D&DLS Bulletin

Derby & District Law Society

www.derbylaw.net

Dec 22 / Jan 23

High Sherriffs at the Derby Legal Service

Manesha's day out!

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Editorial

A real bumper edition of the DDLS Bulletin with lots of varied activities going on in the world of this local law society thanks largely to the hard work and enthusiasm of the management team Tina, Oliver and especially Manesha. Well done.

If you are inspired to join the committee then please drop me an e-mail. We meet every 8 weeks or so and, as can be seen from the exciting happenings reported on in this edition, we are looking to refresh and revitalise Derby and District Law Society.

Can I encourage everyone to visit the website **www.derbylaw.net** – I try to keep it up to date with events etc and there is a link to the newest Bulletin. There is also a section on sponsorship. Please consider whether you or any of your contacts might be interested in sponsoring DDLS or an award or event. Feel free to use the sponsorship package which is linked to the website or let me have details of anyone you think might be interested. Please also "like" DDLS on Linked In, Instagram and Facebook.

There are a couple of save the dates in this edition. The Annual Awards Dinner is 31st March 2023 and tickets will be on sale soon and the Quiz will be Thursday 9th February.

The Derby City Schools Debate Competition will begin after Christmas and my usual thanks for all those members who have committed to help judge. This year we have offered a two hour session in schools to introduce the children to debating, public speaking and presenting themselves with confidence. I have delivered the session in three schools reaching 70 children. I am pleased to say the response from the teachers and children has been excellent – the main feedback word has been "confidence"!

Happy Christmas and see you in the New Year.

Take care,

Julia Saunders
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President's Page

So – hands up, who has not started their Christmas shopping yet?!!! This year has flown by, normally, I am super organised and would simply be wrapping presents by now – not this year, I have heard from many others that Christmas arrangements and shopping have been slightly neglected this year!!

Another historical event has occurred since last writing. Placing any political biases aside, Rishi Sunak, has been elected as our Prime Minister, the first Prime minister to have been elected from an ethnic minority! It is exciting to see the changes our country is making to reflect the diverse community that we live in!

I am delighted to welcome our new Gold Patron, Hallam Wealth Management, who join our long-standing sponsors Severn Trent and the University of Derby. If you would like to sponsor our society or know anybody that would wish to become a patron of our society or sponsor any of our events, please get in touch, full details of our sponsorship package can be found at our website.

Engagements this month and next

I was honoured to attend the Derby Legal Service on 9 October 2022, which was kindly hosted by our High Sheriff; Mike Copestake; a beautiful lunch and prestigious service, it was a pleasure to meet with local Judges, colleagues and other High Sheriffs.

Unfortunately, I contracted the dreaded Covid and thereby missed my engagement with the SRA, I did put forward a question raised by one of our members to the SRA, not surprisingly, I am still waiting for an answer to the question.

I also missed the launch of our Diversity, Equality and Inclusion committee and a panel discussion on diversity and social mobility in collaboration with the University of Derby's Law Society. The event was very well attended, I am grateful to my better half for standing in last minute as Chair of the panel discussion. If anyone would like to join this committee or any of our sub-committees, please get in touch with our administrator Julia by email – *admin@derbylaw.net*

If you haven't seen them already... the results are in for the DDLS Bake off!!

In first place was **Davina Charlton (Nelsons)** who baked a delicious black forest gateaux the judges described the cake as 'simply exquisite' In second place was **Anjuna Ali (Alexander & Co Solicitors LLP)** who baked a scrumptious chocolate cake - dreamily perfect for those chocoholics amongst us!

In third place was a Kinder Bueno cake with layers of yumminess to sink into, baked by **Kim Tate (Family Law Group).**

And the winner of the firm that raised the most funds is... **Elliot Mather LLP**, well done to Elliot Mather for raising over £121!!

I am pleased to confirm that we raised just shy of a magnificent £350 for our charity this year Derbyshire Mind. The DDLS Bake Off entries were spectacular; it was a very successful event and feedback from those entered confirmed that they thoroughly enjoyed baking and eating the goodies! I look forward to the competition again next year. Thank you to all those that entered or supported the competition.

A 'save the date' for your diaries, our highly anticipated annual quiz is to take place on 9th February 2023 at the Rugby Club.

