DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

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Technical rebuttal, topic rebuttal, certainty, and shame sensitive environments

A persistent misunderstanding in construction and property disputes is not simply that facts will resolve disagreement, but that disagreement is occurring in a psychologically neutral space. It rarely is.

Most formal dispute environments in the built-environment sector—adjudication, expert determination, arbitration, and even pre-action correspondence—are **shame-sensitive environments**. Positions are articulated publicly, competence is implicitly judged, and professional identity is continuously at stake.

Once this is recognised, the limitations of conventional rebuttal strategies become clearer.

Certainty as an emotion under conditions of threat

As Robert Burton has argued, **certainty is not a reasoned conclusion but an affective state—a feeling of knowing that arises independently of conscious deliberation** (Burton, 2024). That feeling is experienced subjectively as clarity, correctness, and confidence.

In shame-sensitive environments, this emotional certainty does not operate in isolation. It is tightly coupled with:

- fear of embarrassment;
- threat to professional reputation;
- concern about appearing incompetent, inconsistent, or weak; and
- anxiety about adverse judgment by peers, clients, or tribunals.

Under those conditions, certainty becomes defensive. The emotional signal of “I am right” performs a protective function, insulating identity from threat.

This interaction explains a fundamental paradox of dispute practice: **the more publicly and forcefully a position is attacked, the more certain its holder may feel**, even when the attack is factually accurate.

Why shame makes topic rebuttal risky

Topic rebuttal—responding directly to claims with contradictory facts, analysis, or authority—implicitly communicates more than disagreement. In a shame-sensitive setting it often

communicates:

- *you are wrong*;
- *your reasoning is deficient*;
- *your competence is in question*.

Once certainty is emotionally bound up with self-respect, such messages are not processed as information but as threat. Burton's insight again matters here: because certainty is an emotion, it is not dislodged by evidence. Instead, the emotional system remains engaged and recruits reasoning defensively.

Common symptoms in construction disputes include:

- increasingly strident rebuttals that restate the same core position;
- exaggerated confidence not matched by evidential nuance;
- selective engagement with evidence ("acknowledged but dismissed"); and
- escalation rather than narrowing of issues.

In short, **topic rebuttal in shame-sensitive environments often entrenches belief rather than correcting it**.

Technical rebuttal as a shame-aware strategy

Technical (or technique) rebuttal operates at a different level. Rather than challenging conclusions head-on, it focuses on the *processes by which certainty has been generated*.

This matters because technical rebuttal allows engagement **without triggering shame**.

By examining assumptions, framing, interpretive choices, and confidence thresholds, technical rebuttal:

- reframes disagreement as analytical rather than personal;
- avoids demanding immediate public concession;
- reduces identity threat; and
- creates space for recalibration of confidence without loss of face.

In psychological terms, it does not confront the emotional state of certainty directly; it alters the conditions that sustain it.

This approach is particularly effective in environments where parties are highly exposed and reputationally invested—which describes most formal construction dispute forums.

Shame-sensitive environments: what to do

Where certainty and shame interact, practitioners should adjust not only *what* they argue, but *how* they argue.

Effective strategies include:

1. **Make reasoning explicit, not people wrong**
   Focus on assumptions, interpretive steps, and methodological choices. Let the fragility emerge

from the structure, not the accusation.

2. **Acknowledge competence before disputing conclusions**
   Demonstrating respect lowers threat, making reflective processing more likely.
3. **Use questions strategically**
   Questions invite participation rather than defence, particularly where confidence is high.
4. **Maintain proportionality in tone**
   Excessive certainty in rebuttal signals combat, not inquiry, and invites symmetrical escalation.
5. **Create exit ramps**
   Frame alternative interpretations as refinements or recalibrations rather than reversals. Provide ways to "move" without humiliation.
6. **Match forum to psychology**
   Use mediation, expert conferencing, or informal technical discussions where belief change—not only entitlement determination—is the goal.

Shame-sensitive environments: what not to do

Equally important is recognising what reliably *fails* in these settings.

Common errors include:

1. **Publicly cornering opponents**
   Forcing concession in front of clients, peers, or tribunals invites resistance, not reflection.
2. **Equating force with persuasion**
   Strong language may persuade adjudicators, but it often radicalises opponents.
3. **Over-weaponising expertise**
   Experts who appear to prosecute rather than explain heighten shame and defensiveness.
4. **Ridicule or implied incompetence**
   Even subtle cues of disdain amplify identity threat and harden certainty.
5. **Assuming silence equals persuasion**
   Lack of immediate rebuttal may reflect withdrawal or resentment, not agreement.

Reframing rebuttal as engagement with certainty

Once certainty is understood as an emotion—and shame as its amplifier—rebuttal strategy looks very different.

- **Topic rebuttal** answers: *"Is this claim correct?"*
- **Technical rebuttal** asks: *"Why does this feel so certain?"*

In low-threat environments, those questions converge.
In shame-sensitive environments, they diverge sharply.

The most skilful construction dispute practitioners recognise that entitlement may be determined by logic, but belief rarely shifts that way. Where identity, reputation, and professional standing are implicated, persuasion requires not just analytical strength, but **psychological literacy**.

Understanding certainty, and respecting the dynamics of shame, is not a soft skill. It is a core professional competence.

Conclusion

So the great fantasy—that one can bludgeon a dispute into submission with ever more facts, louder certainty, and the forensic equivalent of finger-pointing—turns out to be exactly that: a fantasy. In shame sensitive environments, people do not merely defend propositions; they defend themselves, their standing, and the fragile professional mythology that they are plainly too competent to have got anything materially wrong. Attack the conclusion head-on and you do not produce enlightenment. You produce trench warfare in a suit.

The more sophisticated practitioner therefore does something rarer and vastly more effective: resists the adolescent thrill of proving the other side wrong and instead examines how their certainty has been constructed, protected, and performed. That is the real distinction. Topic rebuttal flatters the ego of the rebutter; technical rebuttal actually moves the dispute. It preserves room for correction without demanding public humiliation, which is useful, because human beings will tolerate many things in litigation, but dignified retreat is not one they surrender lightly.

In that sense, psychological literacy is not decorative, therapeutic, or an indulgence for the faint-hearted. It is hard-edged professional equipment. The lawyer, expert, or tribunal advocate who understands certainty as emotion and shame as accelerant is not being soft. They are simply refusing to mistake noise for persuasion. And in construction disputes, where everyone is allegedly being "entirely objective" while defending their reputation like a medieval fortress, that is not merely an advantage. It is the difference between analysis and pantomime.

#ConstructionLaw #Adjudication #DisputeResolution #ExpertEvidence #TechnicalRebuttal #DecisionMaking #CertaintyAsEmotion #ShameSensitiveEnvironments #BuiltEnvironment

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE and the CIArb
Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
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Director: N. J. Davies BSc (Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, Chartered Builder, Chartered Construction Manager, Chartered Surveyor, Chartered Arbitrator, Panel Registered Adjudicator, Mediator, Mediation Advocate, and Solicitor-Advocate

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