



Are you ready to be an expert witness?

...and how to avoid becoming a defendant



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Agenda

1. Some first thoughts
2. What sort of witness?
3. What form of court?
4. Who are the parties, representation, witnesses?
5. What should you do first?
6. Preparing with your Client
7. Practical tips for your day
8. Giving evidence
9. What to do afterwards...



Some first thoughts

1. What have you got to lose?

Reputation; professional registration; livelihood; shirt; liberty....

2. What has everyone else got to lose?

Money; reputation; livelihood; liberty....

3. Who are you working for?

- Who is your invoicing/relationship/intermediate /ultimate Client?
- What effect on current and future Clients?
- What is everyone's position in the case?



What sort of witness?

1. Witness for one party
Engaged by Highway Authority; developer;
Contractor; Consultant; solicitor on behalf of others
 2. Single joint expert
Appointed to represent all parties
- See guidance at www.justice.gov.uk/courts



‘A single version of the truth’

“Experts should provide **opinions which are independent, regardless of the pressures of litigation.** In this context, a useful test of ‘independence’ is that the **expert would express the same opinion if given the same instructions by an opposing party.**”

Experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates.”

In practice, this is harder than it sounds.



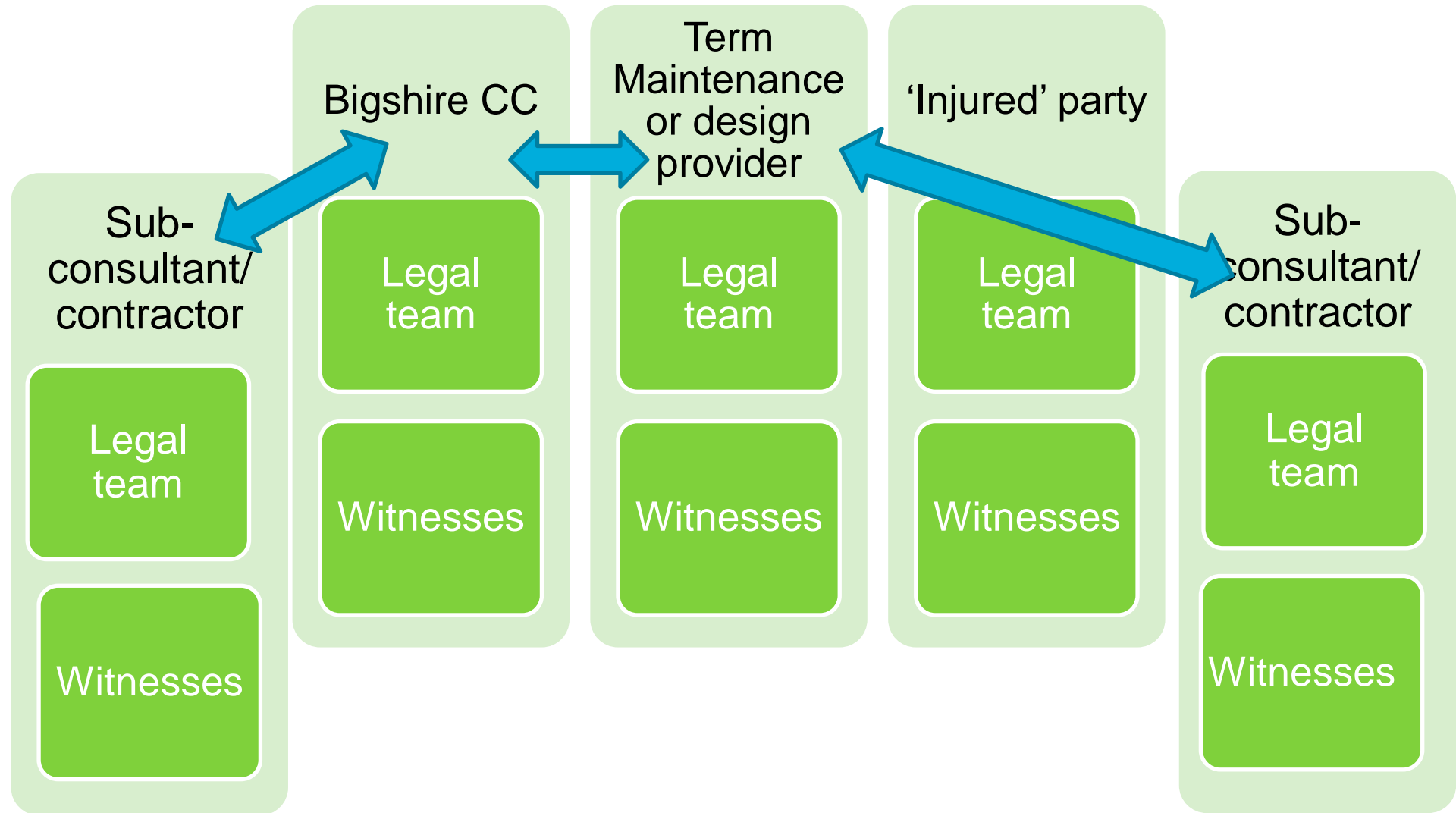
What form of court?

