise on the key further information required to give a preliminary view on a claim. An independent view may help the parties reach a settlement early in the dispute and mitigating legal fees and stress on the parties.

Errors in published accounts

Surprisingly often, we come across errors in the accounts on Companies House when preparing valuation and financial reports. These can be simple arithmetic errors or more technical ones such the incorrect categorisation of a share premium as a liability, the omission of a deferred tax liability on a property revaluation, a material overstatement of an asset such as stock. These errors can substantially change our expert view on the company valuation or financial settlement due in a dispute.

Less than 5% of companies now require a statutory audit and therefore the level of independent scrutiny applied to published accounts is limited. We expect to continue identifying published financial accounts with errors in the figures which result in a misrepresentation of the financial position.

The role of experts

Our final prediction is that the role of experts will remain key in financial disputes. Whilst there may be a role for AI and technology in aspects of an investigation, the experienced expert opinion cannot be replaced by automation.



Ms Fiona Hotston Moore

Forensic Accountant, Accredited Expert Witness & Business Valuer, Chartered Accountant & Tax Adviser
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Fiona is a founder of FHM Forensic Accounting. Fiona specialises in commercial disputes, business valuations, tax disputes and professional negligence matters including giving evidence in the High Court, Family Court, Arbitration and Tax Tribunal. She has been instructed as an Expert in approximately 450 cases in her career to date.

Fiona is also often instructed to provide expert opinion on a range of matters including shareholder disputes, agency disputes and insurance claims, tax disputes (including EBTs, film schemes, entrepreneurs' relief and Generally Accepted Accounting Practice), officer and employee fraud, auditor and tax adviser professional negligence claims.

Fiona specialises in share and business valuation cases with particular experience in the Family Court. She also has considerable experience in commercial disputes, tax disputes and professional negligence matters.

Fiona has over 25 years' experience providing strategic, accounting, tax and corporate finance advice in a variety of sectors. Fiona's clients have included successful entrepreneurs, start-ups, international groups and household names

The practical experience that Fiona has as a corporate finance and practicing tax professional perfectly complements her experience as an expert in commercial disputes in Court proceedings - and vice versa.

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Till death do us part ...?

by Paul Burchett, Associate Director, Forensic Services at Crowe U.K. LLP

This phrase is most commonly heard in the context of marriage, two people join in union with the expectation that nothing will come between them until a natural end separates them.

In the context of a shareholder or partnership dispute (reference to ‘partnerships’ in this article covers both forms of investment), this theme is not too dissimilar. It would be odd for any shareholder to invest in a limited company, or any two or more partners to go into business together, without there being an initial level of trust or confidence amongst all the parties involved.

However, the course of true business never did run smooth (credit: Lysander speaking in Act I/ Scene I of *A Midsummer Night’s Dream*) and there are many obstacles that can block or upset the course of any business.

- Have the partners very different ideologies on how to grow the business, finance the business, or pass the business on with regards to succession planning?
- Do any of the partners have outside issues affecting the course of the business, such as personal debts, gambling addictions, personal family matters?
- Are any of the partners dipping their fingers “in the till” or falsifying records to ‘window dress’ the accounts?
- Are certain parties ganging up on another, excluding them from the business?
- Is this a family business that is maybe closing ranks on an ‘outsider’?

Partnership or shareholder agreements

Any range of issues can lead to matters reaching a head and partners falling out. One way of mitigating this occurrence is the equivalent of a

pre-nuptial agreement for a marriage – in other words a partnership / shareholder agreement which could have an unlimited number of arrangements signed up to, such as division of profit, methods for valuing shares on any exit, or maybe agreement on certain accounting treatments for areas which could prove litigious, such as long term contracts or asset depreciation.

Of course, many businesses never have any real need to refer to a partnership agreement, and just as many will never write up any sort of agreement in the first place. However, unlike marriage where two parties generally make their vows never contemplating that one day it won’t work out, business is just what it says on the tin, it’s business, and you can never forecast what the future may hold, with regards people, relationships, the local and global economies, industries, inflation or the political climate, to name but a few factors.

Expert witnesses

But where partnership disputes do arise, expert witnesses from the field of forensic are frequently instructed to assist the Court. This might be on a party appointed basis whereby a forensic accountant acts for a single partner, or a group of partners. Or, if the parties haven’t reached too acrimonious a position in their dispute, appointed on a joint basis by the parties in the role of single joint expert.

This could form part of a litigation process that may go all the way to Court (potentially costing everyone an eye watering sum of money) or could be purely advisory whereby the parties agree to act on the expert’s opinion. The need for an expert can arise under various different scenarios, some examples of which are set out below.

<p>Example 1</p>	<p>A common occurrence is a minority shareholder arguing they have suffered prejudicial behaviour and been excluded from the decision-making process of the business. They therefore decide to pursue a claim for their shareholding to be repurchased by the business with an adjustment to reflect that prejudicial action, in legal jargon a s994 claim (previously a s459 claim for those readers of a certain vintage).</p>
<p>Example 2</p>	<p>A joint venture where one shareholder disagrees with how the business is being managed and decides to sell their shareholding on a clean break basis or, alternatively, an offer to buy back a share where a shareholder is being asked to leave.</p>
<p>Example 3</p>	<p>A family business where a relative disagrees with the direction the business is moving, or a person that is not a member of the family falls out with the family, may look to have their shareholding repurchased as a means of exiting the business.</p>
<p>Example 4</p>	<p>A post-acquisition dispute whereby new shareholders are created but the actions of incumbent shareholders are criticised in some way, impacting business value and therefore creating a shareholder dispute.</p>

In many of these situations a forensic expert will be instructed to opine on the value of the business. They might also be instructed to consider certain accounting treatments that impact value. This might typically include looking at issues such as the valuation of stock, the treatment of intangible assets, or revenue recognition.

A company's Articles of Association can sometimes set out the approach to adopt when valuing shares although, more typically, many Articles remain silent on the matter. No company expects to have a future shareholder dispute at the time of incorporation, so this is perhaps not too surprising.

Premiums and discounts

Share value can be impacted by the split of shares held.

Take a scenario whereby one shareholder owns 80% of the shares in issue, but the remaining 20% are split between a number of shareholders. The shareholder with the 80% holding might attract a premium for their shareholding, to reflect their control of the company with the remaining shareholders, owning 20% between them, have little (if any) real control.

Alternatively, there may be a scenario whereby shares are held between four shareholders, with 25% held by each. Equal 25% shareholders may see value reduced to recognise their minority stake as they would need the support of at least two other shareholders (to make 75%) to make any substantive changes to the business, and so the value of those shares to a third-party purchaser would be reduced.

Minority discounts are often applied to minority parcels of shares, to reflect lack of marketability and lack of control, although in certain situations, such as valuing a minority shareholding following prejudicial behaviour, the Court can direct that no minority discount be applied. This effectively is acknowledging that the minority shareholder, if prejudicial behaviour has been proven, should not suffer any loss as a result of that behaviour.

The level of minority discount applied can be something of a subjective matter where an expert applies their experience, although the Court will of course ultimately make the decision as to discount. It is worth noting that such discounts are only relevant in the context of shareholdings in a company. Minority discounts are not applicable in a partnership situation, where there is a presumption that all parents have equal control.

Disputes on the rise

Anecdotal evidence suggests partnership disputes have been on the rise in recent times, possibly created by uncertain economic conditions and residual issues associated with Brexit, the pandemic outbreak and geopolitical issues, whose impact will likely continue into the foreseeable future.

The uncertainty around the changing Capital Gains Tax rules, impacting M&A activity, arising from the most recent government budgets, has also led to some hastily organised company sales, which will likely lead to later post sale disputes and a potential rise in breach of warranty claims.

Final thoughts

Partnership / shareholder disputes will continue to keep forensic experts busy into the future, be that as party appointed experts or single joint experts helping all parties. It is wise to have partnership agreements in place to insure against future fall outs and provide mechanisms to resolve such disagreements. In the event a dispute does arise, forensic accountants can provide a fair and robust review of share value and accounting scenarios.

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Paul has specialised in Forensic accountancy since 2000 and is a Fellow of the Institute of Chartered Accountants in England and Wales.

He has worked on cases across various industries, for Claimants, Defendants and SJE appointments, including assignments in the Middle East.

Paul has assisted with numerous expert determinations and also supported on disputes within the context of transactional, commercial and family matters.



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Matthew Haddow

Partner & Head of the Forensic
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Matthew Haddow is a Partner and Head of the Forensic Accounting and Valuation Services team at Menzies LLP. He has over 20 years of experience acting for UK and international law firms, corporates, insolvency practitioners, and regulators. For the last 16 years, Matthew has specialised in forensic accountancy and valuation services since qualifying as a chartered accountant.

Matthew has produced expert witness reports in the civil arena and expert quantum reports. He has been appointed as expert for matters in arbitration, tribunals, civil litigation in the High Court and in Criminal Courts and has given oral testimony in all forums. He has also acted as a Single Joint Expert and is regularly instructed to determine valuation and accountancy matters.

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Report Fraud launches

by City of London Police

The City of London Police, the national lead force for fraud, recently announced the full public launch of Report Fraud - a new national service designed to transform how victims and businesses across England, Wales and Northern Ireland report cyber crime and fraud, and how law enforcement and industry respond.

Cyber crime and fraud are now the most common crime in the UK, accounting for around 50 per cent of all offences and costing the economy billions of pounds each year. Cyber-enabled crime and fraud continues to grow in both scale and sophistication, targeting individuals, small businesses and major organisations alike. Report Fraud has been created to meet this challenge head-on, providing a single, modern national gateway for reporting and intelligence that will strengthen the collective response of policing, government and the private sector.

Report Fraud is the most significant evolution of our national capability. It provides, for the first time, a single, modern national reporting, triage and intelligence platform for both cyber crime and fraud, enabling the City of London Police to lead policing's 4Ps response – pursue, protect, prevent and prepare - at a national level. Through the new service, intelligence will be assessed and disseminated across forces, serious and complex cases will be identified for specialist investigation, and victims will be directed into a consistent national standard of care and support.

The service also reflects the City of London Police's position at the heart of the UK's financial centre, with unparalleled access to industry, regulators and international partners. This proximity enables real-time collaboration, faster disruption of criminal networks, and a stronger collective defence of the UK's economic security, supported by specialist capabilities and training delivered through the force's Economic and Cyber Crime Academy.

More than just technology, Report Fraud is the result of one of the largest transformation programmes ever undertaken by the City of London Police. Built from the ground up around the victim journey, it brings together the reporting of both cyber crime and fraud in one place for the first time, making it quicker, clearer and more supportive for people and businesses to come forward - and ensuring that every report counts, helping to protect others.

Pete O'Doherty, Commissioner of the City of London Police and the Senior Responsible Officer for delivering Report Fraud, said:

“Cyber crime and fraud are the crimes most likely to affect people in this country, yet too often victims feel unsure where to turn or what will happen if they make a report. These crimes cause more than financial loss and often have devastating impacts on those targeted. We see the true cost of cyber crime and fraud when taking reports from those affected.”

“Report Fraud is a landmark step forward. The service puts victims first, gives them a clear national front door to policing, and strengthens our ability, and that of every police force, to identify, disrupt and pursue the criminals behind these offences. This is not just a new service; it is a major upgrade to the UK's defences against economic crime.”

Lord Hanson, Fraud Minister said:

“Report Fraud is a critical new tool in our fight against the scammers. It will deliver better support for victims while giving law enforcement the tools to investigate fraudsters' operations. My thanks go to the City of London Police and all partners for their work to bring this crucial service to life.”

“Every fraud report matters - it is the first line of defence for yourself and others. Fraud can target anyone at any time, so we will continue to step up efforts to ensure the UK remains the hardest place for scammers to operate.”

Chair of the City of London Police Authority Board, Tijs Broeke, said:

“*Report Fraud marks a turning point in the national fight against fraud and cyber crime - making it easier for victims to come forward, strengthening intelligence, and disrupting criminals at scale.*”

“*The City of London Police is uniquely placed to deliver it, bringing unmatched expertise in fraud reporting, investigation, and victim support.*”

“*As the National Lead Force for fraud, they are protecting the public, safeguarding businesses and the national economy, and building the intelligence needed to prevent fraud before it happens.*”

Chris Bell, Service Delivery Director for the City of London Police, added:

“*This service has been years in the making, shaped by victims, frontline officers, industry and government partners. It reduces the burden on people when they report, provides clearer advice and reassurance, and generates richer intelligence that can be acted on quickly to stop cyber crime and fraud in their tracks.*”

The City of London Corporation has provided significant financial support to the development and launch of Report Fraud, including a £13.2 million contribution. In addition, the organisation will contribute £2.5 million per year towards the ongoing running costs of the service, underlining its long-term commitment to tackling fraud, supporting victims, and strengthening the UK's economic security.

To mark the full public launch, a national advertising campaign will run across radio and social channels from week commencing 19 January, featuring the service's clear new visual identity and explaining the campaign message that 'Every Report Counts' by building the best crime intelligence to cut cyber crime and fraud, and stop it impacting other victims.

Please see our campaign hero film here:
<https://youtu.be/CpZRbpNxCOM>



Ms Tina Lannin

Expert Witness Forensic Lipreader

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by *Bond Solon*

1. The facts of the case

Lorimer-Wing v Hashmi [2025] EWHC 2757 concerns an application for security for costs by the respondent to the appeal. The security for costs application was made in the context of the appellant's appeal against an order of ICC Judge Barber dated 14 November 2024.

This application follows a 2021 petition by the respondent alleging unfair prejudice in relation to the conduct of the affairs of a company. After trial, the appellant was ordered to pay the respondent's costs at a sum to be fixed. Directions were given for the quantum stage by the judge, including permission to the respondent to adduce valuation evidence from a forensic accountant. As the appellant refused to pay intermediate costs, he was debarred from the quantum hearing and was unable to challenge the respondent expert's report.

At the quantum hearing, the judge made an order fixing consideration of the shares in the company at £3.3 million plus interest of £600,000.

2. Professional body steps in

However, in December 2024 the appellant applied for permission to appeal his debarment order, and issued a complaint to the expert's professional body, the Institute of Chartered Accountants of England and Wales (ICAEW) over flaws in the respondent expert's report.

Just before that final application was heard but following the quantum hearing, the court received letters from the respondent's expert and from a representative of the ICAEW. In the letters, the expert had accepted that the report he drafted, and that had been relied upon to value the company, was flawed. Most concerningly, he admitted that the correct value of the company at the time would have been nearer to nil.

The ICAEW representative explained that the professional body had investigated the matter. This involved instructing an accountant to make an independent valuation, which determined the company had no value at the material time.

3. The outcome of the case

The respondent's application for security of costs was dismissed by the court, and the appellant was allowed to adduce further evidence and amend his grounds of appeal.

The judge noted that the new evidence could fundamentally undermine the previous valuation judgment. He said the "proceedings need to be brought to a conclusion by getting to the bottom of what happened" in the quantum trial.

4. What can experts learn from this case?

This case presents a stark reminder to experts of the repercussions of failing to provide a reliable report, and that even if their evidence is not challenged in court, it has the potential to be scrutinised at a later stage.

Whilst this is a rare case, experts should note that there is always the potential for flawed evidence to be brought to light. As such it is critical that experts only supply evidence to a court that they believe to be watertight.

References

- ¹ *Lorimer-Wing v Hashmi* [2025] EWHC 2757 (Ch) (07 October 2025) - www.bailii.org/ew/cases/EWHC/Ch/2025/2757.html

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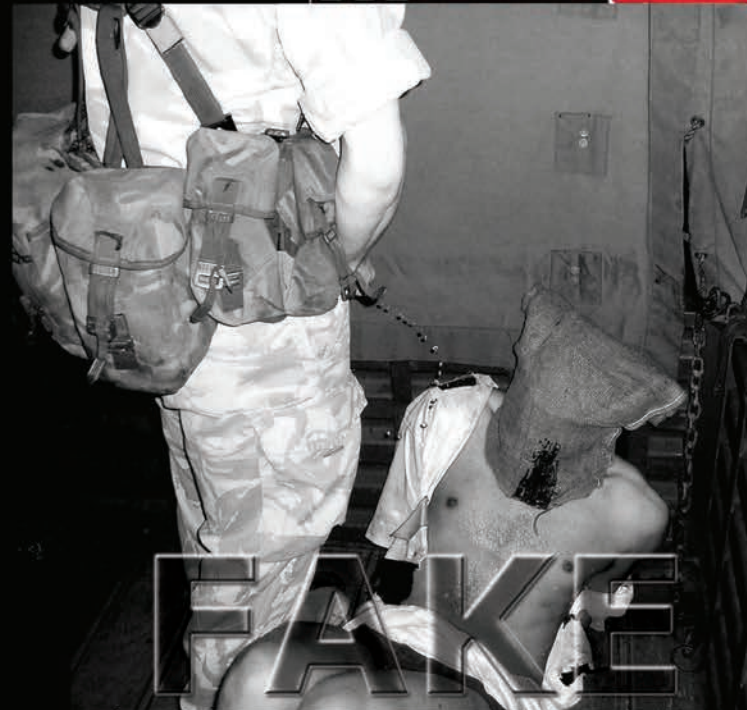


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Defamation in the digital age: What counts as serious harm?

by *Betul Milliner, Legal Director at DAC Beachcroft*

Overview

Two recent cases, *Tattersall v Tattersall* [2025] EWHC 2558 (KB) and *Blake v Fox* [2025] EWCA Civ 1321, show how courts are drawing the line when it comes to proving serious harm in defamation claims.

Legal framework

Section 1(1) of the Defamation Act 2013 provides that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

Tattersall v Tattersall

Facts

The High Court struck out a libel claim arising from a single Facebook post shared during a family dispute involving a mother in law (claimant) and daughter in law (defendant). The post, seen by about fifty people, accused the claimant of trying to make the defendant homeless and lying about her. Whilst the words were held to be defamatory, the claim was struck out because the claimant could not show that the publication caused, or was likely to cause, serious harm to her reputation.

Court's reasoning

The court emphasised that the serious harm test requires objective evidence of reputational damage. The claimant's personal distress was not relevant

to the question of harm to her reputation. The court also held that there was no real prospect of the claimant establishing an inference of serious harm based on the Facebook post, due to its limited publication, the modest gravity of the allegations and the lack of evidence from those who had read the post that it had caused her reputational harm.

The court emphasised that the serious harm test was intended to prevent trivial claims and struck out the claim, finding that it disclosed no reasonable grounds and had no real prospect of success.

Blake v Fox

Facts

The Court of Appeal revisited a high-profile X (formerly Twitter) spat in which Mr Fox accused the claimants of being “*paedophiles*” after they had labelled him “[a] *racist*”. At first instance, Mr Fox's counterclaim failed for lack of serious harm, the claimants succeeded and were awarded £90,000 each in damages.

The Court of Appeal held that there was compelling support for an inference that the mass publication of each of the claimants' “*racist*” tweets seriously harmed Mr Fox's reputation and that this was the only conclusion reasonably available to the judge. Mr Fox's counterclaim was remitted for retrial on his defences of honest opinion and truth.

The Court of Appeal also reduced the claimants' damages to £45,000 each, citing mitigating factors such as Mr Fox's deletion of the tweets and clarifications given in interviews, as well as proportionality.

Court's reasoning

The Court of Appeal also affirmed the law in cases where the defendant is seeking to argue that the claimant already had a bad reputation, as the claimants had sought to do in the counterclaim. The court reaffirmed the continuing relevance of the rule in *Dingle v Associated Newspapers Ltd [1964] AC 371 (HL)* when assessing serious harm. Under this rule, the defendant can't rely on publications of the same/similar statements by third parties to show that the claimant already has a bad reputation and must instead call witnesses who know the claimant and "have had dealings with him" to give evidence about this.

The court also held that, when assessing whether there had been general harm to the claimant's reputation, it is not permissible to rely on acts of the claimant to show that he already had a bad reputation at the time the alleged libel was published.

Comment

These two cases highlight the practical realities of the serious harm test under the Defamation Act 2013.

Tattersall demonstrates that limited publication and modest allegations will rarely satisfy the statutory threshold without clear evidence of reputational impact. Claimants must go beyond asserting hurt feelings and show objective harm supported by facts.

Conversely, *Blake* illustrates that scale and context matter: mass dissemination of inherently damaging allegations can justify an inference of serious harm, even without direct evidence from readers. The Court of Appeal's reaffirmation of the *Dingle* rule underscores that defendants must produce credible witness testimony instead of relying on third-party publications or unrelated acts to establish a claimant's pre-existing bad reputation.