I am also very excited to announce that tickets for our **Annual Awards Dinner on 31 March 2023** will be released soon, we are releasing some early bird tickets this year – look out for the details in your inbox! It is sure to be a night to remember!

The nominations for awards will also be opening shortly, categories for the awards are:-

Junior Lawyer of the Year:

Lifetime achievement award; and

Solicitor of the Year

I look forward to seeing you all at our Christmas Cheese and Wine Social & Networking event on 9 December, it will be great to catch up and celebrate the end of the year!

As ever - if you would like to get involved in the Committee or if there is anything that you would like to see our society to do more of – please do not hesitate to get in touch.

Wishing you all a peaceful Christmas and a prosperous and healthy New Year!!

Manesha Ruparel
President, 2022-23

Save The Date!
D&DLS Annual Quiz
9th Feb 2023

Home Office needs urgent overhaul, new statistics show

Immigration statistics for year ending September 2022* provide further evidence of poor and slow decision-making at the Home Office that may delay or deny justice for people claiming asylum in the UK, the Law Society of England and Wales said.


Richard Atkinson

"People fleeing persecution and war – from Ukraine, Afghanistan or Syria for instance – may try to seek sanctuary in the UK," said Law Society Deputy Vice President **Richard Atkinson**.

"Far too many people are waiting far too long for a decision on their request for sanctuary in the UK.

"A staggering 148,533 individuals were waiting for a decision from the Home Office on their claim for asylum in the year to September 2022 (up from 87,995 in Sept 2021) [i].

"We know from today's data that 77% [ii] of applicants were recognised as refugees at initial decision - a quarter of them were children (3,780 of 12,581 people) in the year to September 2022 [iii].

"In the year to September just 16,400 initial decisions were made by the Home Office [ii], barely denting the backlog.

"The number of people waiting longer than six months for a decision on their asylum claim has nearly doubled in that time, to 97,717 in September 2022 - up from 56,520 in September 2021[i]. Data is not available to show how much longer than six months people are being left in limbo.

"We can also see from the data there is still a problem with the quality of Home Office decision-making. 52% of decisions were overturned when appealed [iv].

"There is no doubt the Home Office is under pressure, and it must be properly resourced to ensure lawful, timely decision-making.
The number of people claiming asylum in the UK was approaching 86,000 in the year to Sept 2022 (15,269 of whom were children), up from around 45,000 in the year to September 2021 [v].

"The government should honour the UK's obligations to refugees, as enshrined in the United Nations Refugee Convention.

"The government points to resettlement routes as an alternative to arriving in the UK without prior permission but for most people who flee conflict or persecution there is no resettlement scheme available and so there is no safe and legal route for them to come to the UK.

"In the year to Sept 2022 just 1,391 [vi] people were resettled to the UK, a tiny fraction of the total number of people who sought sanctuary in the UK in that time.

"The UK should have a properly functioning immigration and asylum system which reflects the values of British justice – it should be fair, efficient and provide timely, lawful decisions."

* See the stats in full at: *https://www.gov.uk/government/statistical-data-sets/immigration-statistics-data-tables-year-ending-september-2022*

[i] Asylum applications awaiting a decision, Asy_D03: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118032/asylum-applications-awaiting-decision-datasets-sep-2022.xlsx

[ii] Asylum summary Sept 2022, Asy_02a https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118222/asylum-summary-sep-2022-tables.ods

[iii] As above, asylum summary, Asy_03b and Asy_03a

[iv] As above, asylum summary, Asy_05

[v] As above, asylum summary, Asy_01b
[vi] Asylum applications datasets, Asy_D03: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118033/asylum-applications-datasets-sep-2022.xlsx

The Law Society is keen to engage with members who wish to share their expertise with the Law Society to promote the rule of law and mitigate damage caused by current issues, one example being the Home Office and asylum seekers. The Law Society issues regular news releases which will be circulated to the membership going forward. Please contact me if you wish to be involved at *https://www.lawsociety.org.uk/about-us/our-governance/council-constituencies-and-current-members/shama-gupta*

