



## Time to grow up!

*Article published in Sales Force magazine*

---

### Abstract

The IT software and services industry is under fire in the courts where a number of judgements have recently been made with profound implications. The law is being changed to establish that software and services companies have a duty to “get it right” and that lapses from exemplary professional standards will be heavily punished.

Whilst this may cause the IT executive to sleep less soundly, it is time for the industry to grow up, says Ian Henley, Chairman of *ChangeBEAT*.

## In the firing line

In case you missed it, over the last couple of years the Courts of England and Wales have been giving the software and services industry a series of harsh reprimands.

Starting with *St Albans vs ICL*, then *Pegler v Wang*, *Horace Holman v Sherwood*, *Marconi v London Fire Brigade*, *South West Water v ICL*, and others, the courts have made it clear that, if a project to implement a software and services solution goes wrong, the supplier is in the firing line and likely to be held responsible.

## Come to heel

In fact, the courts have been bending over backwards to bring the industry to heel. They have been stretching interpretation and setting new precedents to establish by degrees that:

- the supplier may not effectively limit liability
- the supplier may not safely exclude consequential loss
- clauses excluding “fitness for purpose” are unreliable
- the risk of (for example) poor or absent specification falls on the supplier.

All of this now makes the supply of customised software and services solutions an even more risky business. For example, in *Pegler v Wang*, an award of over nine million pounds of damages was made against Wang for an unfulfilled software and services contract of less than one and a quarter million pounds.

## Is it fair?

Is it fair? Well as far as the IT company executive is concerned, the question is quite academic. If the courts say it is fair and reasonable then, short of future legislation, it is. In any case, don't they have a point? If we were to compare the IT industry with the more mature building industry, we would find that many of these principles are well established. Builders are not allowed to build buildings that fall down, so why should the IT industry be able to build systems that do?!



## Get it right!

Good news for the lawyers, as usual? Well, not necessarily. What the courts are saying, more or less, is that *whatever the contract says*, if the supplier fails in their duty to act in a proper and professional way and deliver on their promises, they are in trouble. Whilst no doubt the lawyers will profit where conflict occurs, the IT company cannot hide behind a legal fig leaf to protect their interests. They may as well save the legal fees spent negotiating liability clauses and the like.

Instead they have got to get it right.

## A duty of care

Whilst the first reaction to this stern news may be to reach for the tranquillisers and the Appointments Section (to consider life in a different industry) should we not really concede that, on reflection, the courts may have a point?

Even if the customers were partly culpable (and in some of the above cases they clearly weren't) doesn't the industry owe a duty of care to its customer base? How can all these disasters have been allowed to occur? After all, who are the IT experts supposed to be?

## Time to grow up

The industry may not have realised it yet, but these court judgements spell the belated end of the industry's adolescence. IT is now so central to the running of the economy, and all manner of companies are so dependent on it, that higher standards are a requirement. Selling systems that don't do what the customer needs, or agreeing to major implementations on the basis of "fag packet" specifications, will just no longer do. IT companies have, at last, to grow up and face their responsibilities.

## The challenges

So, how should the industry react to this watershed? Unfortunately, fixing these issues will be no picnic. Yet again the industry must step up to the challenge of change, and, yet again, many will deny the need to do so. We confidently predict that the industry will get



further maulings in the courts before they finally get the message.

Broadly speaking the issues are these

- In many organisations there remains a culture of “sell first... ask questions later” and this culture is often connived at or even created by the senior management team.
- In all companies sales professionals must increase their business and applications focus and work with customers to articulate the business case and achieve successful implementation. The language of risk management must become a part of the sales professional’s vocabulary.
- The buyers are guilty of lazy buying practices. Under the impression they are doing a professional job, the buying process is often netted down to wish lists and feature comparisons which have little to do with the achievement of benefits.
- In much of the industry there is no culture of understanding, agreeing and capturing “best practice”. This absence makes it very hard for senior management to establish flexible but effective management processes, and have confidence they will work.

Let’s look at each of these areas in turn.

## **Unprofessional sales culture**

In many UK IT software and services companies there persists the kind of “sales culture” that gives the selling profession (and the industry) a bad name. In these companies customers are “punters” to be “rooked”, and empty promises and sleight of hand are more in evidence than addressing customer needs.

Customer expectations are raised to fever pitch. Risks are never properly analysed, and so never managed. Certainly they are never mentioned to the customer, lest they get cold feet. The salesman’s sole responsibility is to get the deal, whatever it takes, and if they succeed, the squirming bag of worms is pitched over the wall to some poor project manager with a smile and a wave of the hand.

Such organisations get the sales teams they deserve. Symptomatic is lax management controls which help to obscure accountability, senior management



connivance in winning bad business (Nelson's telescope is often used), unclear or absent procedures, unrealistic pressure on the sales teams, tension and lack of teamwork between sales and delivery, low morale on the part of the deliverers, patchy or poor customer satisfaction, and a culture of lionising immediate sales "success" ahead of successful delivery.