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Brighton scientists to pioneer DNA-based ‘forensic’ tool to trace sources of water pollution

by University of Brighton

University of Brighton researchers are developing a diagnostic tool to find human sources of pollution in UK rivers, ensuring safer swimming and drinking water.

Funded by the Natural Environment Research Council (NERC), the three-year project brings together an interdisciplinary team of experts to create and test a first-of-its-kind tool which can trace the sources of pollution in UK water bodies, including rivers, lakes, and streams used for drinking water supply and for recreational activities.

By using advanced DNA sequencing technology, scientists can search the samples for bacteriophages, which are viruses that infect bacteria and are naturally found in the human gut and shed in our faeces.

The new portable diagnostic technology will enable scientists to collect and analyse water samples both in the field and in the laboratory. This will be a major improvement on the traditional water testing technology which relies on culturing bacteria in laboratories, a process that is slow and fails to reveal the presence of human contamination.

Currently, no river in England meets the ‘good chemical status’ set by the Water Framework Directive, the internationally recognised standard which regulates the quality of water bodies across Europe. Pollutants found in sewage and industrial discharges or produced by agricultural and wild animals continue to impact water purity, leaving only 16% of English rivers classified as being of ‘good ecological status.’

Led by researchers at University of Brighton Centre for Environment and Society, the £950,000-project will allow scientists and regulators to rapidly, accurately and cost-effectively trace human contamination to

its source, helping target interventions, improve the ecological health of freshwater systems, and reduce risks to public health.



Dr Sarah Purnell

Dr Sarah Purnell, Environmental Microbiologist at the University of Brighton, said:

“This project aims to significantly improve how we monitor water quality. By using advanced DNA sequencing and bacteriophage diagnostics, we aim to deliver a tool that can quickly and accurately identify human faecal pollution. This will help regulators and communities make decisions to protect water resources and public health.”

Professor James Ebdon, Co-Investigator at the University of Brighton’s Environment and Public Health Research Group, added:

“This project is particularly exciting as it gives us an opportunity to use the latest biomolecular tools to advance an area of water quality management known as Microbial Source Tracking (MST) that our researchers have been trying to resolve for the past 25 years.”

Once developed, the technology will be implemented and tested by experts at the Environment Agency and the University of Sheffield on the River Wharfe in Yorkshire, home to England's first inland designated bathing site at Ilkley, which has faced water quality challenges linked to sewage and runoff.

By giving regulators and industry the means to trace pollution to its source, this Brighton-led collaboration could play a critical role transforming the robustness of UK water management and ensuring safer rivers for recreation and drinking water for the entire population.

The tool will be developed together with partners from the University of Bath and University of Sheffield, working alongside the Environment Agency and other regional water service providers.



Dr Sarah Purnell



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Mr Mark Hinnells Climate Change Expert

PhD MSc MA BA



Dr Mark Hinnells is an Energy and Climate Change Expert, he has over 33 years academic and consulting experience in energy policy, energy strategy, project development and climate finance, and uses this to undertake expert witness instructions to aid arbitration, litigation, or public inquiry.

His expertise covers:

Planning law – where the impact of a planning application on UK climate change targets may be material. Such proposals include airports, roads, oil and gas and power generation proposals. Mark has particular experience with appeals and public inquiries at airports acting both for airports and Local Planning Authorities.

Fiduciary Duty – challenges as to whether Trustees or Directors have met their Fiduciary Duty in considering ESG, environment or climate change in investment decisions and risk management. Mark has a particular interest in pensions and other funds in multiple jurisdictions.

Greenwashing – assembling a case against a claim, or defending the accuracy of claims made by, financial institutions retailers or producers.

Challenges to Government policy – including under the Climate Change Act, carbon budgets, policy impact assessments, efficacy, proportionality, cost etc

Human rights and climate change – including where rights are claimed to have been infringed through lack of appropriate action.

For instructions involving several different environmental impacts he works closely with Ricardo Energy and Environment and others.

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Widespread Disruption Causing Delay... Or Is It?

by David Waddle, DipICArb FCIQB FAPM MCIArb AMICE

Introduction

Many of us in the world of construction are aware of the term 'disruption' but what does it actually mean? In the UK, the SCL Protocol¹ describes disruption as "a disturbance, hinderance or interruption to a Contractor's normal working methods, resulting in lower efficiency."

And in the United States, the AACEI Recommended Practice note provides a list of some common types of disruption that can be experienced on engineering and construction projects². These include:

- Absenteeism
- Acceleration
- Adverse weather
- Availability of skilled labour
- Changes and rework
- Competition for trade labour
- Labour turnover
- Crowding / stacking of trades
- Defective work
- Dilution of supervision
- Excessive overtime
- Failure to coordinate trade contractors
- Fatigue
- Labour relations
- Learning curve
- Materials and equipment shortages
- Overmanning
- Poor morale
- Out of sequence working
- Site or work area restrictions
- Site conditions
- Untimely approvals or responses

This is by no means an exhaustive list and I am sure that you will be able to come up with several more.

Is there disruption to the works?

In 2023, a survey in the United States found that 45% of contractors experienced a decline in productivity³. The survey found that some of the top causes of productivity issues included poor planning and communication, poor site logistics management,

poor quality drawings and specifications and change order inefficiencies.

To be able to consider and quantify the effects of disruption it is necessary to first determine that disruption has in fact taken place or that the project is currently being disrupted.

Spotting disruption is easy, right?

Well maybe not so easy. The clue to disruption lies in those last four words of the SCL's definition: "resulting in lower efficiency" – that is to say, lower productivity.

When carrying out its regular progress update, a contractor might find that it is on programme – there is no delay, and no disruption – so all is good with the world. Well, that may not be strictly correct.

Consider this. What if the contractor had planned to install 100m of pipework per week and the progress update showed that it had in fact installed 100m of pipework per week. Traditionally that would be the end of the story. However, what if the planned work was to be carried out using a single two-person team but instead, two teams actually completed the work – a total of four people not two?

In this situation, the planned production was achieved but productivity was not.

What is often not appreciated across the industry is the subtle difference between production and productivity. Production is a measurement of output whereas productivity measures the labour hours required to achieve a unit of output.

How do we value disruption?

There are several ways of assessing disruption. The SCL Protocol provides a summary table of the more common methods of measuring disruption⁴.

It describes the productivity-based methods as being the preferred methods and they are listed in order

Productivity-based methods	Cost-based methods
1. Project-specific studies:	1. Estimated v incurred labour
(a) Measured mile analysis	2. Estimated v used cost
(b) Earned value analysis	
(c) Programme analysis	
(d) Work or trade sampling	
(e) System dynamics modelling	
2. Project-comparison studies	
3. Industry studies	

of preference. The cost-based are considered to be the least robust and are mostly used when lost productivity cannot be reliably calculated.

The cost-based methods generally rely upon comparing actual costs and estimated costs.

Of the productivity-based methods, probably the measured mile is one that is most talked about. A reason for this is perhaps that it is very easy to understand. It requires the analyst to compare actual production during an undisrupted period of work to the production rate achieved during a disrupted period.

The measured mile is very good, however, as with most methods, it does have its limitations. A limitation which is often discussed is that it requires the analyst to 'find' a piece of the same or similar work that has not been disrupted. Having done that – and this is not as easy as it sounds by the way – the undisrupted period must be over a reasonable length of time to confidently determine a trend.

Another problem might be the identification of disruption taking place. In my pipework installation example, the measured mile would show that production is being achieved therefore there is no disruption - it does not automatically identify lower productivity.

A better option, particularly during the 'live' works might be an Earned Value calculation.

What is Earned Value?

Earned value (generally referred to as Earned Value Analysis 'EVA' or Earned Value Management 'EVM') is a technique used in project management to measure performance of a project.

The analysis combines project budget and the programme to determine the value of work that has been completed to date. It can be applied across the entire project, specific sections of work or selected activities.

A simplified EV equation is:

$$EV = \% \text{ of work completed} \times \text{budget}$$

The EV method compares 'earned' hours (derived from the budget) with actual hours to complete the work (EVA). The difference is then used to determine any productivity loss and the productivity (or performance) factor ('PF').

Using the earthworks example:

- The contractor budgeted that it would take 144 machine (CAT637) hours to move 15,000m³ of material to the stockpile. This is the Earned Value for this work.
- If 72 machine hours have been recorded to date, then the EV method estimates that 50% of the work has (or should have been) completed.
- If the contractor has actually spent 243 machine hours to complete the work, then 99 machine hours measured as lost productivity (144hrs – 243hrs = -99hrs).
- The productivity factor is calculated by dividing the earned hours by the actual hours:

$$- 144 / 243 = 0.59$$

This is a 41% loss in productivity.

If the contractor is able to carry out these calculations early enough in the programme, it has the opportunity to make informed decisions with regard to improving the productivity factor, this is Earned Value Management.

AN EARTHWORKS PROJECT

PLANNED

Location of stockpile area is 500m from the cut

Plant:

2 x Cat 637 scrapers

1 x Push CAT

Cycle time 15 minutes per load

Output 4 loads/hour

Calculation:

15,000m³/25m³ load = 600 loads

600 loads/2 machines = 300 loads each

300 loads/4 = 75 hours/machine

75 hours/8 hour shift = 9 days

2 machines for 9 working days

ACTUAL

The employer cannot provide the intended stockpile area, the new area is 1000m from the cut.

The new cycle time is 25 minutes per load

Output is 2.4 loads/hour

Revised calculation

300 loads/2.4 = 125 hours/machine

125 hours/8 hour shift = 15.6 days

2 machines for 15.6 working days

HOWEVER

What if the earthworks foreman decided to add a 3rd CAT 637 and extended the working day from 8 hours to 9 hours?

Revised calculation

600 loads/3 machines = 200 loads each

200 loads/2.4 = 83 hours/machine

83 hours/9 hour shift = 9 working days

3 machines for 9 working days

In this scenario, the **planned production** was to excavate 15000m³ in 9 working days and the **actual production** showed that the material was in fact excavated in 9 working days. **The updated programme shows that no time is lost - there is no delay.**

However, **productivity is reduced** from 4 loads/hour to 2.4 loads/hour. But production was maintained and so would most likely go unnoticed when progress is recorded.

Establish causation?

Having determined there has been a loss of productivity – and therefore higher costs – the next step is to establish the cause of the loss. In the earthworks example, the cause was the change of the stockpile location. The Employer was to provide an area of land for the stockpile but once the project commenced the location was not available and an alternative was provided.

This is quite straightforward but, what if the contractor’s planned outputs and resulting budget was over ambitious in the first place?

What if the contractor always required 3 machines to carry out the work but only based its tender on 2 machines?

I expect many of you will have been in a tender finalisation meeting where the director ‘requests’ that time, money or both are ‘stripped’ out of the ‘realistic’ tender programme and sum to win the work! I know I have!

It may be that the Employer change did cause a loss of productivity, but this was further exacerbated by the contractor’s own culpable performance.

Performance Analysis

What I have described so far is about recognising issues with productivity to help in recovering additional costs where it is appropriate to do so and as such, it is often carried out after the event – indeed it is often an afterthought and only recognised once the contractor realises it has lost money on the project. However, performance analysis is also a helpful and transparent tool to help manage and deliver the project.

When the project programme is updated, it is normal to record current progress (% complete) up to the date of updating. The programme is then rescheduled, and the completion date is forecast. This approach - which is common practice – assumes the remaining work will be completed within the planned remaining durations.

However, a question to be asked is how long did it take to achieve the current work completed? For example:

Activity 1 has a duration of 20 working days (diagram 1).

After 4 weeks, the programme is updated, and a measure of the work shows that 50% of the Activity 1 – which started on 06 May - has been completed (diagram 2).

Below, diagram 1

Line	Name	Start	Finish	Duration	Percent complete	2025																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
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However, the performance achieved line shows an improvement in the week immediately before the update. If this improved rate continues, the forecast finish date for Activity 1 is 20 June (diagram 5).

I am not saying the programme update is obsolete, far from it, it is the programme that identifies the starting point for the analysis.

Activity 1 in this example is a driving critical activity, therefore any delay to it has a direct equal effect on the completion date for the whole project. Having the performance data available and presented in a simple format such as these graphs, the project team is better equipped to make informed decisions and potentially, take corrective actions.

Why is productivity down? Do we continue as we are? Was the improvement a blip? Can we improve and mitigate?

Back in my time as a project planner I was lucky enough to be site based full-time. This made it easy for me to actively monitor the programme and the performance. I realise in today's world, having a full-time planner may be a luxury that the contractor cannot afford in terms of cost or simple availability. But that does not prevent the site team from carrying out the performance monitoring. It does not need to have a full-blown EVA technology system; a simple Excel spreadsheet (or even pen and paper) will also do the trick. It is more about recognising the problem and doing something about it.

A final thought

I would suggest to anyone reading this article that having reached its end, it might be a good time for some inward review. Ask yourself and your team: if you were now tasked to prepare a disruption claim: could you? Are the records of a suitable level of detail? Indeed, stepping back a little further: do the records even exist?

And if you're on a live project that is currently on programme, is your productivity what it should be or is there a large bill looming for increased labour costs?

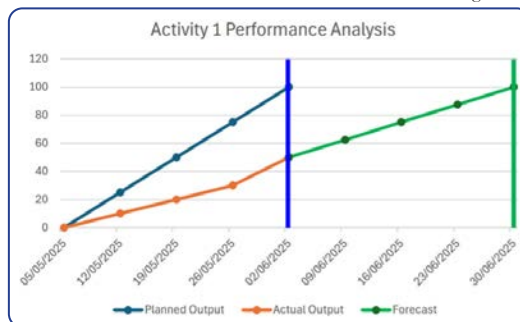
David Waddle DipICarb FCIQB FAPM MCIARB AMICE is a Regional Director and Construction Expert Witness with Rimkus Consulting. David has more than 40 years civil and building experience working on major UK projects both as a site-based planner and project manager, and as a delay and construction management consultant.

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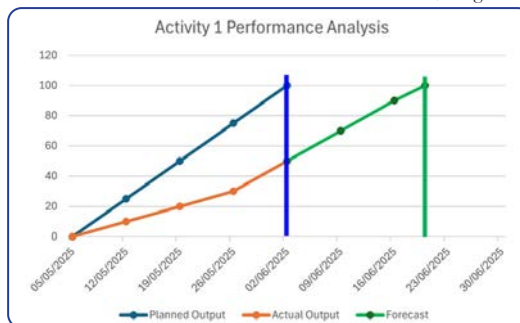
References

¹ Society of Construction Law 'Delay and disruption Protocol' 2nd Edition (2017), paragraph 18.1.

Below, diagram 4



Below, diagram 5



² Association for the Advancement of Cost Engineering (AACE) International, Inc., 'Estimating lost labor productivity in construction claims, AACE International Recommended Practice No. 25R-03' [2004].

³ FMI Labor Productivity Study 2023.

⁴ Society of Construction Law 'Delay and disruption Protocol' 2nd Edition (2017), paragraph 18.13.

Mr. Glenn Horton

Consultant Fire Engineers

Chartered Fire Engineers, Chartered Members of IFE & CABE, Prof M SFPE MEWI



A significant portion of my workload is comprised of numerous cases involving the use of combustible materials in the build-up of external walls, alongside other alleged fire safety deficiencies. My instructions generally involve compliance with guidance, regulations and contracts, organising fire tests for systems and materials.

I specialise in the application of Part B of Building Regulations, the Regulatory Reform (Fire Safety) Order 2005& the design and installation of fire fighting systems in England and Wales. Taking instruction in relation to the cause, origin and spread of fire and have worked on a number of significant matters in this field.

I have extensive experience including the preparation of reports under CPR for Civil and Criminal cases and an extensive CV of cases and formal instructions, as well as attendance at court, adjudications and mediations

I have worked throughout the UK (including the Channel Isles & Scotland), Asia, Europe and Africa. Specialising in working with clients who have fire safety issues, whether they be civil or criminal matters.

Recent cases include: Provision of expert support arising out of construction defects, exposing our client to potential prosecution due to alleged non-compliant external wall build-up; expert reports following post-fire prosecution; application to have a formal notice withdrawn, contractual disputes between landlords and tenants.

I have been involved in fire safety since 1981, initially as fire officer, then subsequently as a fire consultant and engineer.



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Fraud or forbidden tactics: between a rock and a hard place

by Gary Orritt, *Legal Director*

The Commercial Court was recently presented with a unique question: What should the Court do when someone with an apparently strong and substantial, perhaps unanswerable, claim in fraud seeks summary judgment in light of illicit knowledge obtained by unethical means?

In other words, should a claimant be allowed to rely on knowledge and evidence that came into their hands via unethical channels? If not, what should the Court's response be bearing in mind that a defendant with an objectively weak defence might be absolved of the underlying fraud?

These were some of the tricky questions facing Stephen Houseman KC, sitting as a Deputy Judge in the High Court in *Ricardo Benjamin Salinas Pliego & Anor v Astor Asset Management 3 Limited & Ors* [2025] EWHC 2968 (Comm).

Mr Houseman KC decided that it would not be appropriate and proportionate to strike out or stay the underlying action in light of the claimants' abusive conduct, at least at this stage. However, it is likely that the claimants will pay the costs of the hearing on the indemnity basis, as an appropriate sanction.

As a reflection of the importance of the issues at hand, the judge has already granted permission to appeal and cross-appeal. If the case continues, it seems destined for the Supreme Court.

Brief background facts

A solicitor acting for the defendant was deceived into meeting a private investigator in the belief that he was pitching for a new client represented by them. Across nine hours of meetings, the solicitor, referred to as 'X', was coerced by apparently skilful intelligence techniques to divulge information and offer insights into the perceived strengths and

weaknesses of his client's strategic position in the proceedings, including relating to settlement.

These meetings, arranged by a third party organisation with apparent links to the claimants, were secretly filmed and recorded. Those video and audio recordings were provided to the claimants who then deployed the information when applying for summary judgment.

The underlying case relates to an allegedly fraudulent scheme to expropriate shares. Mr Sklarov (a defendant) was said to be the main financial beneficiary of this scheme. In a previous hearing, when continuing Worldwide Freezing Orders, Calver J considered there to be a "strongly arguable" case that the claimants' deceit claim would succeed. An application to commit Mr Sklarov for contempt is pending. There are other pleaded claims in contract, conspiracy, breach of trust or fiduciary duty, dishonest assistance and knowing receipt.

The applications before Mr Houseman KC at the most recent hearing were:

- An application by the claimants seeking summary judgment on the liability elements of their pleaded claims in deceit and contract.
- A cross-application by certain defendants to strike out or stay the action for abuse of process and / or a risk of an unfair trial.

The significance of the underlying claim in fraud

There is some significance to the underlying case being one of fraud.

The civil litigation system is supposed to ensure that a defendant who is responsible for "serious wrongdoing, such as fraud" is held accountable. Fraud is famously said to "unravel all". A defendant should

not necessarily be let off the hook to enjoy the benefit of his own misdeeds, purely on the basis that the other side has also acted reprehensibly.

That reasoning seems to have influenced the Court's decision not to strike out the claim. Striking out or staying the entire claim was considered to be disproportionate in circumstances where there is a decent prospect of the claimants succeeding on their deceit claim at trial.

The judge emphasised that *"there is a distinct policy in favour of exposing and remedying serious wrongdoing such as fraud."*

The culpability of the solicitor

It is clear that X should not have divulged the information that he did about his client's case. Solicitors are under a strict duty of confidentiality to their clients, regardless of the circumstances.

However, the Court had some sympathy with the way in which information was extracted from X. Mr Houseman KC described how X was *"skilfully and tenaciously"* steered into discussing various aspects of the litigation and settlement strategy of his clients. The questioning was *"designed to pressure the interviewee into privileged and confidential territory."*

The claimants argued that there ought to have been a *"nil return"* from the questioning if X had complied with his professional obligations. However, the intention behind that submission was directed at the claimants' assuming no responsibility for the investigator's actions. This was firmly rejected. The Judge did not accept that X *"would have provided the same information to a genuine potential new client"*.

The claimants' conduct

The Court's ire was largely directed at the claimants.

First, the Court considered it noteworthy that the process leading to the extraction of information remained *"opaque"*, and that the claimants had failed to deny the extent of their own role in targeting X to extract sensitive intelligence from him. The Court was *"left with the distinct impression that [the claimants were] choosing to hide details"*.

