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Delay & Quantum Experts

Professionals & Experts

The Role of Professionalism and its Impact on
Experts & Expertise Among Construction
Professionals

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When the author started work in the construction industry, times were substantially different from 2025. There were people able to quote the rules around measurement from memory, who knew by heart SMM7 and the associated methods of measurement.

Experts in construction now appear much younger and much smarter, but are they better? Is the industry producing the quality of young surveyors needed to ensure our expertise brings benefit and quality to the industry in years to come? Or do we need to look at who we hold out as experts and review the quality of those individuals?

The shocking events at Grenfell in 2016 shone a spotlight on the incredible lack of industry control. It highlighted failures by successive governments, suppliers, contractors, and a raft of other agencies. Some seven years after the event, the public inquiry into the disaster referred to a “culmination of decades of failure by central government and other bodies in positions of responsibility in the construction industry”¹.

Successive reports and statements have pointed to reliance by construction professionals on data which “are now known to not accurately reflect the risks posed by some of those products”². A cursory glance across the media coverage over recent years brings back various phrases. These include, “wilful non-compliance” and “professionally negligent”. The litany of errors is remarkable. They range from professionals faking qualifications to building control officers with little to no experience signing off major safety features.

Even in the inquiry stage there were several resignations or dismissals from the enquiry team due to either conflicts of interest³ or falsification of skills and experience⁴. Endemic is a strong term. However, it would seem there are a number of individuals out there who do not hold themselves to the high standards that others might expect.

So what is the industry doing to tackle professionalism, and why is it so important?

¹ <https://constructionmanagement.co.uk/grenfell-culmination-of-decades-of-failure-by-government-and-construction/>

² <https://constructionmanagement.co.uk/grenfell-professionals-and-contractors-accused-of-wilful-non-compliance/>

³ <https://constructionmanagement.co.uk/rydon-auditor-quits-grenfell-inquiry-over-conflict/>

⁴ <https://www.theguardian.com/uk-news/2018/jun/22/grenfell-inquiry-sacks-expert-architectural-witness-tower-fire>

The Industry Response

The major institutions have responded with varying degrees of alacrity.

The CIOB appear to have been one of those most willing to rise to the challenge, with their “Modern Professionalism” campaign. The CEO Caroline Gumble stated,

*“The **Grenfell report** is a reminder that professionalism means not only accredited competence but also strong ethical conduct, driven by a clear moral compass”⁵.*

The CIOB’s campaign is now running through their CPD, publications, and their entire business plan, informing much of their CPD and professional output.

The RICS have taken a more specific approach. Their “Global Plan for a Decade of Fire Safety” focuses on design and construction as they affect fire safety.

Other institutions such as RIBA and ICE have put out similar statements to the RICS. They have contributed to papers and best practice documentation. They have stated their support for the wider improvement of standards in the sector.

The construction industry council, which brings together all the major bodies stated,

“It is essential that government and the construction sector recognise the findings (Sir Martin Moore-Bick) has reported and that we learn the lessons... Only then will public trust in the sector be restored”⁶.

Such statements are, of course, important, but do not in themselves, bring about the required cultural change needed.

Arguably more than hollow statements alone are necessary to ensure Grenfell and its tragic events never happen again. More broadly, is a more significant shift needed in industry culture? Should there be a change to ensure those professing to be experts and leaders in our sector actually have the required knowledge and skills required?

Experts

Which brings us to ‘Experts’.

There are now over 3,000 experts registered with the Lexis Nexis register of experts. A staggering 38,236 experts are registered with the ‘Who’s Who Legal’ database. There are around 3,000 members of the Society of Construction law – a large number of whom consider themselves experts.

⁵ <https://constructionmanagement.co.uk/modern-professionalism-is-central-to-changing-construction-culture/>

⁶ <https://www.ucem.ac.uk/whats-happening/articles/grenfell-inquiry-final-report-findings/>

Twenty or thirty years ago, the number of 'delay experts' in the world could probably be counted on one hand, and extended to the likes of Keith Pickavance in the UK, Geoff Brewer, Jim Zack and a few folk in the USA. Pickavance notes in his work 'Delay and Disruption in Construction Contracts' that the use of CPM methods to analyse delay has only really blossomed over 25 years, as a result of changes in technology and processes in the USA. Prior to that, a delay expert would have been almost unheard of⁷. Although quantum experts have undoubtedly been around for longer, in the form of the 'claims QS', they too have flourished in number over the past two decades.