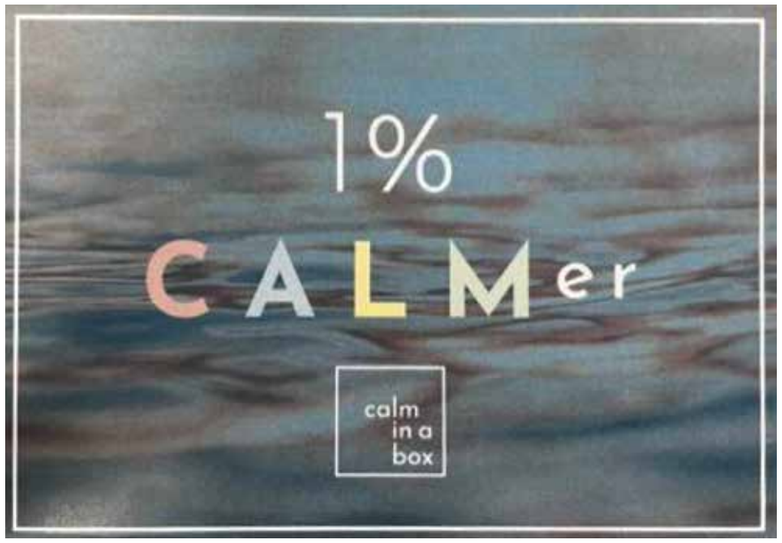
Shama Gupta
The Law Society

Shama's roots are in the East Midlands and after qualifying in 1988 with a general high street practice in London, Shama worked as a property solicitor with Herbert Smith (now Herbert Smith Freehills).

www.lawsociety.org.uk

The Law Society

CALM in a Box Event 28th September 2022



This September members of the DDLS joined a workshop from Calm In A Box to take some time out to reflect on how to reset and rebalance their energy for work/ life brilliance.

Hosted by Nelsons, the group spent 90 minutes with Sarah Markham, Founder of Calm In A Box, to explore the CALM philosophy to try and find 1% CALMer at work and at home. The CALM model sets out the four dimensions that are key for workplaces when it comes to creating cultures where people can really thrive.

Calm In A Box was founded in 2019 on a mission to disrupt workplace culture based on the core philosophy that to do well, you need to be well.

A culture change consultancy deploying their unique CALM model to guide leaders and teams in developing the culture, mindset and behaviour to thrive in a 21st century world of work, aligning with the business strategy to better meet the needs of customers and employees, both today and for the future.

With Derbyshire Constabulary as a founding client, Calm In A Box has gone on to work with a range of open minded and dynamic organisations, both large and small, in a range of sectors including Rolls Royce, NHS, University of Derby, Barclays Bank, Nuclear AMRC, Leukaemia UK, St Modwen and Simply Health.

This Autumn will see the launch of the CALM hub - a digital space for the latest ideas, inspiration and thought leadership on effective workplace culture, productivity and the link with health and wellbeing.

Home to the upcoming CALM experiments series, people will also get access to events and experiences which may be of interest in exploring for 1% CALMer at work and at home. If you and your team are interested in signing up as beta testers of phase one of CALM hub, please get in touch with Sarah - *sarah@calminabox.co.uk*

Timms Celebrates 130 Years Of Serving Local Communities

Timms Solicitors have celebrated their 130 year anniversary with a series of achievements.

Highlights during the milestone year have included regional and national awards for the firm, individuals and teams, the largest-ever care conference organised by the firm and an increased profile for Timms within the local business community.

Timms was launched in Swadlincote in 1892 and now has nearly 70 staff who work from prominent high street offices there as well as in Ashby, Burton and the Derby main office in the former St Michael's Church in Queen Street which the firm moved to in 2017 from its previous Derby base in Babington Lane.

Fiona Moffat has been managing partner of Timms since 2008 and still combines her leadership role with a busy Family Law case file.

She said: *"So much has happened in the past year alone – never mind the last 130 years.*
"Since the start of the pandemic, we have invested in technology and managed a more flexible approach to working in the office whilst improving efficiency.

"We have also embraced the opportunities to save time and increase efficiency by attending court hearings virtually and improving client communications by meeting up remotely rather than expecting everyone to come into the office.

"Even before the start of the pandemic, the wellbeing of our colleagues and clients has always been a priority for our team.

"As well as supporting employees with their professional and personal progression, we are committed to ensuring wellbeing both for individuals and the wider local communities that we serve.