Second, there was no evidence to suggest that the claimants were *"shocked or surprised"* to receive the fruits of the covert operation. On the contrary, they sought to make use of the illicit knowledge in their summary judgment application, which the Judge said *"compounded"* the abuse.

Although the conduct was not found to be unlawful, it was unethical. The Court was damning about the behaviour and considered it to be an abuse of process:

"It was something that should not happen and it cannot be countenanced by the Court. The use of unethical methods to target an adversary's solicitor in the hope of extracting sensitive information or insights from them is anathema to the norms and values of civil litigation. It is cheating the system with a view to undermining the level playing field which the Court strives to maintain between opposing parties. It offends justice."

The Judge's decision

The Judge confirmed that *"the categories of abuse are not closed"*. Although CPR r. 3.4(2)(b) focuses on abuse relating to statements of case, the interpretation of the rule was much broader so as to cover the circumstances of this case. The Judge was robust in his criticism of the claimants. The conduct was described as *"abnormal and abusive"*. His striking conclusion was that they had *"engaged in unethical behaviour with a view to obtaining an unfair litigation advantage"*, so had *"brought [the consequences] upon themselves"*.

Despite that, rather than striking out the claim, the Court considered that a more proportionate response would be to strike out the claimant's summary judgment application, and (absent compelling argument) for there to be an adverse costs order (likely on the indemnity basis).

It is perhaps surprising that strike out was not the outcome given the seriousness of the conduct. The Judge alluded to this in one of his closing remarks, saying that he was concerned that he had been too lenient on the claimants. In any event, this was one of the reasons why an appellate court would be interested in the issues raised by this case.

Separate to any appeal, there will be an additional 'Information Review Hearing' to decide the evidential status of the illicit information.

Comment

If proceedings continue, this will be a difficult claim for the parties, and for the Court to manage. It is unclear how there can be a fair trial. The claimants cannot have their illicit knowledge erased or reversed. As Judge Houseman KC said *"there is no way of policing its invidious or invisible influence upon their litigation or settlement strategy day in day out."*

The claimants' tactics were clearly inadvisable, but they seem all the more unusual given the apparent strength of their case.

The unusual circumstances of this case shine a light on nefarious practices that some litigants will deploy in order to gain an advantage in litigation. The Court acknowledged that, whereas there are clear procedural rules in place to remedy inadvertent

disclosures of privileged information, there is no such regime for “deliberate acquisition of another party’s privileged material”.

This decision is important for litigants, and professional representatives (as well as to private investigators). It serves as a reminder to solicitors about the sanctity of client confidentiality and privilege. There are no circumstances that warrant disclosing the litigation and settlement strategy to anyone outside of the client team.

The Court was keen to emphasise that underhand practices will not be tolerated in the English courts. When addressing the spectre of strike out, the Judge was keen to focus on the need “to protect the court’s process”, and to apply a “deterrent factor to help ensure compliance by others in future”. However, it is clear from the opening line of the judgment, namely that the Judge had a “difficult choice” that a careful balancing act was required. The Court recognised that strike out is “a draconian measure”, and one of “last resort”. It will be slow to let allegations of fraud go unchallenged.

RAHMAN RAVELLI



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Greg assists clients with the financial aspects of commercial disputes: from advice in the early stages of a case through to giving expert evidence in respect of loss of profits or loss or loss of value. He has given evidence in the high court and arbitral tribunals, and takes on appointments as determining expert.

What we do

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Birth injuries and expert evidence

by *Elizabeth-Anne Gumbel KC*

OAJ By His Mother and Litigation Friend CFT v Dorset County Hospitals NHS Foundation Trust [2025] EWHC 3345

This is the third birth damage case in just over 3 years in which Mr Justice Ritchie has been the trial Judge. The other two being CNZ (Suing By Her Father and Litigation Friend MNZ) v Royal Bath Hospitals NHS Foundation Trust, The Secretary of State for Health and Social Care [2023] EWHC 19 (KB) and CDE (Suing by her mother and litigation friend MNZ) v Surrey and Sussex Healthcare NHS Trust [2022] EWHC 2590 (KB). Ritchie J has therefore heard and/or assessed evidence from many of the most well known and well respected experts in this area including:

Obstetrics:

- Mr Derek Tuffnell [in CDE and CNZ]
- Miss Leonce [in CDE]
- Mr Paddy Forbes [in CNZ]
- Mr Gerald Mason [in OAJ]
- Professor Neil Thornton [in OAJ]

Midwifery:

- Miss Angela Helleur [in CDE]
- Miss Janet Edwards [in CDE]
- Ms Dawn Johnson [read in CNZ]
- Ms Kaye Wilson [read in CNZ]
- Ms Jean McConville [in OAJ]
- Ms Susan Brydon [in OAJ]

Neonatology:

- Professor Mitchell [in CDE]
- Doctor Jane Hawdon [in CDE]
- Doctor Peter Dear [in CNZ]
- Doctor Fox [in CNZ]
- Doctor Gary Hartnoll [in OAJ]
- Doctor Janet Renniwick [in OAJ]

Neuroradiology:

- Doctor Marcus Likeman [read in CDE, CNZ and OAJ]
- Doctor Craven [read in CNZ]
- Doctor Neil Stoodley [read in OAJ]

Paediatric Neurology:

- Doctor Lewis Rosenbloom [in CNZ]
- Doctor Richard Newton [in CNZ]
- Doctor Shakti Agrawal [in OAJ]
- Doctor Neil Thomas [in OAJ]

Review of these cases gives good insight as to how one Judge has assessed the evidence of these well-known experts.

The case of OAJ concerned a Claimant who was aged 14 years at trial and who suffered severe brain damage around the time of his birth. It was not in dispute that the Claimant had suffered an acute profound hypoxic ischaemic insult and possibly also chronic partial hypoxic ischaemia. The Claimant's

mother was admitted to hospital by ambulance at 0010 on 1 September 2011 and the Claimant was born by caesarean section at 1019 on 2 September 2011. Apgar scores were 5 @ 1 minute; 7 @ 5 minutes and 6 @ 10 minutes. The arterial cord pH was 7.01 and the venous cord pH 7.08. Before admission to hospital the Claimant's mother had had a spontaneous rupture of membranes and described some heavy blood loss when phoning the midwifery unit. On admission minimal blood loss was noted on the Claimant's mother's pads.

The issues in the case related to the standard of midwifery care after admission to hospital and the level of obstetric intervention on the following morning. The main issue was to determine when the insult causing brain damage had occurred as unusually the Claimant's condition at birth was not easily reconcilable with a severe insult just before delivery.

The Judge found there was no breach of duty in the care by the midwives in not asking for obstetric assessment after the mother's admission to hospital. He stated:

“ I was greatly assisted by both midwifery experts who were of high professionalism and focus. Their opinions were also logical, from their points of view. However, Ms McConville mistakenly wrote that there was continuing fresh bloodstained liquor on admission. I find that there was no “fresh” BSL, only BSL. In her report, she considered that the maternal report of heavy bleeding at home was enough to mandate medical referral despite: (1) what M had said to the paramedics (“some bright red watery blood”); and (2) all the examinations and assessments of M and C being reassuringly normal; and (3) the difficulty for any mother in estimating blood volume in liquor in a toilet after SROM. I consider that Ms McConville stretched the meaning of the extracts from the text books which she relied upon a little further than they actually went. Not one of the texts stated that medical referral was mandated where SROM and BSL have arisen, against a background in which all of the examinations, signs and the CTG are normal, just because a mother had reported a heavy bleed at home. Ms Brydon advised that the reason for doing all the examinations and assessments was to determine whether M or C was at risk of having suffered an APH at home and the results did not support APH. Instead, the results supported SROM (which was confirmed on speculum examination) and BSL, which was common with SROM.”

And

“ Overall, once Ms McConville had shifted her opinion in cross examination, I consider that the difference in opinions between the experts represented a reasonable range of opinions for midwives in practice in 2011. Thus, where Ms Brydon advises that midwife Coliandris was not negligent for failing to refer M

on to a registrar after admission, I consider that a reasonable body of midwives would have acted as midwife Coliandris did, so she was not in breach. I should make clear that in my judgment, Ms Brydon's opinion at least represents that of a small but reasonable body of the profession and more probably represents the standard of care of the majority in 2011, because it was more logical and better matched the advice in Myles Midwives 15th ed (2009) at pages 336-337. Having carried out every proper assessment and examination, having noted that all the signs came back normal for both M and C, in the context of mere BSL on the maternal pad and taking into account the great difficulty for mothers accurately to assess the amount of blood loss in a toilet after SROM, furthermore taking into account the paramedics' note of what M told them (some bright red watery blood), referral to a registrar at 00.50 am was not mandated and might, quite rightly, have led to a raised obstetric registrar's eyebrows.”

And

“ As for the actions of the morning midwives, midwife Rogers was involved in the call for obstetric review via her coordinator, Ms Hall, very soon after 08.35 am and that is what the midwifery experts both agree she should have done, so I consider that she was not in breach of her duty of care.”

The Judge criticised both expert obstetricians for commenting on the standard of midwifery care.

“ Mr Mason went outside his field of expertise when advising the Court that midwife Coliandris breached her duty of care because she should have referred M to obstetricians and should have identified the source of the bleeding, soon after admission. That was for the midwifery experts. In any event, Mr Mason altered his opinion on referral to an obstetrician from a blanket mandation, due to M's self-report over the telephone, to a requirement only if there was evidence of significant blood loss as opposed to SROM with BSL. Professor Thornton made a serious error in his report and in the joint report when he overlooked the fresh blood seen by the midwife at 08.35 am and the report by M of fresh blood in the toilet in the same note. He also strayed outside his field to comment on midwifery practice. In relation to the allegations of breach relating to midwifery practice, I prefer to rely on the midwifery evidence and I have done so above.”

The Judge found there was however a breach of duty by the obstetrician at 0848. The Judge was critical of the Defendant's obstetric expert and his analysis of this and stated:

“ Both experts criticised Mr Siddig's diagnosis made at 08.48 am, of a local source for the bleeding. The most unimpressive part of Professor Thornton's joint report was his advice on the events at 08.48 am. Despite Mr Mason pointing out to him that there had been “fresh bleeding” he ignored that and wrote: “ There was no indication to undertake a caesarean at 08.48

.... There were no symptoms and signs of evolving abruptio... it was only at 09.05 hours when the PG was inserted that there was vaginal bleeding". I do not know whether these experts actually had a discussion or just exchanged draft written comments, but this disconnect shows how one expert can mislead himself by overlooking a key entry in the clinical notes, despite it being referred to by the other expert. Professor Thornton accepted that, by 09.25 am, the decision to do a CS was necessary due to the visualised blood. As for the need for continuous CTG after that decision, Mr Mason advised it was necessary but Professor Thornton completely avoided answering the question of whether it should have been reconnected."

and

“When challenged on his opinion about 08.48 am, he accepted that he had overlooked the entry at 08.35 am stating fresh blood on M’s pad and flushed away in the toilet. He accepted that her account was consistent with a significant fresh bleed in hospital. I was unimpressed by his answers about the decisions made by Mr Siddig at 08.48 am. He criticised Mr Siddig for diagnosing a local cause for bleeding without examination, but would not accept that the 08.35 am note of fresh blood on the pad and down the toilet was “significant” enough to mandate immediate examination and a CS. He accepted that the daytime CTG was very unusual due to the spikey baseline variability and the baseline rising steadily from 105 to 160 bpm and the decelerations.”

The Judge summarised his findings in respect of breach of duty by the obstetrician as follows:

“As for the obstetric management at 08.48 am, I accept the evidence of both expert obstetricians that Mr Siddig was in breach of his duty of care when diagnosing a local cause for the bleeding. He did not even try to visualise the suspect ectropian. I also find that he negligently overlooked the note, made a mere 13 minutes before his ward round, setting out that fresh blood was seen on M’s pad and M’s report that she saw fresh blood in the toilet. I find that Mr Siddig should have examined M at that time and would probably have seen fresh blood in her vagina. That, combined with the odd trace, starting with a low baseline of 105 bpm (normal 110-160 bpm), the spikey variability and the lack of any accelerations, should have led to a decision for a CS. I accept Mr Mason’s opinion that, at that time, the working diagnosis should have been a suspected PA. As a result, I find that a CS was mandated. Professor Thornton never really addressed the whole of the facts at this timepoint and carelessly ignored the fresh bleed report at 08.35 am so I do not find his opinion helpful on this timepoint.”

However whilst the Claimant was able to establish breach of duty at 0848 the claim failed as the Claimant could not establish the insult would have been avoided by earlier delivery after 0848. Dr

Agrawal had postulated that the insult occurred between 0944 and 1009 with 10 minutes recovery before delivery at 1019 and that this would explain why the Claimant was not in a worse condition at delivery. However the Judge found:

“Attractively argued though Doctor Agrawal’s theory was, there were various fault lines within it. Firstly, the sheep experiments did not support the level of recovery in C’s levels of acidosis, from a very severe brain injury, to his condition at birth, in a mere 3-10 minutes (or indeed the 14 minutes maximum which I calculated above). I do place a little weight on those because they are the only review papers available and they were not criticised for their methodology, only for having small samples. Secondly, the other experts did not accept that recovery in that very short space of time was likely from their clinical experience. Thirdly, the 08.30 am CTG started with a baseline at 105 bpm, which is below normal, leading slowly up to 140-160 bpm. I accept Mr Mason’s evidence that this might indicate a post injury recovery process. Fourthly, the Agrawal hypothesis rests on cord compression and so on M staying still for 25 minutes causing that compression. But, on his theory, this stillness was happening at a time whilst she was being prepared for theatre, then transported from her room to theatre, then being consented and prepared for the spinal anaesthetic. The entry in midwife Rogers’ notes on the start of the operation was: “knife to skin 10-”, in which case she must have had the spinal before then and been bent over for the needle insertion. That would have involved quite substantial body movement, potentially interrupting any cord compression. Whereas the nighttime compression would probably have occurred when M was asleep. Fifthly, I consider that Janet Rennie’s approach was thoughtful and analytical. I prefer her evidence to that of Doctor Agrawal on the timing of the hypoxic insult. I also prefer the evidence of Mr Mason and Doctor Thomas on the timing of the insult.”

and

“For the above reasons, I find that C suffered an APHI, lasting 20-25 minutes, before 08.30 am and probably at the later end of the period 05.15 – 07.50 am. It



probably ended at or just before 07.50 am, because midwife Rogers went to see M then, took her vital signs and BSL was seen dribbling, so M may well have moved her body during that time. There might have been some preceding CPHI, but on balance I prefer the expert evidence stating that there was a unitary cause: APHI. A lot of brain injury was caused during the APHI insult and I consider it likely that C's arterial cord gas pH probably reduced to 6.6-6.8 as Doctor Thomas postulated. After the APHI there would then have been a period of re-oxygenation and resuscitation for C in utero until birth, lasting perhaps 2-3 hours. Then, C was born with improved but still acidotic cord pH readings. Roughly 4-6 hours after the end of the APHI insult (perhaps very roughly between 11.50 am and 13.50 pm) the usual secondary period of cellular damage probably arose.

None of the experts, other than Doctor Agrawal, whose evidence on timing I have rejected, advised that there was any or any continuing hypoxia after 08.30 am if the main injury had occurred earlier. Instead, they advised the C was being resuscitated in utero. I find that there was no continuing hypoxia after 08.30 am."

And

"I find that C's severe brain injury was caused silently and tragically in the night, between 05.15 and 07.50 am, probably ending at or close to 07.50 am. It was caused by APHI. It was caused by a reversible mechanism. This was probably due to cord compression. This was not anyone's fault. It was not the midwives' fault and it was not M's fault. No one was to blame. By the start of the daytime CTG, at 08.30 am, the damage was either done or the course was set for the full damage to emerge over time in the usual 3 phase manner. Therefore, the breaches at 08.48 am and thereafter and those after 09.40 am made no difference to the outcome and made no contribution to it. The primary damage had been caused, although the normal further sequelae of APHI arose thereafter and further consequential damage would arise hours later."

This was an unusual and difficult case involving birth damage over 14 years ago. The main problem for the Claimant was to reconcile the Apgar scores and relatively mild acidosis at birth and lack of bradycardia just before delivery with a very severe acute profound hypoxic ischaemic injury. By contrast in the case of LMN v Swansea Bay University Health Board [2025] EWHC 3402, where it was accepted the acute event occurred during a 17 minute delivery of an impacted baby the position was:

"The claimant was delivered by Mr Mukherjee at 20.34. The claimant was noted to be floppy, his Apgar scores (a measure of the need for resuscitation) were 4 (at 1 minute of age), 4 (at 5 minutes) and 5 (at 10 minutes). He was ventilated and then intubated. His cord gases were recorded as pH 6.86 arterial and

pH 7.01 venous. He took his first spontaneous breath at 6 minutes of age.

The total period of acute near total asphyxial insult was about 13 minutes and the period of damaging asphyxia was of approximately two to three minutes in duration. The notes of the anaesthetist recorded that it had been a difficult procedure but that the baby had recovered less than one minute after delivery. It is said that the claimant would not have suffered any brain damage or neurological injury had he been delivered by 20:31 or 20:32."

Ultimately in the OAJ case the Judge found the insult must have occurred a few hours earlier and although the mother was in hospital at the time the Claimant could not establish that this injury could or should have been avoided. The breaches of duty that could be established all post dated the timing of the injury.

This article was originally published on I Crown Office Row's Quarterly Medical Law Review.

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Mr Hamoda has published widely in his specialised field and is actively involved in ongoing research projects both locally and nationally. He is first author of The British Menopause Society & Women's Health Concern 2020 recommendations on hormone replacement therapy in menopausal women and author of the British Menopause Society guideline on the management of women with premature ovarian insufficiency 2017.

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Nurseries and safeguarding

by Sophie Shulman

The NSPCC defines child sexual abuse as any act that forces, tricks, or manipulates a child or young person into sexual activity. In the UK, the legal age of consent is 16, meaning children cannot legally consent to sexual acts. Any sexual activity involving a child is therefore a serious criminal offence.

In 2025 a number of convictions of nursery workers show how challenging it can be to ensure the safety of children in nursery care even when the nursery has in place safeguarding policies and procedures, undertakes the necessary DBS checks and trains its staff. They show the importance of constant vigilance and proactive management.

The case highlighted below is an example of how in any setting involving the care of children safeguarding must be a live consideration at all times and in all activities undertaken. This case serves as a clear reminder that safeguarding is not just a moral obligation, but a legal necessity. Institutions must implement comprehensive measures, including enhanced vetting and DBS checks, safeguarding reporting protocols and mandatory staff training on child protection to ensure the safety and wellbeing of every child in their care.

Vincent Chan, 45, worked at a North London nursery between 2017 and 2024. During this period, Chan committed multiple sexual offences against children. He pleaded guilty to 26 offences, including five counts of sexual assault by penetration, four counts of sexual assault by touching, eleven counts of taking indecent photographs or pseudo-photographs of a child, and six counts of making indecent photographs or pseudo-photographs of a child. The offences included images across categories A, B, and C, with Category A depicting the most severe abuse.

Concerns were first raised when a staff member reported that Chan had filmed a child falling asleep and shared the video for “comedic purposes”. This led to a Metropolitan Police investigation, which was described as one of its most harrowing and complex child sexual abuse cases.

Chan was arrested in June 2024 with officers seizing 25 devices from his home and three from the nursery. He was released on bail but dismissed immediately. Forensic analysis completed in July 2025 revealed substantial evidence of contact sexual offences and indecent images. Chan was re-arrested in September 2025 when police seized an additional 26 devices from his home and 15 from the nursery. Sentencing is scheduled for 23 January 2026 at Wood Green Crown Court. The nursery has since closed.

Police have identified four child victims and the NSPCC has launched a helpline for the 700 families whose children attended the nursery during Chan’s employment. The nursery owner has commissioned an external safeguarding review, acknowledging that Chan was able to commit these crimes despite existing measures.

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Dr Dymond currently completes 1-2 medicolegal reports per week, for personal injury and medical negligence, with roughly a 60/40% split claimant/defendant.

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He is the author of the ABC of Urology, now in its 3rd edition, and also co-edited the Evidence for Urology which won first prize in the urology section of the BMA Medical Book Competition in 2005.