But how is that expertise defined? Who qualifies them as experts? What makes an expert worthy of that high esteem?

This paper will not venture into the well-worn path of the duties of an expert, but rather look at what makes a good expert? What is it that ensures experts are worthy of their hire?

Criteria For Experts

The CPS set out a number of criteria for the qualification of an expert witness in criminal cases prior to appointment. Many of the criteria centre around qualifications and experience. The guidance states that much will depend on, "whether he has the right qualifications and experience to give the opinion sought from him"⁸. Experience is perhaps a key word here.

All too often, experience is overlooked by both those appointing and those holding themselves out as experts. A breadth and depth of skills is necessary for any person seeking to act as an expert. That level of expertise can only come with time and practical, lived experience of the subject being examined in expert evidence.

It's well-known that in the field of construction expert firms, those firms are hiring graduates. Not perhaps to practice (initially at least) as experts, but to prepare evidence and reports. Some then go on to become senior within those organisations. It is possible some of those people may give expert evidence without having had a single day working on site.

Would such an expert be suitable in the event a case reached a court or tribunal? There is precedent on this issue⁹. There have been a number of scenarios where experts have been criticised heavily or their evidence dismissed on the grounds of lack of qualification or knowledge. In the case of Comscope and Solid Technologies, the judge said,

⁷ Delay & Disruption in Construction Contracts, Pickavance, Sweet & Maxwell, 2010, P.870

⁸ <https://www.cps.gov.uk/legal-guidance/expert-evidence>

⁹ <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Patents/2022/769.html>

"This is precisely the sort of low-level CGK issue where the Court depends on the evidence of properly qualified expert witnesses who were in the field at the relevant date. Professor Seeds was such an expert and Dr Acampora was not."

The expert, who was not well qualified or experienced, was almost completely disregarded.

Lord Neuberger has said, in an address to a Bond Solon conference on the subject,

*"So, expert witnesses are a well-established feature of litigation, but they are unusual in that they are entitled to give evidence not of fact but of opinion, based on knowledge and experience."*¹⁰

This is a common theme in many cases involving experts. Their 'expertise' as far as it extends and entitles them to provide an opinion to a court or tribunal, is very much predicated upon both their knowledge and experience. Where experts are appointed who lack either of those two fundamental elements, they are found wanting. In a number of cases, such evidence has either been given significantly lower importance, or has been dismissed entirely.

There have been other cases, where experts have been chastised for not taking full account of facts or missing vital pieces of evidence in their preparation and presentation of evidence. These have been well documented over the years. Cases such as *Eggar v Skanska*¹¹, the National Museums and Galleries on Merseyside¹², and *The Great Eastern Hotels*¹³. All these cases have highlighted the courts' willingness to pay short shrift to evidence which has not been well prepared, or lacks credibility when presented.

More recently, the president of the RICS was criticised in an expert matter. Of course, it's not the place of a fellow member to consider this, or comment. However, the court did comment, and the judge did comment. He criticised both experts in that situation. In the case, there is one expert who says the cost will be £7.4 million, and another expert who says the cost will be £305,000. Clearly, that is quite some difference in approach by two people who hold themselves out as 'experts'.

However, this willingness to castigate poor preparation by experts does not seem to deter inexperienced people from appearing as experts. Such cases appear in the courts with troubling frequency. The ability to command substantial fees and a strong immunity from suit¹⁴ arguably leaves the field of the professional expert open to those who might seek to exploit it despite the relevant qualification or experience.

¹⁰ <https://www.bailii.org/uk/other/speeches/2014/141107.pdf>

¹¹ <https://www.bailii.org/ew/cases/EWHC/TCC/2005/284.html>

¹² <https://www.bailii.org/ew/cases/EWHC/TCC/2013/2403.html>

¹³ <https://www.bailii.org/ew/cases/EWHC/TCC/2005/181.html>

¹⁴ https://www.crownofficechambers.com/wp-content/uploads/2017/01/jones_v_kaney_article.pdf

Expert Qualities: Experience and Esteem

It is difficult as an expert, to turn work away. But if based on experience, the legal team an expert is working with are finding the expert's understanding of the matter challenging. If the team are struggling with what can reasonably be presented in both report and written evidence, then it may be prudent for the expert to walk away from the case.