- 1. Small claims court**
most likely for vehicle damage only
- 2. Civil Court**
e.g. driver sues Highway Authority
(balance of probabilities)
- 3. Criminal Court**
(Beyond reasonable doubt)
- 4. Coroner's Court**

All are about allocation of responsibility (blame) except Coroner's Court....or is it....



Who are the parties, representation, witnesses?



What should you do first?

1. Write a timeline – what took place when (commissioning, and at the time of the incident)
2. Allocate actions to parties and evidence: brief, correspondence, photos, other contemporaneous
3. Identify missing information – request it quickly
4. Work out how your Client's position looks
5. Decide the question you don't want to be asked!



Preparing with your Client and legal team

1. Discuss the facts, your opinion, Rumsfeld status.
2. Categorise evidence: definite, possible, doubtful supporting their case? What gaps, significance.
3. Always support settlement out of court.
4. If going to court, what 'props'? Plans, photos.
5. Who are the other witnesses, any skeletons?
6. No 'real' questions!
7. Complex or counterintuitive issues?
(SMP, lighting, PGR, urban design)





Compliant

Lawful

Safe



Lawful

Yes

No

Compliant

Yes

No

Safe

Yes

No

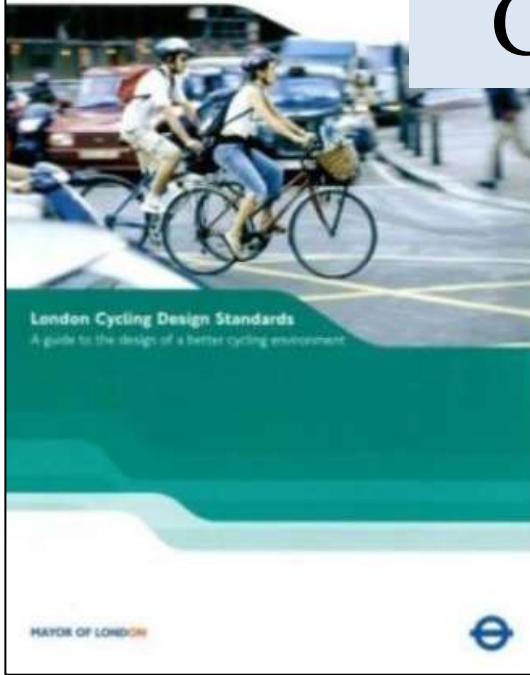


But it's not binary...

Compliant

Lawful

Safe



Lawful	Yes	yeahbutnobut	No
Compliant	Yes	yeahbutnobut	No
Safe	Yes	yeahbutnobut	No

Safe, Lawful, Compliant....



Practical tips for your day

1. Go to the court and see a similar earlier case
2. Find out where things are: parking, loo, waiting areas
3. Check about process/ running order/who sits where (normally all go in at once)
4. Have post-its! Colour coded...
5. Have small bottle of water (not fizzy!) and mints. Tissue/handkerchief, food, medication.
6. Be aware that surprise is common



Giving evidence

1. Process is adversarial, stay calm.
2. Examination, cross-examination, re-examination
3. Answer the actual question, not the one you prefer they'd asked. Your duty is to the court.
4. Don't fill in gaps
5. Don't disclose new information
6. Don't say anything you can't substantiate – by evidence or opinion you can justify



What to do afterwards...

1. Anticipate cameras as you leave court. Don't smile/laugh with others, taken out of context.
2. Debrief with Client, ask for feedback on what you did well, what in hindsight could have been better?
3. Write notes on the case for your file, and for future reference.
4. Don't tell anyone else details which could not have been heard in open court.
5. Don't crow on twitter!



Don't have nightmares!



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