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Dispatch highlights some of the most important legal developments during the last month, relating to the building, engineering and energy sectors.

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Dispatch

Expert evidence

Mashal & Ors v Javed & Ors

[2025] EWHC 3195 (Ch)

The main issue in dispute here was whether monies paid over by Marshal to Javed were for the purposes of investment settling a debt. Each party was granted permission to adduce expert evidence in the field of forensic accounting to trace the monies and related expenses. Only Mashal instructed an expert.

HHJ Matthews described the report as a well presented classic exercise in forensic accountancy. However, the judge also noted that, except in one or two insignificant respects, it did not appear to be expert evidence at all: it was at best hearsay evidence of fact. This was because:

> *"the underlying documents themselves are the primary evidence, and [the expert] is simply reporting (some of) what they say. He is not adding any expert opinion of his own in doing so, such as a scientist might do in explaining a chemical process, or an interpreter might do in explaining what is meant by something written or spoken in a foreign language. He is simply making information contained in a great many existing documents more digestible for the parties and the judge by reducing them to a tabular or summary format."*

The judge went back to basics, referring to section 3(1) of the Civil Evidence Act 1972:

> *"Subject to any rules of court made in pursuance of ... this Act, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence."*

Expert evidence within section 3 can be tendered only by someone who is qualified as an expert. The judge then referred to the words of Evans-Lombe J in *Barings plc v Coopers & Lybrand* [2001] PNLR 22, who said that an expert must satisfy *"the court that he has a sufficient familiarity with and knowledge of the expertise in question to render his opinion potentially of value in resolving any of"* the issues in the case.

This might be through formal qualification or possibly practical experience. But what matters is that the expertise is: *"a recognised expertise governed by recognised standards and rules of conduct capable of influencing the court's decision on any of the issues which it has to decide"* (*Barings plc v Coopers & Lybrand* [2001] PNLR 22). Someone who ***does*** possess a recognised expertise is an expert for this purpose only when giving an opinion ***within*** that expertise. The judge gave the example of a qualified and experienced lawyer having no basis for giving expert evidence of property valuation, merely by reason of possessing that legal expertise.

Here, the expert was a qualified and experienced accountant and *"no doubt"* an expert in the sense described above. However, what the expert did not do was exercise any *"recognised expertise governed by recognised standards and rules of conduct"*. Rather, the expert reviewed the available documents, extracted relevant information, and reorganised it in a more easily digestible format.

Whilst the judge noted that this would save a great deal of time in court; it was typically the legal team who *"prepared such tabular and other diagrammatic aids to a more rapid understanding of the words or figures or other information contained in the documents which would be available in evidence at the trial"*.

This part of the trial preparation was *"all perfectly proper"* and *"very helpful"* but it was not ***expert evidence*** of anything. For example, if the report included comments and criticisms of accounting statements made by corporate bodies, partnerships, trustees, and others which rely on the expert's training and experience, then that might be different.

Further, the expert on occasion gave comments that were not opinions on any accountancy matter but instead of law, where the expert was not qualified.

Therefore here, the report in question was not expert evidence; it simply amounted to submissions in respect of the documents reviewed.

County courts: potential scams

Associated Installations Ltd v All Asbestos Ltd

[2025] EWCC 76

The Parties entered into a contract for the removal of asbestos. AIL alleged that AAL's work was defective and sent a formal letter before action to AAL and in copy to its insurance broker. There was no material response and AIL issued a Claim in the Civil National Business Centre ("CNBC") which was served on 17 October 2025. There were nine detailed heads of loss, and the special damages claim amounted to £172k. AAL accepted service of the claim form and liaised with its insurers and subcontractors, but did not acknowledge service and/or defend the claim. For reasons that remained *"opaque"* to Worthley DJ, AAL failed to instruct solicitors to act on its behalf, instead awaiting advice as to next steps from its insurance broker.

In light of AAL's failure to respond, the CNBC entered a default judgment on 17 November 2025. Four days later, AIL's solicitors applied for a Third Party Debt Order. The case was then transferred out of the CNBC into Worthing County Court where an interim Third Party Debt Order was drawn up ("ITPDO").

On 2 December 2025, AAL sent an *"urgent"* email to the Worthing CC which included the following:

> *"Under the guidance of the court and the court bailiff Mr Paul White, we acted in good faith to pay the agreed amount of £45,549.00 as proof of funds on 24/11/25, as we have a real prospect of defending this case. This payment was made on the understanding this would be honoured, and the judgement would be set aside and proof of funds returned to us "immediately" or within 2 days.*
>
> *We have complied with the directions we received from the court in this regard. Please find attached Certificate of Cancellation and Certificate of Satisfaction dated 24/11/25 sealed by the court setting aside the judgement for 28 days, therefore we contest the formal objection from the claimant to overturn this decision."*

The district judge noted that the attached certificate was set out on a *"slightly blurry"* Form N441A and there were two ink court seals and one further embossed court seal. However, those court seals featured the old St Edward's Crown rather than the Tudor Crown

which has been used in court seals since the spring of 2024. The court seals also had *"The County Court"* curving around the bottom of the seal rather than the top, which is the case with the new seal. The document said that the judgment had been *"set aside"* and that £45,549 had been paid as *"proof of funds only"*. There was also a reference to the now non-existent Northampton County Court. That said, Worthley DJ noted that the presence of the old crown and coat of arms was still erroneously used in many parts of the court estate, including the online *"Judicial Case Manager"* and also on certain parts of the public-facing online portal.