There may be instances where a lawyer requests certain information to be included in a report, or certain things to be added. Through fundamental experience, it should be possible to manage that process. It should be possible to manage where you are, where they are, understanding each other. Whilst the expert may not be a lawyer, the lawyer is not the expert!

Esteem

E is for esteem, and definitely self-esteem. To be an expert, you must have the esteem to actually be able to be confident in your own ability in those situations.

You will be judged, criticised, tested and eventually left in a room to be cross examined by counsel who wants you to leave with no esteem.

Experience – cross examination

From working with an SME subcontractor and having to meet with 14 lawyers around the table as a young expert, and having a client leaning across to, nudge you in the side and say, "Damian, you need to say something now", to being in a room in an arbitration in the Far East, or the Middle East, or Africa, where 30 or 40 people horseshoe around you whilst you give opinion certain matters.

It is essential to be able to manage such a situation.

You need to be able to manage yourself in relation to your examination, your cross examination by counsel, that type of experience, and yes, the difficulty is, how will you ever get that experience unless you get in the room? How will you ever understand what the good things are unless you learn from the bad things and mistakes you've made? It's incredibly difficult.

Professionalism – For Experts and Professionals

Should there then, be better regulation for all professionals? Should the requirements of institutions be stricter? What can organisations such as the CICES, RICS, RIBA, CIOB etc do to improve standards and minimise the risk of poor standards?

There are already processes and rules in place for members of most of the professional institutes. CPD is a firm requirement of all the main professional bodies. The enforcement and regulation of CPD however, varies from institute to institute. The quality of CPD is often reliant upon either commercial operations within those institutes or volunteer members with limited experience across a range of fields. Does this perhaps lead to a diminution in quality?

As an anecdotal example, at one institute the authors are familiar with, a junior member of a contracting firm was responsible for organising a CPD on the subject of contract law. Sadly, without the requisite knowledge of the subject themselves, the speaker selected to talk on the subject was limited to a detailed knowledge of only one standard form of contract.

Although the above is clearly one anecdotal example, similar experiences are replicated across the industry. People who are short of time, but sitting on voluntary committees often have limited enthusiasm for vetting quality and experience.

Perhaps institutions should devote more effort and time to regulating and monitoring CPD? We have already alluded to the benefits of some of the existing commercial training providers. Should these be made compulsory perhaps?

Alternatively, should this be more a case of 'Caveat Emptor'? Should employers, clients and their legal advisors make more effort to vet their teams? Particularly when dealing with large businesses, but even when working with small firms. Careful scrutiny of CVs and simple checks, such as verifying qualifications and experience could eliminate some risks with ease. The processes for identifying and limiting the risk of weak or inexperienced professionals are not particularly onerous, they just require a little extra time.

Conclusions

Whether looking at the expertise required to avoid a second Grenfell disaster or the expertise needed to represent a client in a court or other tribunal, it's clear that there's a need to do more. And to do better. It certainly seems that 38,000 experts is a number we perhaps ought to question – might it be better for some of those 38,000 to be working on actual projects rather than acting as experts?

Membership organisations charge substantial fees for annual membership. Their role in upholding standards should not be downplayed. There is often criticism of the way in which their financial affairs are managed, some more than others. At one end of the scale are the well-publicised financial issues of the RICS¹⁵, at the other are minor, broad criticisms of standards of knowledge more generally¹⁶. Whatever prism this is viewed through, it seems that resources should be directed to causes that will progress standards generally, and lead to improved quality among those professing to be 'experts' regardless of their field of expertise.

Whatever the outcome, it seems clear that better professional training and development are needed. Better scrutiny of who can hold themselves out as an 'expert' and more detailed examination of the qualifications and experience of those people is crucial. Only with such scrutiny and checks in place will the industry retain (or regain) the credibility it needs to maintain the public trust.

¹⁵ <https://www.building.co.uk/focus/independent-review-into-the-rics-scandal-key-findings/5113637.article>

¹⁶ <https://www.building.co.uk/news/industry-leaders-criticise-lack-of-resource-and-competence-at-building-safety-regulator/5131655.article>



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