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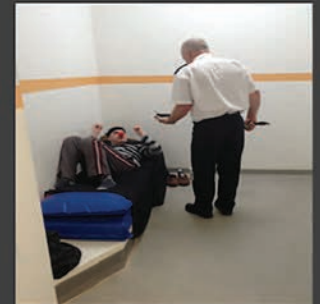
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When fresh evidence isn't enough: Understanding the threshold for age assessment reviews

by Sarah Erwin-Jones, Partner & Miya Watson, Paralegal at Browne Jacobson

We don't celebrate good practice enough. Here we do, and we shall explain why. In age-dispute cases, individuals often submit supporting evidence including identity documents, court records, and witness statements from family, friends, or professionals.

*R(F) v Manchester City Council [2019] EWHC 2998 (Admin)*¹ demonstrates the critical importance of thoroughly evaluating such evidence and understanding when it triggers a duty to reassess. Crucially it also shows how helpful it is for social workers to records what they have taken into account and why they have reached their conclusions.

The claimant, a Guinean national claiming to be born on 9 December 2001 (aged 17), arrived in the UK and was referred to Manchester City Council, entering care under **Section 20 Children Act 1989**². An age assessment conducted between September and December 2018 concluded he was 20 years old.

In February 2019, the claimant challenged this assessment, submitting letters from a Greater Manchester Immigration Aid Unit support worker and a Latter-Day Saints missionary, plus a Guinean court document confirming his claimed date of birth.

Manchester City Council refused to reassess, reasoning that:

- The support worker and missionary evidence did not make it 'more likely' the claimant was 17 rather than 20.
- The court document, whilst not disputed as fraudulent, was obtained specifically to challenge the assessment.
- Significantly, the document was applied for by the claimant's father and supported by relatives, directly contradicting the claimant's account of fleeing family abuse.

- The original assessment was Merton-compliant, conducted by two experienced social workers with appropriate safeguards.

The claimant sought judicial review. Whilst granted interim relief and partial permission, HHJ Julian Knowles ultimately dismissed the claim.

On Ground 1 (refusal to reassess), the judge held the defendant's decision was rational. The court document, though the 'high point' of the claim, raised serious inconsistencies about how it was obtained. The judge agreed that Home Office verification would achieve little, as the issue wasn't authenticity but procurement circumstances. The professional witness statements provided only general, subjective observations without sufficient detail.

On Ground 2 (challenging the original assessment), permission was refused as the claim was filed outside the three-month time limit and lacked sufficient strength to satisfy the FZ test (whether there was a realistic prospect the court would conclude the claimant was younger than assessed).

Implications for social work practice

This case reinforces that social workers must:

1. **Examine evidence critically, not just superficially:** Consider not only what documents say, but how they were obtained and whether they align with the individual's broader narrative
2. **Document your reasoning meticulously:** Record what evidence was provided, what investigations were undertaken, what weight was given to each piece of evidence, and why it was accepted or rejected
3. **Look for internal consistency:** Evidence that contradicts the individual's own account (such as family members assisting with documentation when the individual claims to have fled family abuse) significantly undermines credibility

4. **Understand the threshold for reassessment:**
Fresh evidence must make it 'more likely' that a significantly different conclusion would be reached; general observations from professionals with limited contact will not suffice
5. **Ensure Merton compliance from the outset:**
A robust, well-documented initial assessment protects against successful challenge and reduces the likelihood of costly judicial review proceedings

The case demonstrates that thorough, well-reasoned initial assessments that properly consider and document all evidence will withstand legal scrutiny, even when fresh evidence emerges.

If you would like to learn more, contact Browne Jacobson or view their other age assessment article guides.³

References

- ¹ **F, R (On the Application Of) v Manchester City Council [2019] EWHC 2998 (Admin)** - www.caselaw.nationalarchives.gov.uk/ewhc/admin/2019/2998?query=R%28F%29+Manchester+City+Council+%5B2019%5D+EWHC+2998+%28Admin%29#download-options
- ² **Children Act 1989** - www.legislation.gov.uk/ukpga/1989/41/section/20
- ³ **Age assessment article guides** - www.brownejacobson.com/insights?tab=Articles&type=&search=age+assessment

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I provide clear, evidence-based assessments and balanced recommendations rooted in trauma-informed and systemic practice. My approach is direct, child-focused, and grounded in established social work foundations. I hold advanced training in Dyadic Developmental Psychotherapy (DDP), Systemic Practice, Attachment Narrative Therapy, NVR, sexual-harmful behaviour assessments, and domestic abuse risk work.

I regularly prepare Section 7 reports, Parent Assess assessments, parenting capacity assessments, and risk assessments in cases involving emotional harm, neglect, domestic abuse, and allegations of alienating behaviours. I also undertake contact observations and provide reunification planning, as well as direct work with children when instructed.

My expertise is strengthened by my role as Senior Social Worker at the Parenting Apart Programme, a nationally recognised intervention evaluated by the Anna Freud Centre. I train social workers, provide case consultation and supervision on reducing parental conflict, child mental health, and safe co-parenting in separated families.

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What does “father” mean

by *Phoebe Starbuck, Associate*

The recent case of *Re X (A Child) [2025]* examined the meaning of “father” under section 2 of the Children Act 1989 (CA1989). It was also considered whether a man automatically has parental responsibility (PR) simply because he was married to the child’s mother at the time of birth, even if he is not the biological father.

There were three key parties:

- the mother (M),
- the biological father (F), and
- the mother’s former husband (H).

M and H were still married when M conceived and gave birth to the child with F. As a result, H was named as the child’s father on the birth certificate. The true parentage came to light when a DNA test in 2020 confirmed F as the biological father. H’s name was removed from the birth certificate in 2021.

In 2025, F obtained a declaration of parentage. He then applied for a declaration that H did not have PR. H supported this application; M opposed it.

Judgment

Justice Harrison accepted F’s submissions. He decided that when a child’s mother and father are married at the time of birth, each has PR—but that “father” in this context carries its ordinary meaning: the biological father. Because CA1989 does not define “father,” the court must interpret it using its everyday meaning unless Parliament has clearly provided otherwise.

The judge pointed out that Parliament has expressly recognised non-biological parents in other parts of the legislation, such as Schedule 1 to CA1989. Further support comes from section 2(1A), which grants PR to non-biological parents who are treated as parents under sections 42 - 43 of the Human Fertilisation and Embryology Act 2008. If Parliament had intended “father” in section 2 to include non-biological fathers, it would have made this explicit.

Justice Harrison concluded that H could not retain PR. It was compared to if an unmarried man was incorrectly named on a birth certificate that such an



error would not confer PR. PR is a significant legal responsibility, and biological parentage remains an important factor.

The judge also noted that it was not in the child's best interests for H to hold PR: he was not the biological father, had no desire to act as a parent, and did not wish to make decisions for the child.

It is important to remember though that husbands who are not biological fathers but who wish to retain PR for a child with whom they have a meaningful and established relationship can apply for PR provided they have a sufficient connection to the child.

For those facing uncertainty or disputes around PR for a child it is important that specialist legal advice is sought.

This article was published on Stevens & Bolton



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- Specialised Medical Screening of Army potential recruits, with a turnaround of less than 10 days from referral to concrete opinion & recommendation.
- British Army Consultant Advisor in Psychiatry (Colonel), 1990-2013. Delivered a clinical service, while heading up the whole cadre of Army Mental Health Provision, around 150 full-time clinicians. Lead on all new Mental Health Policies, and advice. Frequent engagement with Media, Government Ministers and the Third Sector on the issue of Mental Health.
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Ex-footballer's medmal claim confirms the value of contemporaneous records

by *Stuart Keyden & Simon Perkins, Partners at DAC Beachcroft*

Overview

In this article we look at the recent decision of the High Court in the elite athlete med-mal claim of *Ebanks-Blake v. Calder* [2025] EWHC 3327 (KB) which reaffirmed the significance of the contemporaneous medical records and the weight that will likely be placed on them in medmal cases.

What was the case about?

The claimant, retired professional footballer, Sylvan Ebanks-Blake, had a distinguished football career at the highest level. He came through the renowned Manchester United academy and played for Wolverhampton Wanderers in the Premier League, having signed for Wolves for £1.5 million from Plymouth Argyle in 2008. He also represented England at Under-21 level.

His claim related to an injury he sustained in April 2013 whilst playing for Wolves against Birmingham City in the Championship, following Wolves' relegation from the Premier League. During a collision the claimant sustained a left fibular fracture.

This was not the first injury that the claimant had sustained to his left leg; he had suffered a previous fibula fracture and ligament damage in 2005 whilst playing for the Manchester United Academy.

The defendant, an experienced orthopaedic surgeon specialising in trauma surgery involving elite athletes, saw the claimant following his April 2013 injury and recommended open reduction and internal fixation of the fractured fibula. Importantly, the defendant also recommended an additional



arthroscopy (keyhole surgery generally used to examine and treat joint problems) with debridement of scar tissue and loose cartilage in the ankle. This surgery was performed one week after the injury. As outlined further below, it was alleged that the decision to perform an arthroscopy was negligent.

The claimant returned to playing professional football, but his case was that the alleged negligence curtailed his career. The claimant's case was that but for the decision to perform an arthroscopy, he would have been able to continue playing at an elite level (Premier League or Championship) for a further 3 to 5 years. In fact, the claimant dropped down the leagues, playing for Chesterfield in League 1 in 2015 before ultimately deciding to stop playing league football at the end of the 2016/17 season. He was playing in a non-league match in January 2019 when he suffered a further left fibula fracture and decided to retire from the game.

The issues

Despite his 2005 injury, the claimant's ankle joint had been pain free. He had adapted his playing style to accommodate ankle stiffness, and this had allowed him to play at the highest level of the football pyramid.

The claimant argued that he had suffered no acute injury to the ankle ligaments in the 2013 injury to justify an arthroscopy. An arthroscopy would inevitably involve the removal of arthrofibrosis in order to visualise and access the ankle joint, and removal of degenerate cartilage. However, the claimant's case was that this arthrofibrosis and cartilage had in fact been serving a useful function, i.e. cushioning for the ankle joint, and that its removal altered the biomechanics of the joint and caused pain, instability and an acceleration of degenerative changes. The claimant's case was that an arthroscopy should not have been performed on a pain-free and functioning ankle.

The defendant argued, on the other hand, that the 2013 injury involved significant acute injuries to structures within the ankle, leaving the ankle unstable. The defendant's case was that an arthroscopy was the 'gold standard' intervention for an unstable ankle and that it would have been negligent not to have undertaken the procedure. The defendant further argued that the arthroscopy had in fact prolonged the claimant's playing career.

The case largely hinged on the extent to which the claimant's 2013 injury involved an acute injury or whether there had simply been a modest exacerbation of a chronic (long-standing) ankle injury. This is because the defendant accepted in cross-examination that a chronic process does not require an arthroscopy.

The outcome

Liability turned on the difference between the contemporaneous notes and the defendant's evidence at trial, which were markedly different. At trial, the defendant's evidence was that the claimant's injuries in 2013 were so serious and so striking that they stuck in his memory; his evidence was that the injuries were so severe as to be potentially career ending. However, this was not the suggestion from his contemporaneous notes in 2013, which suggested an altogether less significant ankle injury, which was predominantly chronic in nature (arising from the 2005 injury). Specifically, the defendant's contemporaneous pre-operative notes recorded the following:

- *"He has not had any significant symptoms in his ankle since the previous fracture other than some stiffness..."*
- *"Clinically today the ankle itself appears a little swollen but there is no tenderness across the medial aspect of the ankle...and there is no significant tenderness around the lateral ligament complex – in particular there is no tenderness around the AITFL [anterior inferior tibiofibular ligament]."*

Whilst the defendant noted some abnormalities around the ligaments, he also expressed the view that these were older injuries.

This "evolution" (as the judge described it) of the defendant's evidence was brought sharply into focus by the fact that sections of his witness statement, including the important issue of his rationale for recommending and performing the arthroscopy, had been taken directly from his own orthopaedic expert's report, so much so that the judge remarked that:

"I am led to the irresistible conclusion that the defendant's witness statement and his account at trial are almost certainly an amalgam of what the defendant thought and Professor Ribbans' [the defendant's orthopaedic expert] expert opinion."

Against this background, the judge was persuaded that the defendant's real rationale for performing the arthroscopy was to investigate potential instability in the ankle joint, and not to treat what in fact was found to be a much less serious ankle injury than that suggested by the defendant in his evidence at trial.

In finding that there had been a breach of duty in undertaking the arthroscopy, the judge found, amongst other things, that *"it would be wholly illogical to perform an invasive procedure for the purpose of examining a structure which you believe clinically and radiologically to be normal."*

From a causation perspective, the judge also found that the removal of the scar tissue destabilised the claimant's ankle joint by removing the cushioning

and by altering the biomechanics of the joint leading to increased movement of the joint, increased instability and acceleration of degenerative change in the joint. But for the arthroscopy, the judge therefore found that the claimant would have returned to his pre-accident pain-free state, which would have allowed him to play football at a high level for a further 3 to 5 years.


Judgment was therefore entered for the claimant on this basis, with quantum to be assessed separately, although it is anticipated that the claimant will recover significant damages primarily for loss of earnings at elite levels.

Discussion

This case serves as a salutary reminder of the significance that is often placed at the trial of all medical malpractice claims on the contemporaneous notes. Defendants can continue to expect their records to be the starting point and, as was the case here, potentially determinative. Any later inconsistencies between those records and witness evidence will need careful and reasonable explanation in any witness statement, which should be prepared without the outside influence of expert opinion.

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Mr Kumar undertook his foot and ankle fellowship at Wrightington Hospital. He was granted a Fellowship of the British Orthopaedic Foot and Ankle Society, which he used to gain experience in ankle arthroscopic surgery under the internationally renowned Professor Van Dyke at Amsterdam.

Mr Kumar is involved in teaching and training nurses, physiotherapists, medical students and Orthopaedic Registrars. He has students from the University of Manchester who undertake various clinical attachments with him. He is an Honorary Senior Lecturer and examiner for the University of Manchester Medical School.

Mr Kumar provides a high quality, patient-centred foot and ankle service. His experience covers the entire spectrum of orthopaedic foot and ankle disorders. Besides the more common foot and ankle procedures, he performs ankle replacements, ankle arthroscopy, complex hind foot fusions, deformity corrections, and ligament and tendon reconstructions about the foot and ankle.

Mr Kumar has expertise in assessing personal injury, soft tissue and sports injury, complex polytrauma and low velocity injuries.

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New study redefines our understanding of how memory works

by *University of Nottingham*

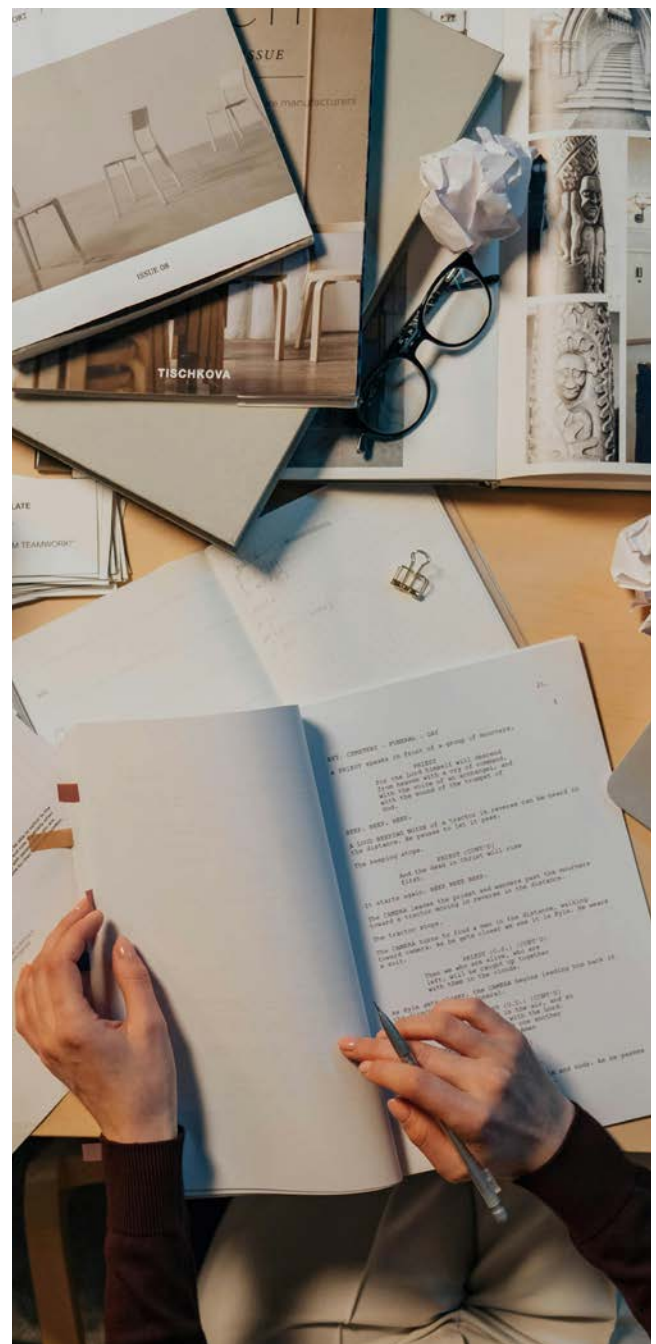
A new study into how different parts of memory work in the brain has shown that the same brain areas are involved in retrieving different types of information, the findings could redefine how memory is understood and studied.

Researchers from the School of Psychology at the University of Nottingham and the Cognition and Brain Sciences Unit at the University of Cambridge have examined episodic and semantic memory, combining task based and fMRI data and have shown that there is no difference in neural activity between successful semantic and episodic retrieval. The findings have been published today in *Nature Human Behaviour*.

Episodic memory refers to the ability to remember a past event that occurred in a particular spatial and temporal context. This type of memory supports the human capacity to re-experience events from our past, as a form of “mental time travel”. Semantic memory, on the other hand, refers to the ability to remember facts and general knowledge about the world that are retrieved independently from their original spatial or temporal context.

In this research the team examined how information associated with successful episodic and semantic memory is processed and stored, using tasks that are more closely matched. 40 participants recalled pairings between logos and brand names, where the pairings corresponded to real-world knowledge (semantic task), or were learned in an initial study phase (episodic task).

fMRI (Functional Magnetic Resonance Imaging) scanning was used whilst participants were asked to recall details about the associated brand from their prior knowledge in the semantic task, or details about the pairing in the study phase in the episodic task.



Dr Saal Seneviratne

Consultant Psychiatrist in Private Practice

MBChB, MRCPsych, Accredited EMDR specialist
and practitioner

Consultant Psychiatrist | Expert Witness | GMC Assessor | Advisor to the Parliamentary Health Service Ombudsman

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His practice includes work with musicians, and professionals in the creative sector through BAPAM.

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fMRI is a non-invasive brain imaging technique that maps brain activity by detecting changes in blood flow, showing which areas are active during tasks like speaking, moving, or thinking. It works by sensing increased oxygen-rich blood flow to active neurons, creating dynamic 3D maps that help doctors and researchers understand brain function, plan surgeries, and study neurological conditions.

Dr Roni Tibon, Assistant Professor in the School of Psychology led the study, she said:

“We were very surprised by the results of this study as a long-standing research tradition suggested there would be differences in brain activity with episodic and semantic retrieval. But when we used neuroimaging to investigate this alongside the task based study we found that the distinction didn't exist and that there is considerable overlap in the brain regions involved in semantic and episodic retrieval.

“These findings could help to better understand diseases like, dementia and Alzheimer's as we can begin to see that the whole brain is involved in the different types of memory so interventions could be developed to support this view.”

Because, for many years, episodic and semantic memories were considered to be distinct entities, a research tradition had developed in which they are explored separately. The consequence of this is a lack of within-study designs that tap into both systems.

“Based on what we already knew from previous research in this area we really expected to see stark differences in brain activity but any difference we did see was very subtle, I think these results should change the direction of travel for this area of research and hopefully open up new interest in looking at both sides of memory and how they work together.

Dr Roni Tibon,
Assistant Professor in the School of Psychology

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Dr Linda Monaci

Consultant Clinical Neuropsychologist



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Dr Monaci has completed the Cardiff University Bond Solon Expert Witness Certificates.

Dr Monaci receives approximately 60-70% instructions from Claimants and 40-30% from Defendants. In April 2024, Dr Monaci counted each new instruction received in the previous 12 months and found the percentages were as follows: 58% Claimant, 37% Defendant and 5% Jointly instructed. In April 2025, Dr Monaci calculated that in the previous 12 months, the split was divided as follows: 73% Claimants, 24% Defendants and 3% jointly instructed.