"My fellow partners and I have been delighted to have the opportunity to celebrate this milestone with colleagues with a day at the races. It was a perfect opportunity to spend time together socially and celebrate and to thank everyone for their hard work and commitment."

130
YEARS OF
Timms
SOLICITORS
1892 | 2022

D&DLS Bake Off in Aid of Derbyshire Mind

Solicitors firms from Derby took part in a Bake Off to raise money for local mental health Derbyshire Mind.

The stunning cakes were sold within the firms and photos sent into the Judges who were amazed at the standard of the entries.

This chocolate creation from Davina Charlton (left) from Nelsons was the worthy winner of the DDLS Bake Off apron and afternoon tea voucher.

Anjuna Ali from Alexander & Co was second, followed by Kim Tate from Family Law Group

Well done to everyone who took part and thank you for supporting this event - £400 or so was raised towards the President's Charity.

Launch of Diversity, Equality and Inclusion Sub-Committee Event – 13th October 2022

DDLS were pleased to work with Alec Stephens and Jade Dickson from the University of Derby Law Society to present this event.

Thanks to Shas Ruparel who expertly chaired the event and presented the students questions to our varied panel of Hasnat Bashir, family Barrister from St Ives Chambers, Vee Monro, District Judge and Barrister, Theo Addae, criminal Solicitor from the Johnson partnership and Asheidu Joel, cultural intelligence trainer.

The students and members of DDLS who attended were interested to hear the various journeys of the individual panel members and were inspired by their success against some significant obstacles.

The theme for the day became *"you can only become what you can see"* and our panel members where keen to relay that perseverance is needed but will pay off.

Thank you to everyone who made this event possible and if anyone is interested in joining the DEI sub-committee or has ideas for an event please e-mail Julia at admin@derbylaw.net

Meanderings: An Elite Profession?

It has been said that the Solicitor's Profession in the 1960's lacked diversity --- poppycock. The profession admitted the grammar-school educated, and the public school educated; the sons of mine owners and the sons of miners; graduates and non-graduates. More women were being admitted, perhaps in part because, astutely, they had learned to play the system: applications for Articles were signed "Jonny" by Joanna, "Charlie" by Charlotte, "George" by Georgina and Sam by.... well you have the drift. By the time the applicant got in the waiting room for interview it was difficult for the Managing Clerk (more of this venerable being in a later post) to turn her away – particularly when it transpired that her father owned the firm's largest client company. There were occasional "problems". Recently some ethnic minority solicitors and counsel have rightly complained about being mistaken in court for clients or parties. This is by no means new. In the '60's it was far from unusual for female solicitors or Articled Clerks, accompanying clients to a "con" with counsel, to be assumed by counsel (or their clerk) to be the defendant's "moll"! Increasingly, also, there were solicitors from "foreign parts": though for Derby solicitors that usually meant lawyers from Chesterfield or Burton.

It has also been suggested that the Law, and legal education was "elitist" in the '60's --- never. It is true that "O" Level Latin was a minimum requirement for admission to the Law Faculty in even the most redbrick of redbrick Universities, and even in the North. But as a Law Tutor once said to me "it only requires half a brain and 4/6d to get "O" Level Latin" (4/6d being the price of "Civis Romanus" the standard Latin textbook at "O" Level.)

Why, this fixation with Latin? – Well "Res ipsa loquitur". Until the sweeping edict of abolition from above in 1999, in lawyer's offices and courts you could not escape "Latin tags" or maxims – they were like midges in Scotland. They were supposed to briefly encapsulate legal concepts which it was argued (by their biggest fans) would take reams of English. Some, like "subpoena" were widely understood outside the profession, but what of "tabula in naufragio" or "donatio mortis causa".

So prevalent was Latin that it gave rise to some leaden jokes
Judge to Counsel: "Mr. Jenkins has your client never heard of the principle; "omnia praesumuntur rite esse acta"? "

Counsel to Judge: "Your Honour, in the Valleys where my client comes from they speak of little else"

So Latin has gone (save perhaps for the expression "Decree Nisi) but young advocates quoting an authority in the Derby County Court should still be careful that they know their "ratio decidendi" from their "obiter dicta!

