

Stand Down if You Can't Deliver: The Trials and Tribulations of Experts

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PRACTICES Litigation

Introduction

The deficiencies of expert witnesses are a recurring theme in many exasperated judgments by the courts. Most disputes lawyers will have experience of working with, or against, an expert witness who did more harm than good to their client's case. Given that cases are frequently decided on the strength of the expert evidence, guarding against those deficiencies is vital.

This article is not meant to tar all experts with the same brush, but intended as a salutatory tale. There are many good experts who assist the court or tribunal and take their duties of impartiality and independence very seriously. Nonetheless, the amount of judicial criticism in the reported cases suggests that for some, there is room for improvement. This article is in two parts. The first examines two recent decisions in the Technology and Construction Court that showcase the typical mistakes of experts, complete with judicial guidance on how to prevent them. The second tells the story of two experts who made extraordinary mistakes and the judicial chastisement they received.

Bank of Ireland

In *Bank of Ireland v Watts Group Plc* [2017] EWHC 1667, the claimant (the "Bank") sought damages for professional negligence against the defendant monitoring surveyors ("Watts") relating to a residential development in the centre of York. The developer, who had borrowed £1.4 million from the Bank, went into liquidation and could not repay the loan. The Bank subsequently sold the property but suffered a £750,000 loss. It was the Bank's case that Watts' initial appraisal report was negligent and that, if it had been properly prepared, the Bank would not have permitted the drawdown of the loan to the developer, and so would not have suffered any loss.

In assessing whether Watts had exercised the degree of skill and care to be expected of a surveyor of reasonable competence and experience, the court allowed the parties to adduce expert evidence. There was little dispute between the parties on the facts or the law, so the case would turn on which expert's evidence the court preferred. As it turned out, that was very unfortunate for the Bank. After setting out the facts in his judgment, Mr Justice Coulson (as he then was), devoted three full pages to explain why Mr V, the expert for the Bank, was "unreliable".

To read the full article, see the PDF linked below.

[Stand-Down-if-You-Cant-Deliver-The-Trials-and-Tribulations-of-Experts.PDF](#)