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Spike in Reoffending Rates for Drug Driving

by Jeremy Sirrell, Director at Palmers Solicitors

Figures released recently by the Ministry of Justice reveal a significant rise in the rate of reoffending for drug driving offences. In fact, almost 50 per cent of those who commit offences of drug driving have previously committed a similar offence. The data also revealed that over the past four years, drug drive reoffending rates have increased by more than 134 per cent. Whilst these figures will likely be greeted by the predictable chorus of shock horror in some quarters, it is worth pausing for a moment to reflect just why there might be such high rates of reoffending amongst drug driving offenders.

One of the reasons suggested is the delays of up to six months in processing blood tests, which means people who have been arrested for a drug driving offence on one occasion may be free to commit a second offence before they have been prosecuted for the first. There is no doubt that there will be a small number of people who fall into this category. However, in my experience, this is a very small number indeed and cannot begin to account for the increase in reoffending rates.

A more credible reason is likely to be that, unlike offences of driving with excess alcohol, there is not yet a rehabilitation scheme for those convicted of offences of drug driving. When offences of drug driving first started to be prosecuted, now more than ten years ago, it was very much new and there had been no opportunity to set up courses similar to those for drink driving.

However, more than ten years down the line, there are still no rehabilitation courses with no clear indication as to why. Evidence seems to suggest the rehabilitation courses really do help to prevent reoffending for drink driving cases and might therefore be of real assistance for drug driving matters.

However, there is yet a more likely reason for the higher rates of reoffending, and that lies in the

different approaches to drug driving and drink driving that have been adopted by the law.

In relation to drink driving, the approach is very simple – the limit has been set at the level at which there is likely to be at least some (albeit not necessarily very much) adverse effect on reaction time and judgement so that those who drive above that limit are driving impaired and should be subject to prosecution. The position in relation to drugs, however, appears to be quite different in two ways.

Firstly, the levels for drugs found in the system have been set extremely low, whereas the limit for alcohol is set at the level where there is some reduction in reaction time and judgement. The limit for drugs appears to be set at a level where one may be registering a drug in the system that is above the legal limit whilst not showing any signs of impairment. This is for two reasons:

- The limit for drugs has been set very low (one can only assume that this is a clear and deliberate decision).
- That drugs remain in the system and are detectable in the system long after their intoxicating effects have passed.

To be clear then, with alcohol, the presence of alcohol indicates (depending on the level) a degree of intoxication at the time that the alcohol is detected. However, drugs remain in the system, detectable after their intoxicating effects appear to have passed, and this effect is exacerbated by the fact that not only are the drugs themselves unlawful (above the limit) but so are their breakdown products. It is an offence to drive with more than the specified quantity of the breakdown product of the drug in one's blood, as well as the drug itself. Breakdown products are, of course, the result of the body breaking down and metabolising the drug.

Breakdown products themselves are not intoxicating but, indeed, are the result of the intoxicating effects

of the drug having been effectively removed by the body, leaving only the breakdown product behind. In other words, whereas to commit an offence of excess alcohol requires you to actually be intoxicated, having consumed alcohol a short time before, to commit an offence of drug driving requires you simply to have had a drug possibly up to days before hand. No intoxicating effects at the time of driving or arrest may be present. For example, regular users of cannabis are probably permanently in excess of the limit for driving with drugs, making it extremely easy to commit the offence.

It is easy to avoid committing an offence of drink driving – simply do not drink more than a reasonable quantity shortly before you are about to drive. A reasonable quantity is not necessarily very much, but it is something, and a short while before you drive may mean only a few hours. This advice, however, will not work with those who consume drugs.

What we seem to have is a huge number of people being prosecuted for drug driving in circumstances where many, perhaps most of them, are not actually showing signs of intoxication at all.

Given the above, the high reoffending rates for drug driving should be neither a shock nor a puzzle.



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Ian is the founder and director of Expert Witness Services Ltd, and the former Specialist Drugs Advisor and the Lead Expert Witness Coordinator of the Metropolitan Police, London, U.K. A former New Scotland Yard detective with unparalleled experience of the illicit drugs trade within the U.K. and beyond.

Ian has over 34 years experience of drugs and firearms investigations as both the lead investigator and supervisor and over 20 years experience in performing the role of the Expert Witness. Highly commended by the Metropolitan Police, the National Crime Agency, and Judges in criminal trials, you can be assured that you are receiving genuine expertise in a unique and dynamic field.

Ian's areas of expertise are extensive and are the primary reasons why he was invited onto many national working groups and committees. From social supply to street dealing, county lines to encrypted communications and Organised Crime, Urban street gangs and street slang to the Chemsex scene, illicit drugs labs and cannabis cultivation.

Ian is the lead trainer at Expert Witness Services and continues to deliver Expert Evidence and Drugs Awareness training to U.K. Police Services. The feedback received from serving police officers and staff speaks for itself and can be viewed via the website.

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Consultant Urologist based in Fife, Scotland.

My medicolegal areas of interests are; personal injury, pelvic and genitourinary trauma, clinical negligence in all aspects of urological surgery, including delayed diagnosis and complications related to implanted surgical materials.

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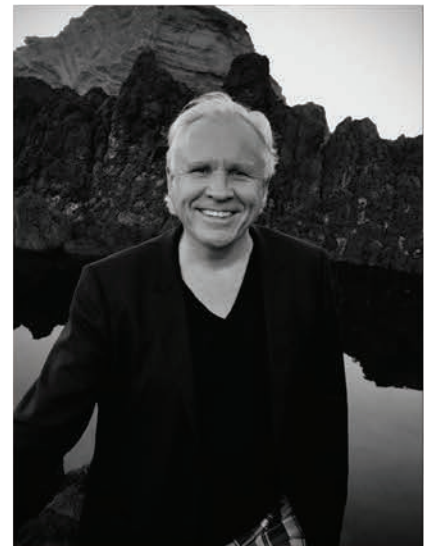
Dental consultant Toby Talbot, an independent expert witness with British and American training, has spent **25** years providing a fast track service for the legal community in cases of clinical negligence.

Toby assists courts, counsel and judges in making accurate and well-informed decisions in cases relating to restorative dentistry and all aspects of prosthodontics, periodontics, endodontics and implantology.

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Implant Failure and How It Affects the Cost of a Claim

by Dr. Raj Kumar, Dental Surgeon

Introduction

Dental implants have been used for over 60 years to replace missing teeth, either as single units or as part of dental bridges. The most common material is titanium alloy, which has been scientifically studied since implants were first introduced into clinical practice.

When preparing reports on causation and prognosis, I am frequently asked the following questions:

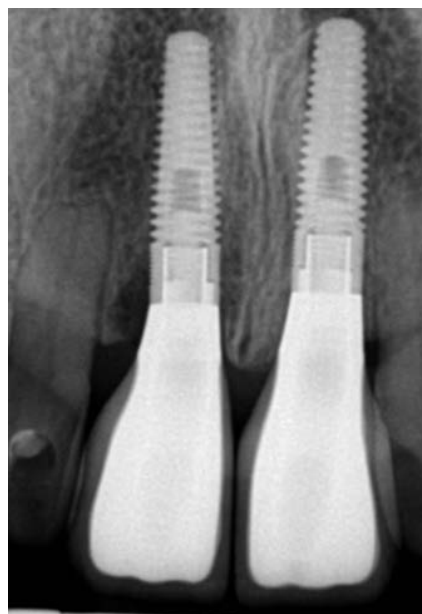
- How long is this implant likely to last?
- Can the claimant reasonably claim the cost of future replacement implant crowns?
- If so, how many replacements should be allowed for over a lifetime?

It is well recognised that a natural tooth can last a patient's lifetime if they have a clear medical history, good oral hygiene, and good dietary control. Conversely, patients who do not look after their teeth may suffer premature tooth loss due to decay or periodontal disease.

These individual factors must be taken into account when preparing cost reports for claimants. It is the responsibility of the dental expert to review the claimant's dental history prior to the accident and assess whether the lost tooth would reasonably have been expected to last for the claimant's natural lifetime.

Although implants have been used for many decades, there are relatively few long-term studies with sufficiently large patient numbers to provide consistent evidence regarding true implant longevity. Most published studies last between 5 and 15 years and typically involve smaller patient cohorts, which limits the strength of the conclusions that can be drawn.

Many scientific studies are retrospective and are often carried out by the clinician who placed the implants, usually within specialist practices where



standards of placement and aftercare are higher than in general practice. This may not reflect everyday clinical reality.

Ideally, a robust scientific study assessing implant longevity would include a large number of patients, a large number of implants placed by multiple operators, and long-term follow-up of at least 10–15 years. Unfortunately, most available studies fall short of this ideal, meaning that we cannot state with certainty how long all implants will last, even when well maintained.

Review of a Major Long-Term Study

One of the largest published studies reports over 22 years of follow-up and includes nearly 11,000 dental implants:

“Long-term clinical performance of 10,871 dental implants with up to 22 years of follow-up: A cohort study in 4,247 patients”

- D. French et al.

This was a retrospective longitudinal cohort study of implants placed by a single specialist periodontist between 1995 and 2019.

- Total implants: 10,871
- Total patients: 4,247
- Maximum follow-up: 22.2 years
- Mean follow-up: 4.5 ± 4.2 years

Risk Factors Identified

The study reported higher implant failure rates in the following groups:

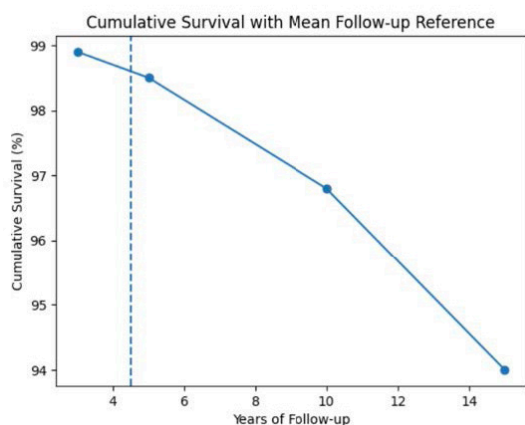
- Patients with multiple implants compared to single implants
- Heavy smokers
- Patients with diabetes
- Implants placed in grafted bone
- Short implants (6 mm or less)

At first reading, this study may give the impression that implants can reliably last up to 22 years or more. However, there are important limitations:

1. All implants were placed by a single specialist operator, which is unusual in routine implant dentistry and may overestimate success rates.
2. The average implant follow-up period was relatively short (mean 4.5 years), meaning that relatively few implants were actually observed for 15–20 years.

Actual Survival Versus Predicted Survival

The reported cumulative implant survival rates were:



dashed line is the mean follow-up time

- 3 years – 98.9%
- 5 years – 98.5%
- 10 years – 96.8%
- 15 years – 94%

Cumulative survival represents a statistical estimate of the probability that an implant survives to a given time point, based on all available data.

Although the maximum follow-up extended to over 22 years, the study does not clearly report how many implants were actually observed beyond 15 years. Many implants may only have been followed for a short period.

The study used Kaplan–Meier survival analysis, which:

- Counts every failure event when it occurs.
- Treats patients who have not yet failed (or who are lost to follow-up) as “censored” rather than failures.
- Continuously updates survival probability over time.

As long as some implants remain under observation at later time points, the model can calculate long-term survival estimates, even if most implants were followed for much shorter periods. This can result in optimistic projections of long-term survival.

Wider Published Evidence

Other studies have reported that:

- Dental implants are not 100% successful and there is a risk of failure within 10–15 years, commonly due to peri-implantitis. Removal of a failed implant can be traumatic and may result in significant bone loss. Subsequent replacement implants may need to be placed under more difficult clinical conditions (Setzer and Kim).
- All restorations require replacement cycles over a patient’s lifetime (Holm-Pedersen).

My Opinion

Based on the available evidence and my own clinical experience:

- A single implant can reasonably be expected to last between **10 and 20 years**, depending on patient risk factors and maintenance.
- Implant-supported bridges are more difficult to keep clean and are subjected to increased loading due to additional pontic teeth. Their expected lifespan is therefore typically **10 to 15 years**.

Having carried out implant surgery for over 30 years, my experience is that some implant failures can occur early. Once an implant has successfully integrated however, many remain functional for 20 years or more, although gradual bone loss and implant exposure can occur over time.

For the purpose of costing future treatment:

I generally allow for **replacement every 20 years** in patients without significant risk factors.

In patients with increased risk (for example diabetes, periodontal disease, smoking history), I apply a more cautious 15-year replacement cycle.

This approach reflects both the published evidence and real-world clinical experience.

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25 March 2021
David French DDS, Dip.Peri, Ronen Ofec DMD, MSc, Liran Levin DMD,
Clinical Implant Dentistry Vol 23//3

Dr Raj Kumar Dental Expert



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Dr Raj Kumar has written over 400 reports in matters arising from patient and regulatory complaints, dental negligence and accidental injury.

Dr Kumar qualified from Guys Hospital in 1989 with a BDS. In 1990 he obtained his LDS RCS from the Royal College of Surgeons London.

He also has an expertise over 20 years in Invisalign orthodontics, having treated over 1400 patients. He worked as an NHS dentist from 1990 and set up a private practice in 1995 in the West End of London.

He has expertise on breach and causation. Dental regulatory guidelines and those of independent dental associations. He has worked closely with regulators, indemnifiers, lawyers, mentees and patients. He is fully compliant with Part 35 rules.

Experienced in assessing patient complaints, record card assessment, record keeping and assessing the patient consent process. Has worked closely with regulators, indemnifiers, lawyers, mentees and patients. He has acted as a mediator for patients as well.

Doctor Kumar as an ability to read into patient treatments and to decipher the important tracts that relate to consent and treatment provided.

Having a good understanding of dental guidelines and expert literature helps Dr Kumar to create informative and corresponding medical legal reports.

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Dr Wassim Slim qualified Bachelor of Dental Surgery with distinction from the prestigious Guy's Hospital Dental School in 1998. In 2000 he gained diplomate membership of the Royal College of Surgeons of England. He holds further postgraduate qualifications; a gaining a postgraduate certificate in Implant Dentistry from Warwick University and a postgraduate diploma in Primary Dental Care from the University of Edinburgh.

He currently works at the Headquarters of the Defence Medical Services as a policy officer for dental services, as well as part time in General Dental Practice in Northamptonshire.

He is experienced in managing patient complaints, conducting clinical competency investigations and record card reviews.

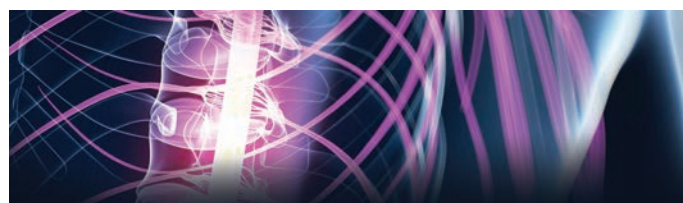
Dr Slim produces fact-based, informative; detailed reports based on strict adherence to the instructions received, and a thorough assessment of evidence packs. His reports are compliant with CPR 35 standards, providing a balanced, impartial opinion on evidence based findings with reference to national clinical guidelines and best practice standards where appropriate.

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Conflict of Interest: Dr Slim cannot accept instructions involving the Ministry of Defence

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Specialist interests

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Mr Singh delivers reports for both claimant and defendant solicitors producing fair unbiased reports to assist the courts. Mr Singh provides legal training to assist solicitors in trauma and orthopaedic related matters.

Mr Singh is an expert in personal injury and medical negligence and performs over 200 reports per year. Mr Singh is Chair for the British Orthopaedic Association Medico Legal committee. Mr Singh is Bond Solon trained and MedCo registered and has undertaken training for medical negligence and court room experience.

Mr Singh undertakes regular CPD to ensure his clinical and legal practice is up to date.

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SKAT vs Solo

by Expert Evidence

Summary

This case represents the long-awaited verdict in a legal battle which has run for almost a decade and is one of the highest value civil cases ever heard in the UK. It is undoubtedly a huge blow for the Danish tax authorities, but demonstrates that if legal loopholes are left open, then they can be exploited, a lesson they have learned at great financial cost.

Background

In October 2025, Denmark's tax authority, Skatteforvaltningen ('SKAT') lost its £1.44 billion London based lawsuit against Solo Capital Partners and others (the 'Defendants'), which first began in 2018. SKAT argued that large amounts of money had been falsely claimed in tax rebates as part of what are now known as "*cum-ex schemes*".

“ Nothing is too good to be true.”

Ernest Holmes

SKAT alleged that Solo Capital Partners ('Solo'), run by Sanjay Shah, was responsible for most of these claims. Solo was a hedge fund established in 2009 by Mr Shah, with the head office in London and a further office in Dubai.

Cum-ex schemes

Cum-ex schemes first appeared in the aftermath of the 2008 crash and steadily spread across Europe. They are transactions where shares were sold from one party to another just before the payment of a dividend, known as 'cum dividend', effectively with dividend, but delivered to the other party afterwards, so ex-dividend.

The timing of these transactions was designed to exploit confusion over who actually owned the shares at the time of the dividend being paid out to shareholders. By using this timing delay, both parties were able to claim rebates on withholding tax. This tax was initially paid once, when the dividend was first issued, and it is clear that these schemes were carried out with the sole purpose of generating multiple refunds of a tax which had only been paid once.

From this starting point, those involved in such schemes created ever more elaborate trades to exploit this arrangement, costing taxpayers in Europe billions financially. Whilst many European countries were targeted to exploit this arrangement, Solo focused primarily on Denmark from 2013 onwards.

Outcome

The Judge ruled that the 4,170 tax refund claims were valid under Danish law. After examining all the evidence, it was concluded that SKAT had not been misled by any “misrepresentation” from the Defendants into making the payments. The Judge noted that whilst greed had undoubtedly played a part in the Defendants’ actions, this did not mean that what they had done was misleading or outside of what was permitted under the legislation at the time.

It was concluded that the situation had arisen due to the Danish tax authority’s controls for the assessment and payment of dividend tax refund claims being “so flimsy as to be almost non-existent”. This lack of regulation had allowed these schemes to flourish. The Judge added that the Defendants were “able to and did help themselves to a fortune because SKAT’s processes were so limited”. The conclusion being that insufficient legislation and controls were at fault here, rather than the Danish government being the victim of fraud.

Setting an example

It was noted that SKAT effectively had “unlimited resources” in the pursuit of this matter, being backed by a sovereign state. It was clear that there was a desire to “set an example to the world” that such actions would not go unchallenged. The case was also described as being “politically as well as financially motivated”. Nevertheless, despite such vast resources, the Judgment has been an indisputable victory for Mr Shah and the other Defendants.

Expert Evidence

There were a number of Expert Witnesses called to give their views on the principles involved in the case. Professor, Dr. Jur Frederik Waage gave unchallenged expert evidence on the fact that the nation state of Denmark is a constitutional monarchy. Only SKAT put in expert evidence from a forensic accountant, Mr Jens Ringbaek of Deloitte Denmark, whose evidence was also unchallenged.

However others came in for severe criticism where Mr Justice Baker said in paragraph 397.

“ All three experts, in differing ways, did not provide properly balanced written reports, uninfluenced by the fact that they were instructed, respectively, by SKAT (Mr Wade), the DWF Ds (Mr Sharma), and the Shah Ds (Mr Bird). This was most evident in the case of Mr Wade, much of whose written work was argument rather than expert evidence. Regrettably, in my view he carried into his oral evidence the same tendency and approach, to think first of how

he should be putting the case for SKAT. I concluded, with regret, that he has become compromised by the nature and extent of his involvement for SKAT in its global litigation effort, such that he finds it difficult not to think and express himself as an advocate for SKAT’s position. He has, I think, lost detachment from the partisan interests of SKAT as his instructing client, and that left me unhappy to accept views of his that, on analysis, were genuinely matters of expert opinion where his views were not shared by at least one of Mr Sharma or Mr Bird.”

In paragraph 398.

“ In Mr Sharma’s case, my concern was less pronounced. There was in his case an unwelcome tendency, in writing, to fail to express qualifications or set out a complete expression of his view, such that the absence, or narrowness, of any real difference of expert opinion between him and Mr Wade was obscured, and the impression might have been gained from reading his reports that there was nothing at all unusual or contrary to typical market practice about the Maple Point Model trading (which was Mr Sharma’s focus).”