A University Law Course in the 1960's was not only distinguished by the almost universal presence of Latin, it was also "academic" in a way which would bemuse an undergraduate undertaking a Law Degree Course today. Some aspects remained etched on my memory in practice, and even now, but they were of little practical use in the Long Eaton Mags. As examples - In my first year the "English Legal System" element of the course required me to regurgitate, among other things, the jurisdictions of the "Liverpool Court of Passage", the Bristol Tolzey Court" and the courts of Piepowder (yes it was real once!). All were formally and finally abolished in 1971, five years after I graduated. The "Real Property" part of the course seemed to regard "conveyancing" as a "dumbing down" of the true, vast landscape of Land Law and that it was a dereliction of the responsibilities of the Faculty if they sent into the Solicitors office or Counsels chambers any graduate with an incomplete understanding of the difference between "Gavelkind" and "Borough English", or ignorant of the Rules in "Whitby v Mitchell" (1890), and "Shelleys Case" (1581), or the Statutes of Westmnister 1275 (as long ago as that – seems only yesterday!) not to mention that for a prescriptive right of way to exist it had to be exercised "nec vis, nec clam nec precario" (oh that d*mn Latin again.). Finally, what can I say of my undergraduate studies in "Jurisprudence", except that a submission to Mr Registrar (District Judge) Howarth in the Derby County Court on a wet and cold Friday afternoon in November, based on the Jurisprudential difference between "Norms" and "Grundnorms" never found a receptive audience.

Now if I had had the experience of being blooded in Advocacy in the "Triathlon" – what a difference, truly, that would have made!.

John Calladine

Admissibility or weight: what is the test for expert evidence?

The case: The plaintiffs, Mr & Mrs Duffy, claimed to have suffered severe personal injuries as a result of exposure to toxic chemicals present in their home during and after the installation of spray foam insulation. The case had been decided in favour of the plaintiffs and McGee appealed.

Expert evidence: One of the experts was Dr. Thompson, a toxicologist, who came into the case quite late in the day. At the appeal, Collins J added some observations of his own on the issues arising from *"the extraordinary evidence that was given at trial by Dr Thompson"*.

He began with an account of 'Expert Evidence in Civil Proceedings' observing that the domain of expert evidence had expanded inexorably and although it was often indispensable to the just resolution of civil proceedings (and criminal proceedings also) it was *"far from being an unalloyed blessing"*, adding significantly to the duration and cost of litigation which, as well as being undesirable in itself, could also give rise to concerns regarding equality of arms and access to the courts. He identified another issue of concern as the significant challenge presented by the assessment of the reliability of expert evidence, particularly in the area of complex expert evidence based on novel scientific theories or methodologies, where there was a real risk that the court may inadvertently admit and rely on unreliable evidence is a real one.

Collins J observed that different jurisdictions have taken differing approaches to the issue of reliability. In some jurisdictions reliability is assessed as a threshold admissibility issue. That appears to be the position in the United States (at least at federal level) and in Canada. He cited the influential US Supreme Court decision in *Daubert v Merrell Dow Pharmaceuticals* (1993) 509 US 579. However, according to McGrath, Evidence (3rd ed; 2020): the *"Irish courts have not propounded a test of admissibility which require expert evidence to achieve a specified threshold of reliability before it can be admitted."* Nevertheless, there have been instances in which courts have refused to admit novel scientific evidence because its reliability had not been sufficiently established. Thus, in *People (DPP) v Kelly* [2008] IECCA 7, [2008] 3 IR 697 the Irish Court of Criminal Appeal rejected evidence based on the CUSUM sequential analysis technique of an inculpatory statement made by the accused because the court was not satisfied that CUSUM had *"a properly established scientific provenance or that it has achieved the requisite degree of expert peer approval"*.

Even in the absence of a Daubert-style threshold reliability test, the reliability of expert evidence is obviously a crucially important matter. Collins J referred to how in *Kennedy v Cordia (Services) LLP* [2016] UKSC 6, [2016] 1 WLR 597, the UK Supreme Court identified four considerations governing the admissibility of *"skilled evidence"*, including *"whether there is a reliable body of knowledge or experience to underpin the expert's evidence"*.

