

The Use and Abuse of Expert Witness Evidence

Patrick Heneghan, Barrister

Today's Agenda

1. What are the Policies?
2. What are the Rules
3. Practice
4. What's being done about it?
5. Conclusions in context

What are the Policies and Rules?

- Prime Sources: CPR Part 35, The TCC Guide, The White Book
- Also Professional Standards
- Prime Cases: Ikarian Reefer, Factortame No 8.
- Beyond Civil Lit. (liability)

What are the Policies and Rules?

- Adversarial Context
- Need
- Control, permission: limits
- Not outsourcing a function of the court
- Peril
- Controlled time/cost

Practice: What's Going Wrong

- The Limits of the Role
- Hoping it will never get to court
- That the duty is to the Court
- Not asking for help soon enough*
- Conflict with a Commercial Imperative

Specific Concerns

- When is an Expert not an Expert?
- **Gardiner & Theobald v. Mr David Jackson (VO) [2018] UKUT 253 (LC)**
- Dual Role
- Remuneration – Conditional Fees

Gardiner & Theobald v Mr David Jackson (VO)

- Repeated Statements of Truth
- Disclosure: “Conduct of the litigation”
- What do you do with it?
- The sophistry tells us what?
- Relevance?

Working Towards Solutions

- Regulation – RICS Practice Statement 5th Ed is in the pipeline
- Training
- what's it for?
- Who is getting it?
- New edition of the TCC Guide is imminent

Conclusions In Context

- What's going to change?
- Context – The result in G&T
- Turbulence 2022 Style
- TCC 150
- Our Team

Contact



Patrick Heneghan, Barrister

T: 020 7583 8055

E: patrick.heneghan@3pb.co.uk

London
020 7583 8055

Birmingham
0121 289 4333

Bristol
0117 928 1520

Oxford
01865 793 736

Winchester
01962 868 884

Bournemouth
01202 292 102