Next steps

SKAT was quick to issue a statement that they plan to appeal this decision and that they “strongly disagreed” with the outcome of the case. They are no doubt encouraged by the decision in the US in February 2025, where a US jury awarded \$500 million to SKAT following the first US civil trial over cum-ex trades.

Simultaneously, Mr Shah, who is currently serving twelve years in prison following a successful parallel criminal conviction by the Danish authorities, has stated that he intends to appeal this conviction, in view of the outcome in this case.

What seems clear is that this is not the end of this particular legal saga and it will be very interesting to see how both of these appeals progress.

References

- ¹ Skatteforvaltningen v Solo Capital Partners LLP & Ors [2025] EWHC 2364 (Comm) (02 October 2025)
- www.bailii.org/ew/cases/EWHC/Comm/2025/2364.html



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Supreme Court ruling: Illegality defence applies despite insanity acquittal

*by Owen Fear, Senior Associate & Katie Viggers, Professional Development Lawyer
at Browne Jacobson*

The Supreme Court has unanimously ruled that a man found not guilty of murder by reason of insanity cannot pursue civil claims in negligence to recover compensation for the consequences of his killings, applying the doctrine of illegality to bar his claim.

The case – *Lewis-Ranwell v G4S Health Services (UK) Ltd and others* [2026] UKSC 2

Mr Lewis-Ranwell, who had been diagnosed with schizophrenia, attacked and killed three elderly men in their homes on 10 February 2019. At the time, he was experiencing a serious psychotic episode and held the delusional belief that his victims were paedophiles.

Following his arrest, Mr Lewis-Ranwell was tried for murder but found not guilty by reason of insanity, meaning the jury accepted he carried out the killings but was not criminally responsible. He was detained at Broadmoor Hospital under a hospital order with restrictions, where he remains.

The negligence claim

Mr Lewis-Ranwell brought civil proceedings against four defendants¹ – G4S Health Services (UK) Limited, the Chief Constable of Devon and Cornwall Police, Devon Partnership NHS Trust, and Devon County Council. He alleged that they were all negligent in failing to provide him with adequate mental health care or assessment² in the days before the killings. He had been arrested twice shortly before the murders for suspected burglary and assault, and during both detentions, he behaved erratically and appeared severely mentally unwell. He was seen by mental health practitioners and the need for a mental health assessment was discussed but not arranged before he was released on bail.

Mr Lewis-Ranwell alleged that, but for the alleged negligence, he would have been admitted to

hospital, preventing the killings of the three men. He sought damages for the consequences of the killings, including his compulsory detention, and an indemnity against potential claims from the victims' families.

The legal issue

The central question was whether the doctrine of illegality – which prevents individuals from profiting from their own wrongdoing – barred Mr Lewis-Ranwell's civil claim in negligence³, despite his lack of criminal responsibility.

The Supreme Court's decision

The Supreme Court held that the illegality defence applied in the circumstances and that Mr Lewis-Ranwell was barred from bringing civil proceedings in negligence, even though there was no criminal conviction. The Court rejected the argument that the distinction between diminished responsibility (a partial defence reducing murder to manslaughter) and insanity (a complete defence) should determine the availability of the illegality defence in civil law.

Key principles

The threshold question

The Court first considered whether the act in question – the killing of three men – constituted unlawful conduct serious enough to engage the illegality defence. A threshold is needed because it would be unjust if trivial acts of unlawfulness barred otherwise valid legal claims. The acts must engage the public interest, but the claimant's actions do not have to carry criminal responsibility to cross the threshold.

Was the defence of illegality engaged in this case? The Supreme Court held that, even though there was no finding of criminal responsibility, the jury's verdict established that Mr Lewis-Ranwell did kill the

three men, breaching “*the most fundamental moral rule in our society: you shall not kill*”. The claimant’s actions demonstrated the danger he posed to the public and accordingly the public interest. The killing of the men is unlawful conduct which engages the illegality defence.

Did the defence apply in the case?

The next issue to consider is whether the defence should apply to the present case, applying the framework set out in *Patel v Mirza [2016] UKSC 42*.⁴ The Court considered:

- 1. The purpose of the prohibition:** The fundamental rule against killing exists to preserve life, protect the public, deter unlawful killing, and acknowledge wrongs done to victims. Allowing the claim would create inconsistencies damaging to the legal system’s integrity – for example, compensating someone for lawful detention ordered to protect the public.
- 2. Other public policies:** Whilst courts generally should adjudicate civil wrongs, alternative procedures such as inquests and public inquiries are better suited to examining what went wrong. The policy of maintaining legal system integrity outweighed arguments for permitting the claim.
- 3. Proportionality:** Given the utmost seriousness of killing three men and the centrality of these acts to all claimed losses, denying the claim was a proportionate response.

Significance

The judgment establishes that the illegality defence can bar civil claims even where the claimant has been acquitted by reason of insanity. The Court emphasised that criminal law distinctions between conduct that results in criminal responsibility and conduct that does not should not automatically govern civil law, and that the coherence and integrity of the legal system as a whole must be maintained.

Lord Hodge and Lord Lloyd-Jones delivered the judgment, with which Lord Reed, Lady Rose and Lady Simler agreed.

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- ² **Mental health care or assessment** - www.brownejacobson.com/sectors/health/nhs-mental-health-and-community-trusts
- ³ **Claim in negligence** - www.brownejacobson.com/services/health-and-social-care-disputes/clinical-negligence
- ⁴ **Patel v Mirza [2016] UKSC 42** - www.caselaw.nationalarchives.gov.uk/uksc/2016/42?query=Patel+Mirza+%5B2016%5D+UKSC+42

Mr. Paul Carmody

Use of Force Expert Witness

BA Hons (Criminology), BTECH Level 4 Certificate Educational Training, HRDET Team Leader and Lead Trainer, Managing Safety Trainer IOSH, TRIM Trauma Risk Intervention Management Practitioner

Paul Carmody is a use of force expert, and founder of Carmody Consultancy.

With 25 years of policing experience, he offers bespoke safety training and expert witness consultancy in use of force, leveraging his expertise in high-risk operations and litigation. Paul is also a First Aid Instructor – (Freelance) for ATACC Group (October 2025 – Present) responsible for teaching police officers and staff the initial first aid package and their refresher training covering all aspects of first aid

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Prof. John Quinlan

Consultant Orthopaedic Surgeon

MB, BCh, BAO (Hons.); AFRCSE; MCh;
FFSEM; FRCS (Tr. & Orth.)



Professor John Quinlan graduated from University College Dublin with MB, BCh, BAO (Hons.) in 1997, receiving the Gallagher Medal in Orthopaedic Surgery. After his internship in St. Vincent’s University Hospital, he entered the Dublin Regional Basic Surgical Training Scheme, attaining his AFRCSE and subsequently completing two years as a registrar before commencing Higher Surgical Training in 2002. He spent six years as an SpR, achieved FRCS (Tr & Orth.) in 2006, MFSEM (UK) in 2007, and was awarded his CCST in 2008. He then undertook an arthroplasty fellowship with Prof. Theis at the University of Otago before beginning consultant practice in Waterford in 2009.

In 2013, Professor Quinlan joined Tallaght University Hospital as a Consultant Orthopaedic Surgeon specialising in lower limb arthroplasty. He chaired the Orthopaedic Trauma Department (2013–2016) and subsequently the Medical Board (2018–2021). He has held academic appointments at Trinity College Dublin, becoming Clinical Professor in 2022, and was elected to the Council of the Royal College of Surgeons in Ireland that same year. He has provided expert witness reports in nearly 200 lower limb arthroplasty cases.

Professor Quinlan’s MCh by research (2004) marked the beginning of a prolific academic output, including over 120 peer-reviewed publications, more than 100 abstracts, and over 250 presentations delivered nationally and internationally. He is a specialist editor with The Surgeon and has served as Clinical Lead for the Irish National Orthopedic Register since 2024.

Teaching and surgical training are central to his career. He has been an ATLS/EMST instructor and course director, former AO UK & Ireland President (2021–2023), and President of the Irish Institute of Trauma and Orthopaedic Surgery since 2021. He has examined multiple MCh and PhD theses and has served as an external examiner for programmes in Edinburgh and Cork.

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When opinion becomes fact

by Sian Fisher, Senior Associate

Factual witness evidence can be the foundation of a successful defence. However, obtaining a credible and compelling statement from the key witnesses can be challenging.

The Claimant will have undergone the procedure or sat through the consultation or assessment which is at the heart of the case only once. By contrast, the witnesses for the Defence may have repeated the process in question many times in the intervening period and have no recollection of the particular procedure or consultation which is the focus of the claim. Some assistance may come from reviewing the contemporaneous notes, but the notes may be written in short hand, particularly if the procedure in question is routine.

The witness may describe their usual practice as a means of bolstering their evidence. This, of course, is reasonable. However, as a recent case illustrates (*Ebanks-Blake v Calder* [2025] EWHC 3327 (KB) (18 December 2025)) adopting the evidence of the parties' expert and passing it off as your own recollection, is not.

The case

The claimant was a professional footballer with Wolverhampton Wanderers who suffered a fracture of his lower left fibula during a match. The Defendant reduced and fixed the fracture to the fibula in addition to which he performed an ankle arthroscopy. The Claimant's case was that the latter procedure was not indicated and caused damage. The key issue to be addressed by the Defendant in his statement therefore was the rationale behind his decision making at the time. Put simply, why had he thought that the arthroscopy was reasonably required? To supplement his own recollection, the Defendant incorporated wholesale passages from the report of his expert into his statement, without attribution.

Unsurprisingly, this unusual stratagem did not escape the scrutiny of the trial judge. Noting that the Defendant's evidence had evolved throughout the lifetime of the case, the Judge observed that

“the fact that sections of the defendant's witness statement had been cut and pasted from Professor Ribbans' report is a strong pointer in the direction of the defendant's thinking having been influenced by aspects of the expert opinion of Professor Ribbans. The defendant accepted that those sections were almost word for word identical and their inclusion could not have been accidental or coincidental”.

In other words, rather than the expert basing his opinion as to whether the care was reasonable upon the Defendant's factual account of his reasoning at the time, the Defendant based his factual account upon the opinion of his expert, who was a known enthusiast for arthroscopies. In short *“the defendant's account of his reasoning and recollection has been, no doubt unwittingly, influenced by expert opinion”*. Given this, the Judge concluded that *“I can place little or no reliance upon the defendant's witness statement or his evidence at trial”*.

The defence failed.

Practice points

This is the latest of a series of cases in which factual statements have been the subject of unflattering judicial comment, and where the hand of the lawyer has been felt, rather than the voice of the witness heard. Ultimately, lawyers do need to step back and let the witnesses speak for themselves.

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AI - the expectations for expert witnesses

by Fay Waterfield, Associate

AI tools have been used by the legal profession for a significant time without difficulty, for example, Technology Assisted Review in electronic disclosure. Over recent years and with the advent of large language models (LLMs) such as ChatGPT, the use of generative AI in dispute resolution has increased. Whilst AI can potentially be useful for summarising large bodies of text and performing administrative tasks, care needs to be taken to ensure that the information obtained through AI tools is accurate.

Judicial guidance

The Courts and Tribunals Judiciary has recently issued updated guidance¹ for Judicial Office Holders on the use of AI and the need for independence, impartiality and integrity. Setting out key issues and risks, and suggested ways to mitigate those, the guidance highlights (among other matters) the need to:

Understand the limitations of AI:

- AI tools “are a poor way of conducting research to find new information you cannot verify”.
- “Even with the best prompts, the information provided may be inaccurate, incomplete, misleading, or biased. It must be borne in mind that “wrong” answers are not infrequent.
- “The currently available LLMs appear to have been trained on material published on the internet. Their “view” of the law is often based heavily on US and historic law”.

Uphold confidentiality and privacy:

- “Do not enter any information into a public AI chatbot that is not already in the public domain.”
- “Any information that you input into a public AI chatbot should be seen as being published to all the world.”

- “In the event of unintentional disclosure of confidential or private information you should contact your leadership judge and the Judicial Office. If the disclosed information includes personal data, the disclosure should be reported as a data incident.”

Ensure accountability and accuracy:

- “The accuracy of any information you have been provided by an AI tool must be checked before it is used or relied upon.”
- “AI tools may “hallucinate”, which includes... making up fictitious cases, citations or quotes, or refer to legislation, articles or legal texts that do not exist”.

Take responsibility:

- “Judicial office holders are personally responsible for material which is produced in their name.”
- “Judges must always read the underlying documents. AI tools may assist, but they cannot replace direct judicial engagement with evidence.”

Lawyers

The Law Society issued similar guidance on 1 October 2025 (Generative AI: the essentials). The guidance highlights the need to make sure that any information or documents that a solicitor submits “to the court are accurate and from genuine and verifiable sources.” The guidance also provides that “misuse of any tool, leading to inaccurate information being presented” will breach the SRA Code of Conduct.

Unfortunately there have been several recent cases where legal professionals have been censured by

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I am a highly experienced, highly qualified and well trained member of the construction community. I am best known for running a multi award winning chartered construction company called the Abbey Construction Group. The Abbey Construction Group has completed hundreds of residential construction projects and I have vast experience in understanding the nuance and grey areas allowing me to find the correct outcome to any dispute.

I have worked on over 300 residential projects and a Level 7 Senior Construction Manager. I have developed relationships with architects and developers and oversee all projects from proposals to contract phases.

I started my own construction company in 2020 with a focus on high standards and exceptional construction projects. 5 years on and we have won multiple awards, become a chartered company and received the most accreditations for a residential construction company in the UK. I was the runner up for construction manager of the year 2025 and specialise in the full administration of construction projects from commencement to closure.

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I have acted as an expert witness in property and construction matters since 2012, including cases which have been determined in court proceedings, arbitration hearings, UK government departments as well as private settlements. Cases that I have been involved in include:

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Mr Gareth Smyth

Business valuations - Expert witness



Law LLB (Hons), Corporate Finance (MSc)

Gareth Smyth has been advising owner managed SME businesses on the sale and acquisition of companies since 2006. He specialises in the valuation of owner managed micro businesses to large turnover businesses in excess of 60m.

Litigation and Valuation Experience;

Gareth Smyth has provided reports and expert evidence for both Claimants and Defendants in litigation cases, as well as on a jointly appointed basis in respect of:

- Full company and partial ownership valuations.
- Divorce and Matrimonial proceedings.
- Valuing the interest of an exiting shareholder.

Recent Expert Witness Experience

- Valuation of family operated convenience store c. £500,000 revenue in matrimonial proceedings.
- Valuation of Construction business c. £13m revenue matrimonial proceedings.
- Valuation of Marketing Agency c. £2.5m revenue matrimonial proceedings.
- Shadow Expert Report that resulted in a costs order against the Respondent.
- Valuation of Car Repair Garage for shareholder dispute.

He has also given numerous valuations to company directors to satisfy disputes on share ownership, provide starting points for negotiation of both full and partial sales to internal and third parties, as well as for the purpose of share options and other circumstances in which an independent valuation are necessary.

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the court for misusing AI. For example, *Choksi v IPS Law LLP* [2025] EWHC 2804 (Ch) where a witness statement from the defendant's managing partner contained references to a number of cases that had "wrong citations, wrong names or which simply did not exist", and *MS v Secretary of State for the Home Department (Professional Conduct: AI Generated Documents) Bangladesh* [2025] UKUT 305 (IAC) where it was found that the barrister "had misused artificial intelligence and attempted to mislead the Tribunal".

Dame Victoria Sharp, the president of the Kings Bench Division, issued a sharp warning on 6 June 2025 (*R (on the application of Frederick Ayinde) v Haringey London Borough Council; Al-Haroun v Qatar National Bank QPSC and QNB Capital LLC* [2025] EWHC 1383 (Admin)). In this decision, the Court addressed serious professional misconduct involving the misuse of AI by legal practitioners in two separate cases. Dame Sharp warned that:

“*Freely available generative artificial intelligence tools, trained on a large language model such as ChatGPT are not capable of conducting reliable research. Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect.*”

[para 6]

“*Those who use artificial intelligence to conduct legal research notwithstanding these risks have a professional duty therefore to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work (to advise clients or before a court, for example).*”

[para 7]

“*There are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused.*”

[para 9]

Dame Sharp's judgment refers to an American case (*Kohls v Elison No 24-cv-3754* (D Minn 10 January 2025) where the parties relied on expert evidence about AI. Dame Sharp noted that "one of the experts had used generative AI to draft his report and it included citations of non-existent academic articles" and referred to observations made by United States District Judge Laura Provenzino in that case:

“*The irony ... a credentialed expert on the dangers of AI and misinformation, has fallen victim to the siren call of relying too heavily on AI – in a case that revolves around the dangers of AI, no less.*

...

The Court thus adds its voice to a growing chorus around the country declaring the same message: verify AI-generated content in legal submissions!”

Experts

The use of AI by expert witnesses was addressed in the latest Bond Solon Expert Witness Survey published on 7 November 2025. 20% of respondents stated that they had used artificial intelligence in their role as an expert witness, an increase from 9.31% last year but still considerably lower than the national average of 65% across UK workers.

Of the 20% of experts who had used AI, most had done so to assist with research and others said that they "used AI to rephrase writing, and check grammar and spelling, or to calculate results from data."

The vast majority of respondents (89%) felt that specific guidance was required for the use of AI by expert witnesses in the UK. The survey states that "it is clear that the relatively low uptake of the technology is likely down to fear of inviting unintended criticism".

The survey asked whether experts would "accept an instruction where the solicitor insisted on providing the expert witness with a draft expert report for the case, that was generated by AI". 14% said that they would accept such an instruction. This was raised as a matter of concern by Mr Justice Waksman, head of the Construction and Technology Court, at the Bond Solon Expert Witness Conference on 6 November 2025.

Comment

Whilst there is currently no specific guidance for expert witnesses on the use of AI, they should always comply with their duties under Part 35.3 of the Civil Procedure Rules (CPR). Expert evidence presented to the court should be the independent product of the expert, an expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within their expertise, and an expert witness should state the facts or assumptions on which their opinion is based.

The CPR Part 35 duties make it incumbent upon the expert to check that the information obtained from AI, or from any other research sources, is accurate.

It would be helpful for CPR Part 35 to be updated to include specific guidance for experts on the use of AI. In the meantime, we would suggest that the warnings of Dame Sharp apply to experts as much as lawyers and that they should bear these in mind, as well as the recent judicial guidance. The Law Society guidance on generative AI states that a solicitor bears the professional responsibility for the factual accuracy of expert reports and so it is important that solicitors seek to regulate the use of AI by their experts.

The issue of AI could be addressed in the solicitor's letter of instruction to the expert. For example:

- Enclose a copy of the recent judicial guidance and state that the expert is expected to comply with this if they intend to use AI tools in the preparation of their report.
- Highlight the need to ensure that any material produced by AI is double-checked and verified for accuracy.
- Highlight the need to maintain data security and that confidential or personal information should not be entered into AI tools.
- Suggest that if the expert uses AI, they should document the process clearly, so that they can explain how it was used if questioned by solicitors or by the court. That may include saving and/or reproducing in the body of their report a copy of the specific 'prompt' wording used to generate the AI output.
- Give clear instructions that the expert must verify that all decision-making and opinion contained in the report was generated themselves independently of AI.

References

- ¹ www.judiciary.uk/guidance-and-resources/artificial-intelligence-ai-judicial-guidance-october-2025/

Ms. Helena Evans

High Net Worth Claims Specialist



ACILA FIFAA FUEDI-ELAE

Helena Evans is Managing Director at Criterion Loss Adjusters, who are market leading loss adjusting specialists in the High Net Worth, Fine Art and High Net Worth Real Estate markets.

With over 20 years Loss Adjusting experience, Helena started her career handling primarily domestic property claims arising from the full range of causes throughout southeast England. This experience developed to handling more and more complex claims including major losses, Ultra and High Net Worth, VIP Private Clients, vulnerable customers, resolving distressed claims and multimillion High Net Worth Real Estate claims.

Prior to joining Criterion as Head of Specialist Services, Helena was Director – Head of Major Loss and Private Clients, with a responsibility for a UK team of 20 Loss Adjusters.

Helena had the honour of being elected President of The Chartered Institute of Loss Adjusters for 2021/2022 and throughout her term in office continued to promote the importance of the human side of the role of an adjuster which is key to excellent customer service.

Helena has received the Cardiff University Bond Solon (CUBS) Expert Witness Civil Certificate and accreditation..