Against this background, Collins J then set out the position in Ireland as regards the issue of reliability:

"There is no general requirement that expert evidence must meet any specific threshold of reliability as a condition of admissibility nor do the Irish courts have the "gatekeeping" function contemplated by Daubert. However, in any given case the admissibility of expert evidence may be challenged on the basis that it lacks a reliable scientific or methodological foundation. At what stage of the proceedings, and in what manner, such a challenge should be determined is a matter for case-by-case assessment. Finally, even where admissible, issues of reliability may properly affect the weight to be given to expert evidence."

He went on to refer to how the weight to be given to evidence, including expert evidence, is always a matter for the court. Ultimately it is always a matter for the court to resolve disputed issues of fact and, while that process may be assisted by expert evidence, the court must not surrender its judgment to experts, however well-qualified they may appear to be.

He then explained to properly perform its function, the court must be able to understand and engage with the evidence, which in turn requires that experts should sufficiently explain their opinions and the basis for them. Their entitlement to express such opinions *"is predicated upon also informing the court of the factors which make up their opinion and supplying to the court the elements of knowledge which their long study and experience has furnished to them whereby they have formed that opinion so that, in those circumstances, the court may be enabled to take a different view"* (*Flynn v Bus Eireann* [2012] IEHC 398). It follows that the expert witness must *"provide material on which a court can form its own conclusions on relevant issues"* (*Pora v The Queen* [2016] 1 Cr App R 3. Mere assertion or *"bare ipse dixit"* on the part of the expert witness is, accordingly, *"worthless"* (*Kennedy v Cordia (Services) LLP* [2016] UKSC 6, [2016] 1 WLR 597).

Collins then pointed out that the most significant concern about expert evidence relates to issues of objectivity, impartiality (lack of bias) and independence, noting that concerns of that kind prompted Cresswell J to formulate a detailed statement of the duties and responsibilities of expert witnesses in civil proceedings in *The Ikarian Reefer* [1993] 2 Lloyds Rep 68.

This led him to say that the legal practitioners acting for a party seeking to adduce expert evidence bear an important responsibility for ensuring that the evidence is relevant and likely to assist the court and that witness has the necessary expertise to give it. They must also ensure that such evidence is confined to issues properly within the scope of the expert's relevant expertise. They also have a duty to ensure – and this is critical – that the witness fully understands, and is in a position to comply with, the duties of an expert witness, as articulated in the jurisprudence and encapsulated in procedural rules such as, in Ireland, Order 39, Rule 57(1). If not, the witness should not be proffered.

Referring to the observation of Noonan J in the judgment in the instant case he said that unfortunately it is evident that many expert witnesses either fail to understand and/or fail to take seriously their duties as such. Far too frequently, expert witnesses appear to fundamentally misunderstand their role and wrongly regard themselves as advocates for the cause of the party by whom they have been retained. It may be said that this is an established part of litigation culture in this jurisdiction. If so, the culture is unacceptable and it needs to change. To that end, courts need to be forceful in policing the rules and in taking appropriate measures where those rules are not complied with.

Any significant departure from the essential requirements of objectivity, impartiality and independence must be taken very seriously. There was considerable debate in this case as to whether such matters went only to weight or whether a want of objectivity, impartiality or independence might reach the point where the evidence of an expert should be excluded altogether. Collins J had no hesitation in concluding – in agreement with Noonan J – that, as a matter of principle, (lack of) objectivity, impartiality and independence may (and in an appropriate case will) go to the admissibility of expert evidence, not merely to the weight to be given to such evidence.

Where it appears that an expert is unable and/or unwilling to comply with his or her duty to give objective, impartial and independent evidence – as was the position here with Dr Thompson – then in the view of Collins J their evidence should ordinarily be excluded as inadmissible. He took this formulation from the judgment of the Supreme Court of Canada in *WBLI v Abbott and Haliburton* 2015 SCC 23, [2015] 2 SCR 182 and after reviewing that judgment he added that where it is evident that an expert witness is either unwilling or unable to comply with their duties as expert, their evidence can - and ordinarily should - be excluded as inadmissible. He said that he was not referring to minor transgressions, which may properly be seen as going only to weight. Rather, he was speaking of significant departures from the fundamental requirements of objectivity, impartiality and independence. He then turned to Dr Thompson:

"While it may be that it will sometimes be difficult to draw the dividing line, no such difficulty arises here in my view. Regrettably, Dr Thompson demonstrated a total lack of understanding of, or respect for, the duties of an expert witness in this jurisdiction."