There was a short hearing on 9 December 2025. AAL maintained that it had acted in good faith in paying what it understood to be a required *"proof of funds"* payment to the Court Office. It said that the judgment had already been set aside and therefore the ITPDO had been issued in error. AIL said that it had made enquiries of the CNBC who were unable to locate any copy of the purported Certificate. The mechanism of paying in monies as proof of funds to the court so as to set aside a judgment was also unknown.

The district judge, who was *"in the unusual but timely position of having just vacated a case on 15 December 2025"*, directed that the Parties make any necessary applications and/or serve evidence in time for a hearing on that day. AAL duly applied to set aside the default judgment.

AAL explained that they had had an initial approach, or cold call, from a 'Mr Paul White' purporting to be a Court Enforcement Officer. The email correspondence that followed was from the email address: *"judgments.cnbc.justice.gov.uk@hmcts.cc"*. The email header said: *"Northampton County Court"*. Given their previous lack of experience with the court system, AAL did not consider there to be anything unusual about the email address or note that the *".cc"* domain is the internet country code for the Cocos (Keeling) Islands, an Australian territory.

There were other errors. The district judge noted that the official CNBC website confirmed by way of *"additional information"* as follows:

> *"Scammers are mimicking genuine HMCTS phone numbers and email addresses. They may demand payment and claim to be from HMRC or enforcement. If you're unsure, do not pay anything and report the scam to Action Fraud."*

The district judge also noted that AAL had also encountered a number of issues which were *"unfortunately consistent with the experience of litigants reported to this court on a routine basis. Namely that his calls to the switchboard placed him on lengthy hold without being connected to an operator, and that correspondence with the CNBC simply referred him to the County Court at Worthing which no longer has public-facing telephone accessibility. This is because all telephone communication to local court centres is now routed through a contact centre in HMCTS National Services"*.

It was clear that AAL had been the victim of a scam whereby an unknown third party bad-faith operator had approached the company, impersonating the CNBC, in order to coerce a substantial payment on a fraudulent pretext of a temporary payment into court. That payment was made to an account purporting to be a UKFOREX LTD bank account. It was highly likely that the money would not be recovered directly.

This identification of a scam was the reason why Worthley DJ decided to arrange for his judgment to be published. The district judge also *"neutrally"* observed that: *"there is a broad societal trend away from the personal face-to-face service interactions and toward online automated service provision, increasingly via AI. Many predatory practices have emerged to fill the space that has been created. The National Crime Agency reports that 41% of all crime in England and Wales is estimated to be fraud, and that 67% of fraud reported in the UK is cyber-enabled"*.

The district judge also set out what were described as *"some obvious common-sensical cross-checks"* for litigants. These included:

> *"a. Be aware that the County Court will not 'cold call' any litigant demanding a payment of a judgment sum into court;*
>
> *b. Check the telephone number of any purported HMCTS building or staff member against the maintained telephone numbers on an official gov.uk website ... ;*
>
> *c. Check the email address number of any purported HMCTS building or staff member against the maintained email addresses on an official gov.uk website...Such addresses should ordinarily end @justice.gov.uk;*
>
> *d. Check for obvious typographical errors in any email signature or header;*
>
> *e. Check that any court seal is the current seal featuring the Tudor Crown; ...*
>
> *g. In the event that an individual is claiming to be a bailiff or enforcement officer, cross check their details against the Certificated Bailiff Register maintained by the government online at https://certificatedbailiffs.justice.gov.uk/;*
>
> *h. If in doubt, always consider seeking legal advice from a regulated lawyer or other verified sources of advice such as the Citizen's Advice Bureau or Advice Now."*

The court then proceeded to consider the application to set aside the default judgment. In the usual way, the court has a discretionary power under CPR 13.3 to set aside or vary a regular default judgment. In deciding whether or not to do so, the court will need to consider three related stages:

1. Does the defendant have a real prospect of successfully defending the claim or is there some other good reason why the judgment should be set aside or varied?
2. Was the application made promptly?
3. Then the court will consider the test for relief from sanctions and the circumstances of the case generally in order to determine whether or not to exercise its discretion.

Here the district judge focussed on the seriousness of this claim and the suggested defence, that there would be a counter-claim for set off of the original contract sum, along with the potential for additional claims against the subcontractors who carried out the works and the air monitoring checks. Proportionality would indicate that these should be heard together under one global claim rather than be split of inefficiently into a separate number of proceedings.

There was agreement that this application had been made promptly. As to the question of relief from sanctions, this was: *"the most serious of failures; a failure to defend a claim."* Any company when sued must act promptly; it was not enough to simply notify a broker and hope for the best. However, when the district judge came to evaluate *"all the circumstances of the case,"* it could not be said that to date that this claim had not been conducted efficiently and at proportionate cost. The prejudice suffered by AIL was the: *"the procedural, administrative and modest financial cost of making its application for judgment and responding to AIL's application to set aside"*. This could be addressed by the making of an indemnity costs order in the sum of £4,980.60.

Dispatch is produced monthly by Fenwick Elliott LLP, the leading specialist construction law firm in the UK, working with clients in the building, engineering and energy sectors throughout the world.

Dispatch is a newsletter and does not provide legal advice.

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