Expertise includes:

- Assessment of Domestic Property claims
- Claims settlement negotiation
- Distressed claims resolution
- VIP Private Client claims
- Vulnerable Customers
- High and Ultra High Net Worth
- High Net Worth Real Estate

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Expert witnesses: what's the price of a change of mind?

by Tony Bingham, Arbitrator, 3 Paper Buildings, Temple

When an expert witness changed his mind under cross-examination, should that have impacted the costs award?

MJ Gleeson submitted a planning application for 139 dwellings at Runcorn – or rather, in the vicinity of Runcorn Chemicals Complex. The Health & Safety Executive (HSE) was a tad sniffy and advised against it on health grounds. No matter, said the local council's planning department, adding it had extensive experience and history with the chemicals industry and “had a robust approach to taking risks posed by such developments”. On top of that, the council took advice from a specialist risk management consultant firm with extensive experience as expert witness.

Fair enough, methinks. Not so the HSE. It coaxed the secretary of state for housing to call in the planning permission. And so the stage was set for an all-singing, all-dancing piece of litigation with solicitors and barristers and expert witnesses. The case is called: the King (on the application of Halton Borough Council) vs the Secretary of State for Levelling-up, Housing, Communities & Local Government.

Now, here is a spoiler in more than one sense. During the High Court hearing, the very experienced expert appointed by the council and hitherto wholly in support of granting planning permission completely changed his mind! When the HSE's barrister cross-examined him on day three of the inquiry, the expert agreed that if he were in a planning inspector's position, he would have to advise the secretary of state strongly against the grant of planning permission. I bet the council's barrister let out a noise, from somewhere deep down, that echoed across the court. That's a spoiler and a half.

You might guess the expert's concession was enough for the borough council to withdraw its intention to give planning approval – and, yes, it did. The next spoiler is that the HSE was awarded all its legal costs by the High Court judge – but then the three-judge Court of Appeal took them away. Spoilsports, perhaps.

Let's go through the topic of who pays legal costs; more particularly, ask who pays the costs in planning inquiries. The ordinary position in planning is much the same as in construction adjudication. Each side, win or lose, pays its own costs. If, however, a dispute comes to the High Court as a construction dispute, then the rule is that “costs follow the event”. This usually means the net winner gets its costs paid by the losing party. But the overarching right of the judge or arbitrator is to apply discretion. In other words, the tribunal can depart from “costs follow the event” if the tribunal sees merit in giving some relief to the losing party for some reason or other.

In the Halton planning case, the first judge, sitting alone, decided that the volte face of the expert, being a complete change of mind, caused the council to quit and concede defeat. So he awarded the HSE its legal costs. He parted company with the usual planning approach of each side paying its own costs.

Ah, but the Court of Appeal took a different approach. First the court explained that in planning proceedings the parties normally meet their own expenses. That's because all parties are expected to behave reasonably to support an efficient and timely process and to encourage local planning authorities to properly exercise their development responsibilities so as to stand up to scrutiny. The Court of Appeal began a search for unreasonable behaviour, which, if found, would lead to costs being awarded against the party judged to have been unreasonable.

The temptation is to find that the collapse of the council's case was of the council's own making, given a member of its own team gave evidence that was demonstrably flawed and unsound and admitted so by its own expert. The Court of Appeal said, however:

The mere fact that the evidence of an expert witness being demolished in cross-examination does not, of itself, lead to the conclusion that the party calling that expert has been guilty of unreasonable behaviour. Instead, it may be said that where an expert witness accepts points put to him in cross-examination, which are adverse to the case of the party calling him, he is performing his duty to the tribunal in question."

The Appeal Court pointed to a remark in the case of R vs Cornish, where the well-known construction industry Judge Coulson said, of an expert who proved "obviously unreliable" when giving his evidence: "In my view, it would be unfair to say anything went 'wrong': In some ways, what happened was a good example of the adversarial trial process in action."

It seems to me there are two questions here. First, was it unreasonable for the council to rely on this expert or did it become unreasonable? The answer is no: he was a competent expert. Second, did the expert behave unreasonably by changing his mind?

No, his job is a duty to the court. He would be behaving unreasonably if he kept up his sleeve a new-found opinion that torpedoed his party's case. His primary duty is to the court. The HSE did not get its costs.

The article was first published in Building www.building.co.uk



Anthony Bingham

Anthony Bingham (Tony) is a specialist in Building & Civil Engineering litigation, arbitration, adjudication and alternative dispute resolution. Tony is a practising barrister, arbitrator, adjudicator and mediator. He joined 3PB in 1991.





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Heritage reliefs: preserving heritage, reducing tax

by Iqra Babu, Trainee Solicitor & Rachel Brooks, Partner at Foot Anstey

For many years, Agricultural Property Relief and Business Property Relief have been the main tools for reducing Inheritance Tax (IHT) exposure. However, with recent reforms limiting both reliefs to a £2.5 million cap, high-value estates may find these traditional strategies less effective. In this evolving landscape, heritage property reliefs (such as Acceptance in Lieu and Conditional Exemption) are emerging as uncapped alternatives worthy of renewed attention.

These reliefs are especially relevant to owners of landed estates, historic houses and their grounds, as well as collections of significant artworks or objects. For such estates, heritage reliefs can provide a valuable route to mitigating IHT while preserving important assets.

Conditional Exemption

Conditional Exemption is a temporary exemption from IHT. The relief operates by deferring the IHT that would otherwise fall due on the assets in question.

It can apply to a wide range of heritage assets. These include:

- Objects which are pre-eminent for their national, scientific, historic or artistic significance.
- Land of exceptional scenic, historic or scientific interest.
- Buildings whose preservation warrants special care as a result of its historic or architectural interest, along with associated land, or objects with a historical association.

This deferment of the liability to tax is conditional on the below:

- Providing public access to the asset for a number of days in the calendar year to be agreed with HMRC (a minimum of 28), either in the asset's current location or in a museum.

- Keeping the item in the UK (except for any period/purpose approved by HMRC).
- Taking reasonable steps to preserve the asset.

IHT becomes payable if the owner fails to meet the required conditions, sells the asset or disposes of it by some other means (a gift to children perhaps). The IHT would also become payable on the owner's death. In the case of a gift or inheritance, the new owner can apply to renew the exemption and the transfer can also benefit from a Capital Gains Tax deferment.

Claiming Conditional Exemption involves completing form IHT420 and liaising with HMRC's Heritage Team. A professional will typically need to prepare an inventory of the assets and set out why they qualify for the exemption, along with details of how the public will be able to access them. Arts Council England or Historic England then reviews the application and assesses the items' pre-eminence or historic value, which may include an on-site inspection.

Acceptance in Lieu

Acceptance in Lieu allows individuals to settle an IHT liability by transferring objects of significant cultural, scientific, or historic value to the nation. This can avoid the complication and risk associated with selling assets in order to fund an IHT liability. Due to a complex function of the relief and the way the value of the asset and associated tax credit is calculated for these purposes, this value is often higher than the post-IHT value in the estate.

To obtain this relief, an application must be submitted to the Acceptance in Lieu Panel, which appoints specialist advisers to assess whether the claim should be approved. If the application is accepted, the necessary directions and arrangements are put in place to transfer the property. Once the transfer is completed, HMRC draws down the corresponding tax credit.

Why expertise matters

Both Conditional Exemption and Acceptance in Lieu can offer valuable savings. Equally, they are not always the optimal choice.

Conditional Exemption may restrict alternative uses (such as environmentally beneficial schemes for landowners) and, if later reversed, trigger significant tax charges. Executors considering Acceptance in Lieu must obtain independent valuations, potentially instruct additional experts, and should also consider the risk of dispute where beneficiaries were expecting specific items from the estate.

Heritage reliefs present unique opportunities - but also complex challenges. Applications require detailed knowledge of eligibility criteria, valuation processes, and negotiation with multiple stakeholders. Missteps can result in delays, unexpected tax liabilities, or missed opportunities.

Our Private Wealth team at Foot Anstey combines technical expertise with a deep understanding of estate planning and succession objectives. We work closely with clients and independent experts to:

- Assess whether heritage reliefs align with their broader goals
- Prepare robust applications and supporting documentation
- Manage negotiations and compliance to secure relief efficiently

By taking a strategic approach, we help clients preserve heritage assets while mitigating tax risk – ensuring that decisions made today stand the test of time.

FootAnstey 

Andrew Acquier, FRICS CHARTERED ARTS SURVEYOR

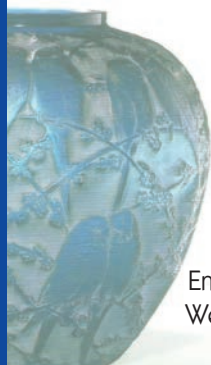
Andrew Acquier FRICS has been working as an independent valuer since 1982, specialising in fine art and antiques. Instructions for probate, divorce settlement, tax/asset and insurance valuations as well as expert witness work are regularly received from solicitors and other professionals.

Andrew has many years experience of compiling reports for litigious cases, several of which have necessitated a subsequent court appearance as an expert witness to argue quantum. Divorce valuations are a speciality, usually as Single Joint Expert. He is an Associate Member of Resolution. Work is carried out throughout the UK and abroad.

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I am a Chartered Building Surveyor with over 25 years of private practice consultancy experience. I have a degree in Building Surveying and am a Member of the Royal Institution of Chartered Surveyors (since 2002). I specialise in building defects, diagnosis, building pathology, and disrepair. I am often appointed in Landlord and Tenant disputes, disputes with builders over defective works and contract compliance matters, Party Wall Etc Act as party wall surveyor to both building owners and adjoining owners. I am often appointed in matters of building architectural technical design, primary in the residential sector, including on building regulation compliance matters.

I have undertaken in excess of 500 Part 35 Civil Procedure Rule compliant reports on a single party appointment and as single joint expert for solicitors and court directly.

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A Chartered Building Surveyor's assistance to Merseyside Police in respect of the suspicious death of Adrian Swift, (deceased 24.03.21)

by Tim Davies, Chartered Building Surveyor



Dampness in bathroom floor

It was in early March, 2021 whilst Covid restrictions were still in place, that I received a call from a detective with Merseyside/Liverpool Police. It was not the usual type of call I was expecting. Being registered as a "Forensic Surveyor" on the NCA (National Crime Agency) data-base for many years I've become accustomed to requests to assist various Police forces throughout the UK with investigations generally into fraudulent property deals and Rogue Traders divesting elderly and vulnerable customers of their life savings. This enquiry turned out to be quite different.

Emergency services had been called to a house in Bishopgate Street, Wavertree on the morning of March 24th, (2021), where a deceased male was located in the first floor bathroom. His name was Adrian Swift and he was 57 years of age, (he was known affectionately by his family as "Ade"). He had been found unresponsive by emergency responders in the bathroom of the house he shared with two other males (Adam Oldland and Steven Hardaker), and a female, 45 year old Cheryl O'Callaghan, believed to be Steven Hardaker's Girlfriend.

The version of events the three occupants had given the Police was that they were in the ground

floor area of the house when water began to emerge through the rear lounge ceiling from the bathroom above, on a Sunday morning, (24th March), 2021. After entering to the bathroom, they reported that they found Adrian, unconscious in the bath, and had tried to resuscitate him with CPR, after lifting him onto the bathroom floor.

The Police were not convinced of the three occupant's version of events, and from the start classed Adrian's death as "suspicious".

As a consequence, I was requested to urgently attend the property, and I was asked to provide an expedited CPRc 19 Compliant Report providing my opinion on whether the amount of water/moisture/dampness in the property was indicative of an overflowing bath, from the first floor bathroom, (in which Adrian was alleged to have accidentally drowned).



Boroscope in floor void

The property was still a secure crime scene when I attended with one of the scene of Crime Officers, but I had permission to cut and lift sections of floorboards; remove the bath panel and bath waste trap to undertake my survey and assessment, for which I used various hand and power tools together with an electronic diagnostic damp meter, thermal imaging camera and a boroscope. The Police

were keen to establish, if in my view, any residual dampness in the bathroom area and ceiling void below, was consistent with a bath overflowing over an extended period of time, as the three occupants, (subsequent defendants), of the house had initially stated.

The survey that I completed established in my view that very little water was on the bathroom floor, in the floorboards, behind the bath panel, or within the floor void, (above the lounge ceiling below), even taking into account evaporation rates and water flow volumes.

Additionally, the bath itself was 1520mm, (5ft) in length and held 140 litres/30 gallons of water, (if filled to the brim). Adrian was a tall man – 1930mm, (6ft 4”), the likelihood of him drowning in the bath was remote, and immediately arose suspicion with the Police as to how Adrian had died.

My view was that less than 1 litre of water had been present shortly after Adrian was “discovered” – lifeless in the bath. There were only two localized areas of dampness – a small section below the vinyl floor of the bathroom floor and in the lower section of the bath panel and timber support frame. Such a small amount of water was in my view inconsistent with an overflowing bath, (as the defendants had told the Police). This would form my opinion of the Expert evidence I would provide in my Report and the subsequent oral testimony I was to provide in Liverpool Crown Court.



Section of floorboard removed to access ceiling void below

The police charged Cheryl O’Callaghan with Adrian’s murder and Adam Oldland and Steven Hardaker were charged with perverting the course of justice, and files were passed to the CPS.

I was called to provide oral testimony evidence in Liverpool Crown Court in the Trial, (in November 2022) and I was subject to cross examination by three Barristers representing the three Defendants.

During the early stages of the trial the two co-defendants that were accused of perverting the

course of justice, entered guilty pleas and each were sentenced to 2 years custody. The Judge, concerned at the potential for an inference that the Jury might obtain from the co-defendant’s guilty pleas and the possibility of a miss-trial, dismissed the Jury and then set a date for a re-trial three week’s later with a new Jury subsequently sworn in. I was requested to provide my evidence again, along with all the other original witnesses.

After relatively short deliberation, Cheryl O’Callaghan was found guilty of the murder of Adrian Swift and subsequently sentenced to life imprisonment.

It emerged in the trial that the day before Adrian was found dead, Cheryl O’Callaghan had badly beaten him with a baseball bat and pushed him down the stairs in the house. Adrian was admitted to hospital that Saturday night but had discharged himself the following day without making a formal complaint to the Police. When he was in the bathroom, on the Sunday morning, Cheryl O’Callaghan, unprovoked, beat him again with fatal consequences. To try and conceal their crime, Adrian’s body, (which was lying on the bathroom floor), was soaked with water from the flexible showerhead attached to the taps of the bath to try to give the impression he had drowned, and the supposedly overflowing bath had alerted the three defendants. Clearly, this deception was unsuccessful. Paramedics who first arrived at the scene described the bath being “dry” and no water in Adrian’s mouth or eye sockets. The evidence against Cheryl O’Callaghan from the paramedics, the Coroner, and other Witnesses, (including myself), assisted in proving beyond reasonable doubt that Cheryl O’Callaghan was guilty of Adrian’s murder.

By all accounts Adrian was a talented musician, often to be found busking in Liverpool City Centre and was much loved by his family, and friends. He was classed as frail, unwell and vulnerable at the time he was murdered.

It was a sad and distressing case to be involved with, and something that I have not in my 40 year career as a Chartered Surveyor experienced previously. It was however satisfying to have assisted the Police, the Court, Judge and Jury with some of my technical expertise, in the successful conviction of the three defendants and ultimately to see justice duly served for Adrian.

Tim Davies

BSc(Hons) MRICS MAE Cert EW (Civil & Criminal)
Chartered Building Surveyor, RICS Registered Valuer

Is DEI a PCP?

by Peter Crowley, Winsdor Actuarial Consultants Ltd

To 99.9% of the population, the word “Essop” will mean nothing, yet it was a landmark employment case in the England and Wales Court. Lady Hale (she of the spider brooch and preventer of proroguing fame) decided that the civil service method of choosing people for promotion was indirect discrimination. In brief (and certainly not legal advice here!), applicants for promotion had to pass a test to see if they would make good civil servants. They then had to pass another test to see if they could do the job. BAME and older people lost out disproportionately on the first test.

Lady Hale ruled that that the first test was discriminatory – how “civil servancy” you were had no bearing on whether you could do the job. The civil service had tried to say “prove the test discriminates”, then disclosed at a very late juncture advice they had received to say that it probably did. A statistical report stated the rejection pattern was very hard to justify. They finally coughed up £1 million.

To anyone why as looked at civil service departments in the context of DEI, (Diversity, Equity and Inclusion), this might come as a surprise. They all swear by it – the MoD probably coming top with a

man with a rainbow jumper offering his services as a “LGBT Ally”) - but the reality is often very different. The Anne Giwa-Amu case shows a shocking combination of racism and managerial neglect.

To fill in the gaps, a “PCP” is Provision Criterion or Practice – a formal or informal rule that an employer puts in place that may or may not discriminate if certain groups of employees lose out. A feature of the “Essop” case was a statistical report - which opined that the chances of the civil servanty test not being discriminatory was less than 1 in 1,000. My calculations agreed this figure.

DEI programmes often require the anonymisation of new recruits into an organisation, but it is not a major focus (possibly because HR, who manage DEI, are personally responsible for supervising recruitment, (and have done permanently)). A new book by Keon West, published in Jan 25, illustrates the results of some surveys (US, UK, Aus) where identical CVs were submitted, the only difference being a white or ethnic name, and the numbers of offers were analysed for each group. Mr West applies a basic test to assess significance, but I have followed the method used in Essop (I believe). Results are as follows:

Survey	Country	Number of Applications	Probability of the result NOT being racist
Devah Pager	US	350	1 in 426,000
B&M*	US	5,000	1 in 35
King	US	155	1 in 3
PWB	US	340	1 in 3.5 million
BLV	AUS	4,000	1 in 166
K&D	US	1,600	1 in 1.8 billion
D&H	UK	3,200	1 in 1.2 million

Quite a range!

The best (least racist) result is the 1 in 3 chance. Although this might not sound too bad, it is certainly not good and would indicate that the position needs to be reviewed more closely. For example, it occurred two years in a row, the odds are just over 10% - three times, about 3%. You get my point.

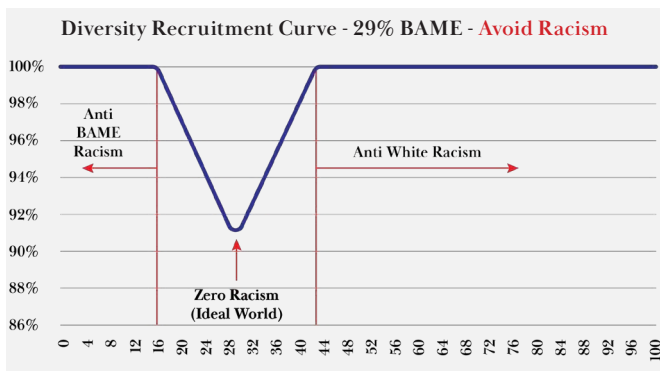
More interesting on recruitment is the published results of certain large professional firms, especially accountants and law firms. I give an example...

(The following firm has over 50 applicants for each place...)

of our workforce. For example, 47% of the nearly 2,000 students who joined us during the course of the year are from a minority

Credit, Inclusion and diversity, pwc.co.uk

I contrast this with the most recent graduate results where better degrees (I or II(i)) were attained. (Source – Table 26, HESA). I have classified anyone other than those identifying as white, as “BAME”, which softens the test. This gives a feeder population of just over 29%. Results are interesting.



The probability here of not being racist is 1 in 9,400, all other things being equal. You would have thought that having a good degree was a prime recruitment factor, but there may be others....

So what are the “PCPs” that deliver such interesting results. I’ll check the recruitment surveys, but they probably show results, not reasons. It might be interesting to ask accountants and law firms a few questions though. Especially if you’re White and have received a rejection letter – see the upshot of the “Furlong vs Cheshire Police” hearing.

Reference

<https://www.telegraph.co.uk/men/thinking-man/last-straight-white-men-have-discrimination-law-side/>

Two other professional papers on this topic are well worth reading – Audrey Ludwig on the Equality Act EA10, and Nigel Marriott on White staff proportions.

<https://audreyludwig.com/cherrypicking/>

<https://marriott-stats.com/nigels-blog/ethnicity-i-is-all-white-alright/>



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Yodel v Corlett: High Court dismisses share warrants claim finding key documents were falsified

by Lois Horne, Partner & Rebecca Mansbridge, Senior Associate at Macfarlanes

The High Court has handed down its judgment in a preliminary issues trial in *Yodel Delivery Network Ltd v Corlett & Ors* on 19 December 2025, dismissing counterclaims by Shift Global Holdings Ltd (Shift) and Corja Holdings Ltd (Corja) for specific performance of purported share warrant rights, which they had said entitled them to more than 54% of Yodel's issued share capital in the battle for control of the home delivery company.