He then made some observations simply by way of emphasis of the many difficulties that had been identified by Noonan J in his judgment in the instant case:

Dr Thompson's written report, while not evidence in itself, contained numerous *"red-flags"* indicating the approach he was likely to take in his evidence. These red-flags included:

- Dr Thompson – who is a toxicologist, not a lawyer, expressing views about the doctrine of res ipsa loquitur;
- Dr Thompson purporting to make categorical statements about disputed issues of fact about which he had no independent knowledge;
- Dr Thompson accusing the plaintiffs of "misrepresentations" of the installation process;
- Dr Thompson purporting to identify *"contradictions"* in the plaintiffs' accounts;
- Dr Thompson – who, again, is a toxicologist, not a respiratory physician doctor - suggesting that the plaintiffs had not told their treating doctors, including Professor Burke, *"the full truth about their injuries or illnesses"*, suggesting that Professor Burke had been misled by the information provided to him into making *"false exposure assumptions"*, purporting to comment generally on the opinions expressed by Professor Burke in his reports and purporting to express a view (in trenchant terms) as to the cause of the plaintiffs' respiratory inflammation which contradicted the views of Professor Burke;
- Dr Thompson – who, again, is a toxicologist and not a psychiatrist – purporting to comment on the views expressed in the psychiatric reports which had been exchanged by the parties and
- Dr Thompson purporting to express his views on the contents of medical reports prepared by the plaintiffs' family doctor addressing local skin irritations which the plaintiffs had presented with and going to present an *"alternative exposure and causation assessment"*. More generally, the tone of absolute certainty that is evident throughout the report, and the aggressively dismissive attitude taken by Dr Thompson to any information that might suggest that the plaintiffs had indeed been negligently exposed as claimed, should perhaps have given rise to concern.

In light of the features briefly identified above, it is rather surprising that it was

considered appropriate to serve Dr Thompson's report in the form it was served. It is equally surprising that the report did not provoke any objection from the Plaintiffs to Dr Thompson being called.

When called, Dr Thompson seriously abused his position as expert witness to repeatedly accuse the plaintiffs of outright dishonesty and deception, in circumstances where – as already observed – he had no independent knowledge of the facts and no role whatever in resolving any conflicts of fact as between the parties (and where his allegations were, in any event, contradicted by the factual evidence). In my view, this aspect of Dr Thompson's evidence, even if it stood alone, was more than sufficient to disqualify him as an expert.

Of course, it did not stand alone. Numerous other factors are identified by Noonan J in his judgment and I agree entirely with his observation that any of those matters on its own would strongly suggest a lack of objectivity and impartiality on Dr Thompson's part but that, taken together, they can only be described as *"a wholesale abdication"* by him of his duties as an expert witness.

I agree in particular that Dr Thompson's reliance on the two Wood papers, which were industry-generated and which had not been peer-reviewed (and which, in any event, as Noonan J notes, were primarily concerned with ventilation, whereas Dr Thompson repeatedly asserted that the issue of ventilation was irrelevant) and his adamantine refusal to engage appropriately with any of the documentary material that was inconsistent with his thesis that it was scientifically impossible that the plaintiffs had been exposed to isocyanate on the basis (so he said) that there was no risk of exposure after a period as short as 30 minutes (material including the Icynene Inc safety data sheets, the EPA and other regulatory documents put to him in cross-examination, as well as the two documents cited in the bibliography to his report which were discussed at length in cross-examination) clearly indicated that Dr Thompson was acting as partisan advocate, clinging at all costs to an evidential thesis that, however implausible, would exonerate his client if only the court might be persuaded to accept it.

Similarly, Dr Thompson's insistence that any respiratory injury suffered by the plaintiffs was caused by exposure to fibreglass, in the teeth of the very clear evidence to the contrary given by Professor Burke significantly undermined his objectivity, impartiality and independence.