Strangely, perhaps, unprofessional sales culture has not always meant immediate ruin. Given a reasonable product, especially if it is allied to a customer base, some companies have managed to grow for quite a while with this approach ...sometimes long enough for the stakeholders to cash out with enough profit to wave two fingers at the market as they leave.

This "unjust" dynamic has been possible because customers are, to an extent, tied in to a supplier for at least a while after they start to implement. In any future tenders, when new or extended systems are being considered, the incumbent supplier always enjoys a big competitive advantage because of switching costs. When the legal position was unclear, and damages were limited, it often made more sense for the customer to grit their teeth and press on hoping that the discredited supplier would mend their ways.

However, what has changed in the last year or so is that now every dissatisfied customer can give vent to their frustrations with a law case that they will almost certainly win. Damages from failed projects may provide real compensation in lieu of the benefits themselves.

## Professional selling

So does all this mean that IT selling skills will no longer be at a premium? Quite the contrary. The successful sellers of tomorrow (as they have been in the past) will be those who take the time and the trouble to ensure that they really understand what the customer needs, and that the proposed solution meets those needs. They must become experts in the business application of their products and services and how they are used to achieve benefits. They must earn their corn by defining and articulating the customer's return on investment and understand how commercial and technical risks are managed to ensure that the returns are achieved. They will of course still need to



be persuasive, innovative and determined. There will still be hurdles to leap and competitors to beat, but the battle must be fought on the field of business benefits, not product features.

For many IT sales professionals in the UK this represents a substantial mind shift, requiring high standards of team working both within their own companies and with the customers. The idea that sales should be held responsible for ensuring successful implementation is an anathema to many sales professionals in the industry today, but they have been warned. In future, lapses from high standards can no longer be tolerated. Those who cannot adapt to the new standards must perish or their companies will.

### **Lazy buying practices**

In many ways it is the customer's own buying practices that are as much to blame for failure as carelessness or opportunism by suppliers.

Typical competitive buying processes are expensive for the supplier and often rely on long-winded and poorly written tender documents (which are in effect nothing more than a wish-list of features that have little bearing on the achievement of business returns). Combine this with poor communication with potential suppliers (no time, you see), and unimaginative purchasing managers armed with tick lists who are measured crudely on discount (rather than benefit achieved) and life becomes very difficult indeed for even the best intentioned supplier. How can they possibly work constructively with the customer to look for a win/win in such a bear pit?

Buyers have to grow up too. They must realise that it is in their long-term interests, if harder work, to invite discussions with suppliers that look at business benefit and risk, rather than product features. They must raise the level of the discussion with suppliers and be prepared to look for, and work for, value rather than focus only on cost.

### **Industry “best practice”**

Part of the problem, of course, is that many companies don't really know exactly what to do to improve, even if they have woken up to the fact that they are going to have to do so. That is not to say that they don't



have, among their people, those who can be relied upon to use their intelligence and experience to manage their way through. The problem is that such knowledge is held in the heads of the few, not the many, and there just aren't enough of them to go around.

Knowledge management techniques need to be applied to all of our activities. The industry needs to start to be explicit about exactly what best practice is. What is the right way to go about bidding for an IT software and services contract? When should they walk away from a possible deal? How can the management be assured that commercial and technical risks are being properly assessed and then managed? How open should they be with customers about the risks? How do they cost bids and manage contingencies? How do they monitor and control projects? How should customer responsibilities be itemised? What sort of project plans should be in place at each step of the sales process?

The challenge for the industry is to define these processes, adapt them to individual businesses, and then ensure that everyone in the company understands how to operate them effectively.

One thing is for sure. If the board of an IT software and services company trust to individuals to take care of potentially difficult issues without providing a clear framework, the right tools and techniques and crystal clear review process, they are asking for trouble.

## Conclusion

The courts are really telling the industry no more than it already knows. The time has come to get more professional and do it right. The time has come for the industry to grow up.

The challenge will be for the industry to react positively to the message that the law courts are giving. By responding positively, IT companies can make themselves more efficient and effective which will improve their businesses as well as keeping their customers happy. These companies will take the trouble to define their processes and subsequently improve them.

Right now the courts have given the industry a problem. But ten years in the future we will look back



on some of our “seat-of-the pants” practices of today, smile indulgently, and shake our heads.

We may even go as far as to thank our friends in wigs!

### **About the author**

Ian Henley, chairman of *ChangeBEAT*, is recognised in the IT software and services market as a leading expert in improving business performance. He specialises in business strategy, marketing and sales and is well known through industry publications and Intellect where he provides advanced sales and commercial management training.



*ChangeBEAT defines, develops and executes change programmes that help achieve enduring business benefit rapidly and reliably. Our people have practical field experience, and are equipped with WingBEAT, our proven change methodology, and our extensive tools. We are professional, pragmatic and action oriented.*

*ChangeBEAT is a trading name and a trademark of Contact to ContRact Ltd.*

For further information call **+44 (0) 208 446 6946** or visit **[www.ChangeBEAT.com](http://www.ChangeBEAT.com)**