The Court concluded that the warrant instruments relied on by Shift and Corja and the associated warrant certificates were not genuine, that the witnessing signatures were forged, and that, even if the instruments had been genuine, they would in any event have been void or voidable given Yodel's insolvency and the statutory duties engaged. The judgment provides definitive findings on authenticity, duties to creditors in financially distressed situations, and the limits of post hoc ratification by shareholders.

This decision follows the Court's refusal to grant an interim injunction earlier in the proceedings (and upheld by the Court of Appeal). We discussed that decision in our article.¹

Background and the disputed warrants

The dispute arose out of turbulent period in mid-2024 when Yodel, having been recently acquired for £1 by YDLGP Limited (a company controlled by Mr Corlett), faced acute funding pressures and the imminent prospect of being placed into administration. At that time, a proposed merger with Shift (a logistics group founded by Mr Corlett) was being pursued by Mr Corlett, but collapsed after critical investment from a commercial partner due to underpin the deal did not proceed. As a result, Yodel was again sold for £1 on 21 June 2024, in this instance to Judge Logistics Ltd (JLL), a special purpose vehicle owned by InPost SA.

In January 2025, Shift and Corja purported to exercise rights under a warrant instrument and associated warrant certificates, each allegedly created by Yodel on 19 June 2024, two days before the sale to JLL and during the tenure of Mr Corlett's control of Yodel. Shift and Corja claimed (respectively) 44% and 10% of Yodel's fully diluted share capital. If valid, these rights would have triggered a transfer of control of Yodel from JLL to Shift and Corja. Responding to these claims, Yodel disputed the authenticity of the documents and, alternatively, asserted that any such instruments were void or voidable given Yodel's then insolvent status and the consequential director's duties arising out of this.

What is a warrant instrument?

A warrant instrument (also called a warrant agreement) is the document by which a company grants a holder the right to subscribe for a specified number or percentage of its shares on terms set out in the instrument, including a fixed price and upon occurrence of a defined trigger event, such as a sale, listing or asset disposal.

In practical terms, validly issued warrants give the holder a contractual right to require the company to allot shares when the trigger occurs, with potentially material dilution of the existing shareholder base and possible shifts in control as a result. They are often used as collateral in commercial financing and investment transactions.

The Court's findings on authenticity

The Court held that the warrant instruments and the related certificates were not genuine. The Court relied on a combination of forensic evidence and contemporaneous documents to conclude that the instruments were created after the sale to JLL and then backdated, and that the purported witnessing by Mr Corlett's mother, Ms Gregory, was in fact

forged. In particular, forensic analysis uncovered various inconsistencies in the documents provided by Shift and Corja, including evidence that:

1. certain pages of the sole director's resolution (approving the warrant instruments) were printed at different times;
2. certain pages of the warrant instruments had been substituted for the originals;
3. Ms Gregory did not write her manuscript printed name on the second warrant instrument; and
4. the signatures on the second warrant instrument were executed around or after 1 January 2025, not on 19 June 2024.

Taken with a "considerable volume" of evidence of circumstances that made Mr Corlett's account extremely improbable, the Court held that it was "impossible to accept that the documents are probably genuine".

Duties to creditors and the limits of ratification

Having disposed of the claim on the basis the purported warrants were falsified, it was not necessary to determine Yodel's alternative case that the warrants were void or voidable. However, in case it was incorrect on the falsification of the warrants, the court proceeded to assess that alternative argument.

- The Court confirmed that, under the Supreme Court's decision in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25; [2024] AC 211 (Sequana), balance sheet insolvency can itself trigger the duty on directors to consider creditors' interests. It should be noted, however, that in doing so the Court recognised "that the burden of the duty that exists is on a sliding scale", being calibrated to the risk of an insolvency process that would be adverse to the creditors' interests on the facts. The duty to consider creditors' interests in a successfully trading, but balance-sheet insolvent business with adequate funding and unquestioned ability to pay its debts as they fall due would exist, but would be lighter than a balance-sheet insolvent business facing a cash flow crisis.
- Here, not only was Yodel balance sheet insolvent, it remained "teetering on the brink" of cash flow insolvency in June 2024: the company faced immediate payroll, HMRC and rent liabilities, all of which were underpinned by uncertain funding that later failed to materialise. The creditor duty was therefore strongly engaged.

- The Court held that, in issuing warrants conferring a potential controlling stake at a time of acute financial distress, without any corresponding capital injection, Mr Corlett acted in breach of the creditor duty as:
 - Mr Corlett "did not even consider the position of creditors as a body"; and
 - Had Mr Corlett done so and nevertheless decided to proceed with issuing the warrants, that decision was manifestly not in the creditors' best interests as it would likely have hindered the swift provision of the sort of rescue finance Yodel urgently needed to continue to trade in the short to medium term.
- The Court also held that the purported shareholder ratification of the warrant instruments could not cure breaches where the creditor duty was engaged. In circumstances of insolvency, where the value of the company breaks in the creditors' debts and shareholders will be out of the money, shareholders cannot ratify acts that exceed directors' powers and disregard creditors' interests.

Specific performance and discretionary relief

The Court then considered, hypothetically, whether specific performance would have been granted if the warrants were deemed valid. It concluded that such relief would have been refused.

Shift and Corja would not have come to the court with 'clean hands': they had knowingly concealed the existence of the warrant instruments from Yodel until six months after the sale (in which YDLGP as seller, acting by Mr Corlett, warranted that there were no such interests), and the existence of these documents would have undermined Yodel's newly obtained funding, which had been provided on the assumption that JLL was the sole shareholder.

Yodel's articles of association (having been amended in November 2024 without knowledge of the warrants) provide that JLL's prior written consent is required for Yodel to allot shares. The Court did not see any basis to imply a term that JLL's consent could not be unreasonably withheld and did not have jurisdiction to require JLL to consent. The Court concluded that it would not order Yodel to do something that was unable to do, which would have left Shift and Corja with claims for damages only.

Comment

In addition to widespread interest for its treatment of authenticity disputes in a corporate setting concerning a household brand name, the judgment is an illustrative example of the practical implementation of the Supreme Court's decision in *Sequana* in businesses experiencing financial distress. Whilst the duty to consider creditors' interests exists on a "sliding scale" depending on how likely circumstances are to arise that may adversely affect creditors' interests, this judgment reinforces the paramount consideration that the Court expects directors to give to protecting creditors' interests once a business encounters cash flow difficulties, and take all available steps to avoid the risk of administration or insolvent liquidation.

References

¹Court of Appeal refuses interim injunction to suspend business "transformation plan"

<https://www.macfarlanes.com/insights/10213c8/court-of-appeal-refuses-interim-injunction-to-suspend-business-transformation-pl/>

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He specialises in the Party Wall etc. Act 1996 and lecture and has written books on the subject. He is the president of the Faculty of Party Wall Surveyors.

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Hutton forensic soil scientist Professor Lorna Dawson named Dame Commander of the Order of the British Empire in New Year Honours List

by The James Hutton Institute

A leading forensic soil scientist from The James Hutton Institute has been conferred the honour of Dame Commander of the Order of the British Empire (DBE) in the New Year Honours List.

Professor Lorna Dawson, Head of the Centre for Forensic Soil Science at the Hutton, was recommended for the award by His Majesty the King for her services to innovations in soil and forensic science.

An internationally renowned soil scientist, Professor Dawson has over 35 years of experience in managing and conducting research in soil and plant interactions, particularly their application in the criminal justice system.

She has reported and advised on over 200 criminal cases and written over 150 Expert Witness reports, both in the UK and abroad. Additionally, she has presented evidence in more than 25 cases, including the World's End murders and the Sheku Bayoh Public Inquiry.

Professor Dawson has previously been awarded a Commander of the British Empire, having been named in the Queen's Birthday Honours list in June 2018. She has also received a Special Recognition award at the 2017 Pride of Britain awards ceremony and is a fellow of the Royal Society of Arts, the Royal Society of Edinburgh, the Royal Royal Scottish Geographical Society, the British Society of Soil Science and the Royal Society of Biology.



Above, Professor Lorna Dawson. Credit, Ross Johnston/Newsline Media

Professor Dawson said:

“I am deeply honoured and immensely humbled to be recognised with a Damehood in His Majesty the King’s New Year 2026 Honours List. This award reflects the extraordinary contributions of the Centre for Forensic Soil Science at the James Hutton Institute and the many dedicated collaborators who work with us.

“Soil science may seem an unsung discipline, but its applications – from underpinning sustainable land management, producing safe, nutritious food, to providing robust scientific evidence that supports the criminal justice system – make a real difference to society in the UK and across the world. I am grateful for the support of my family, my professional networks, and the wider scientific, policy, policing and legal communities, whose collective passion and expertise have made this pioneering work possible.”

Eur Ing Dr Robert Brown Chartered Electrical Engineer

BEng (Hons), PhD, CEng, MIET, IntPE (UK), Chartered Electrical Engineer

Dr Robert E Brown is an expert witness in the fields of electrical, electronic and control engineering.

Achieving a first class honours degree (BEng), in Electronic Systems and Control Engineering, a Doctor of Philosophy degree (PhD) in Electrical Engineering, and attaining Chartered Electrical Engineer status, Dr Brown has worked extensively within the manufacturing, utility and construction sectors, as a consultant engineer with many large blue chip organisations and well as small OME and start-up companies.

Robert, as he likes to called, is an acclaimed expert in the operation and design of electrical fault protection systems. He also has extensive experience in the operation, design, manufacture and testing of electrical and electronic control systems for domestic and industrial environments.

Robert continues to work as a consultant engineer and researcher whilst in the main, undertakes to help in litigation and insurance claims where an understanding of electrical circumstances and phenomena are sought for settlement.

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Court of Appeal finds that digital assets in a computer game are property that can be stolen

by Adam Sanitt at Norton Rose Fulbright LLP

In *R v Lakeman* [2026] EWCA Crim 4, the Court of Appeal held that 'gold pieces' in an online computer game constituted property for the purposes of s4 Theft Act 1968.

Background

The gold pieces were recorded as entries in a ledger kept by Jagex, the developer and publisher of the game. The terms and conditions stated that they could only be redeemed in game and that Jagex could delete the gold pieces or anything in game bought with them. Sale or gifting in the real world was forbidden. An employee of Jagex hacked into user accounts and transferred a large number of gold pieces to accounts within his control which he then sold in the real world for fiat currency.

Decision

The Court of Appeal stressed that the definition of property for the purposes of theft in the criminal law was not the same as the definition for the purposes of private law. However, they did consider the Law Commission's consultations and reports on digital assets and previous cases dealing with digital asset property issues, coming to conclusions that will be relevant in general, and it is this discussion which we consider here.

First, the Court supported the Law Commission's conclusion that digital assets are real functional things distinct from the code that instantiates them. The ecosystem of software, players and code allows the gold pieces to appear visually, to be traded in the game and to have other functional attributes. It is these manifestations together that constitutes the gold piece, not simply the underlying data. Copying the data underlying a gold piece would not copy the gold piece. It followed that what must be evaluated to determine whether it constitutes property is not the underlying data but the ideational object constituted by the combination of people and software and manifested visually or otherwise by the system.



The Court concluded that gold pieces could exhibit the attribute of ‘rivalrousness’ – that is, use and consumption of a gold piece was inconsistent with somebody else using and consuming it. Jagex had the ability to delete any gold piece at any time. The Court pointed out that this was relevant to permanence, but not rivalrousness. An object might only exist for a short time but be rivalrous during the term of its existence. The Court adopted the Law Commission’s example of the melting ice lolly which can only be consumed before its impending ‘runny end’ (as the Law Commission rather poetically puts it in its Consultation Paper, para. 10.110).

The critical quality that the Court considered was permanence. To be considered property, an object must have a sufficient degree of permanence or stability. This is the quality that the Law Commission assumes that in game objects will often be lacking. Here, the Court held that it was sufficient that the gold pieces had “a small degree” of permanence, even if Jagex could unilaterally delete them at any time. They drew the analogy with coins, which could be withdrawn as legal tender at any time and would then cease to exist as currency (although the physical object would remain).

Key takeaways

The approach of the Court to permanence is highly significant in placing more weight on real world practice than it does on the design and implementation of the system. Whether a digital asset is permanent usually starts from an analysis of the system that constitutes that asset: whether it is distributed, cryptographically secure and independent of persons or legal systems, so that no individual person or group has the power unilaterally to destroy it. Here, Jagex could destroy the gold pieces at any time. The system itself exhibited little permanence. But the Court focused instead on the practical aspect: that the game had persisted over time with users prepared to import a high degree of value on the objects contained within it.

This approach is likely to lead to an expansive view of which digital assets constitute property. In particular, closed, permissioned systems may well satisfy the requirement for permanence, even where a single person within a permissioned system could unilaterally create or destroy assets. Many uses of blockchain technology within financial markets involve permissioned blockchain ledgers. Designers of these systems must now upgrade the likelihood that objects created within these systems attract property rights. This will affect the web of contracts that underlie these systems and the process for transfer of and creation of security over the digital assets within them.

The Court of Appeal’s wide definition of in game digital assets as property in the criminal context is of distinct interest. We look forward, for instance, to the first prosecution for theft of a player who beheads another player with his longsword or incinerates them with a magic fireball and then steals all their gold. But looking purely at the implications for civil law, this shows the progressive approach of the English Courts to dealing with digital assets. Treating digital assets as ideational objects constituted by the entire ecosystem of data, software and users is a powerful concept that allows principled and consistent development of the law. Further cases are likely to explore the minimum degree of permanence needed to constitute a digital asset as property in private law.



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His specialist interests encompass the full spectrum of functional neurosurgery, including movement disorders, pain, and epilepsy. He also undertakes general neurosurgery—such as the management of hydrocephalus, infection, and traumatic brain injury—as well as spinal surgery, including decompression, discectomy, and cauda equina syndrome.

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The Crown Court Compendium

by Bianca Brasoveanu, Barrister at Mountford Chambers

The Crown Court Compendium is the primary point of reference on criminal procedure for the judiciary when drafting directions in relation to points of law and practice – as noted by Lord Justice Simon in *AG [2018] EWCA Crim 1393* – as well as being a useful *vade mecum* for practitioners in the course of a criminal trial. Part I deals with Jury and Trial Management and Summing Up and Part II with Sentencing in the Crown Court.

The compendium is published by the Judicial College, and regularly updated by its editors to reflect changes and amendments in legislation and procedure. The October 2025 update brought changes in the following areas: recent case law, guidance on procedure when the defendant's fitness to plead fluctuates during the course of the litigation of a case and at trial, clarification on the *Mountford* problem, and recommendations pertaining to e-mail exchanges between judges and advocates.

Recent Case Law

A number of recent cases are included in the Compendium addressing scenarios frequently encountered in Crown Court trials.

(i) *R v Plummer* [2025] EWCA Crim 1036

Chapters 14 and 16

This case deals with the admissibility of multiple hearsay in the context of a cell confession which was deemed to be hearsay due to the death of the person alleged to have heard the confession.

Plummer reinforces that in the rare cases in which multiple hearsay is admitted, it will be incumbent on the judge to give a very clear jury warning about the enhanced dangers, namely the greater risk of unreliability, of the evidence in question. The jury will need to be directed about each link in the chain of hearsay.

The Compendium provides the following stepped approach to assist with the determination of admissibility of multiple hearsay, which is not admissible unless one of the statements involved in the chain is:

- (1) admissible as a business document (s.117); or
- (2) a previous statement by a witness in the case; or
- (3) all parties to the proceedings agree; or
- (4) where the court is so convinced by the value of the evidence that it can invoke the additional "safety valve" in s.121(1)(c) in which case the court should identify a relevant statutory exception which would apply to admit the first chain of hearsay (eg s.116 or 114(1)(d)) before considering whether the further chain(s) are admissible as per *Walker [2007] EWCA Crim 1698*.

In *Plummer* the following extract from *Maher v DPP [2006] EWHC 1271 (Admin) [26]* was emphasised:

“*it is important to underline that care must be taken to analyse the precise provisions of the legislation and ensure that any route of admissibility is correctly identified. In any case of multiple hearsay, that should be done in stages so that each link in the multiple chain can be tested.*”

(ii) *R v Green* [2025] EWCA Crim 923

Chapter 3

The judge's conduct throughout the trial was deemed fair by the Court of Appeal, but it was held that the judge should have given a direction that the jury should ignore his comments if it did not agree with them.

(iii) *R v Vaughans* [2025] EWCA Crim 9

The judge refused to allow the defendant to call an expert witness in relation to the interpretation of street slang to give a translation of the hearsay

statements in the prison calls which differed from that relied upon by the prosecution expert. Arguably a decision significantly tipped against the defence. This may be of particular relevance at a time when drill music features prominently in many murder cases or where defendants are said to be part of Organised Crime Groups ('OCGs').

Guidance on cases where the defendant's fitness fluctuates during the proceedings

When the question of fitness to participate arises during a trial, the decision as to the defendant's fitness remains with the judge alone in accordance with s.4(5) Criminal Procedure (Insanity) Act 1964. *R v Vinnell [2024] EWCA Crim 1294* provides further guidance as to the factors a judge should consider in determining fitness. In *Vinnell*, it was found that the judge had erred in finding that the 86-year-old defendant in question was fit to plead and stand trial for historical indecent assault offences in the face of expert evidence suggesting vascular dementia and associated Alzheimer's disease.

The offences alleged in *Vinnell* dated back to the 1970s. Two defence reports from a consultant psychiatrist and a consultant psychologist opined that the defendant was not fit to plead. The Prosecution's expert initially found the defendant fit but having assessed the defendant a second time, the addendum report described a significant cognitive decline following which their opinion changed, concluding the defendant was unfit because although he could still understand the charges against him, he was no longer able to give evidence in his own trial. The judge found that arrangements could be put in place for those aspects of the case to be tailored to accommodate the defendant's needs such as shortened court days and frequent breaks in the proceedings.

The defendant's conviction was quashed, the Court of Appeal making clear that in order for a finding of fitness to be made by the judge, all of the constituent parts of the test for fitness to plead had to be met, namely:

- (i) understanding the charges;
- (ii) deciding whether to plead guilty or not;
- (iii) exercising the right to challenge jurors;
- (iv) instructing solicitors and counsel;
- (v) following the course of proceedings; and
- (vi) giving evidence in their own defence.

Plainly, the judge's role in determining a defendant's fitness is a crucial one and requires careful consideration of the expert evidence presented by both sides even though the judge is not bound

to accept it. The determination however must be balanced and made within the context of the evidence and the issues that are likely to arise at trial.

Clarification on the Mountford problem

This issue is discussed in Chapter 17 of the Compendium, and it deals with the difficulties that may arise when it is argued on behalf of a defendant that the jury cannot determine the reason for their failure to mention their defence without first deciding whether the defence is true. In *R v Mountford [1999] Crim LR 575* the defendant was charged with drug dealing offences and his defence at trial was that it was in fact 'W' – the main prosecution witness – who dealt drugs. The defendant asserted that he did not raise this defence in interview out of fear of exposing W to prosecution. The judge directed the jury that they could make an inference in accordance with section 34.

On appeal, *Mountford's* conviction was quashed and it was found that in these circumstances the jury should have considered first whether the defence advanced at trial was untrue and only then if they found so, reject the defendant's reason for not mentioning this fact in interview.

The compendium goes on to suggest that if faced with the *Mountford* dilemma, the judge should leave the s.34 decision to the jury.

The judge's responsibility is to ensure the jury is properly guided through these issues and in order to do so the juries must:

- (i) First decide whether the defendant could reasonably have been expected to mention the fact on which they rely at trial;
- (ii) If satisfied that the defendant could have reasonably mentioned the fact in interview, then consider what -if any- inferences are available from defendant's failure to do so.
- (iii) The jury might be sure of the first but not the second.

Etiquette on e-mail exchanges

Although e-mail exchanges between advocates and judges are acceptable within the course of a busy criminal trial, in *R v Peppiat [2025] EWCA Crim 110* the Court commented that the e-mails ought to be uploaded onto the Digital Case System and the content of such correspondence – whether pertaining to legal directions or any other matter – ought to be at least summarised in open Court so that the discussions are on the record should the Court of Appeal become involved as well as for reasons of transparency.

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