I also agree that issues arise as to the reliability of the Wood papers, given their provenance, the limited nature of the experimental data involved and the fact that they appear not to have been subject to either pre- or post- publication peer review. Peer review *"is an important but fallible filter, which tries to exclude from publication material that is trivial or uses flawed methods or draws conclusions unjustified by the tests used"* (Ogden, "Lawyers Beware! The Scientific Process, Peer Review and the Use of Papers in Evidence", (2011) 55 Ann Occup Hyg 689). In truth, however, much the larger problem here was Dr Thompson's misuse of the Wood papers, rather than the actual content of those papers.

Collins J concluded that in these circumstances, the Judge was perfectly entitled to make the findings that he did about Dr Thompson's evidence. The manner in which Dr Thompson had given his evidence clearly demonstrated that he was unable or unwilling to comply with his duties as an expert witness. Accordingly, he was not qualified to give expert opinion evidence and the evidence that he did give had to be disregarded in its entirety as inadmissible. The fundamental frailties of that evidence went far beyond anything that could properly be addressed merely by discounting the weight to be attached to it. The Judge would have been seriously in error had he adopted such an approach.

Finally, Collins J said that this was:

"a disturbing case and it is certainly to be hoped that its like will not be seen again. As I have said, there needs to be a significant change of culture in this area. As well as the duties of expert witnesses themselves, I emphasise again the responsibilities of legal practitioners. The adverse consequences of calling an expert witness who is unable or unwilling to comply with their duties as such may not necessarily be limited to the exclusion of their evidence, serious as that may be for the party concerned. It may also have adverse consequences in costs."

Commentary:

As in Ireland, courts in the other jurisdictions in the British Isles do not mandate a Daubert-style threshold reliability test as applied in the US. As Hodgkinson and James (Expert Evidence: Law and Practice. (4th edn.) Sweet & Maxwell, 2015; p.31) comment, *'the most effective way of assessing expertise is, rather than conducting a difficult exercise based almost entirely upon the limited evidence as to qualification, experience and skill at the admissibility stage, to hear the witness's substantive evidence and use this as the basis upon which to judge not only the quality of his evidence, but his competence to give it.'* However, in an exceptional case, as here, where the expert singularly and spectacularly fails in their duties to the court, expert evidence may be deemed inadmissible and never get to the stage of being tested for weight.

Learning points:

- Ensure that your evidence is not open to challenge on the basis that it lacks a reliable scientific or methodological foundation
- Be able sufficiently to explain your opinions and the basis for them informing the court of the factors which make up your opinion and supplying to the court the elements of knowledge which your long study and experience has furnished you
- Leave debate about legal doctrines to the lawyers
- Do not give evidence outside your field of expertise
- Do not make categorical statements about disputed issues of fact about which you have no independent knowledge
- Be careful about identifying *"contradictions"* in witnesses' or litigants accounts unless they would only be identifiable with expert knowledge
- An aggressively dismissive attitude towards the pleaded case may reduce the weight that is attached to your evidence
- Avoid accusing litigants of outright dishonesty and deception in circumstances where you have no independent knowledge of the facts and no role whatever in resolving any conflicts of fact as between the parties
- Beware reliance on publications which are industry-generated and which have not been peer-reviewed

Relationships remain key in the age of technology

Winning friends and influencing people is all about understanding their situation and being empathetic to their challenges while excelling at service delivery

Personal relationships are still the heartbeat of business success, despite the increasing use of technology. Personal relationships convey how we value one another. Personal relationships enable us to have empathy with one another's situations.

In his seminal book, *"How to win friends and influence people,"* **Dale Carnegie** wrote

"If there is any one secret of success, it lies in the ability to get the other person's point of view and see things from that person's angle as well as from your own."

Business relationships then are as much about understanding the challenges we all face in our daily encounters.

The search industry has seen significant changes in recent years. Massive consolidation has seen so many of the traditional search companies swallowed up into larger corporates. We have to find ways of differentiating our service offerings, building that trust in client relationships, and delivering services which conveyancers feel add value to their business.

Don't get me wrong, consolidation has brought with it huge advances in technology and customer experience. Gone are the days of endlessly calling suppliers to order reports, collating them manually, printing off reams of paper and hand delivering the search to the office.... and good riddance too! With the exception of local authority searches, most of the reports are now available same day, with many returned in minutes.

The delivery platforms are slicker, smarter, more intuitive and spot potential risks that might need to be accounted for, and errors in search requests. But some of this technological advancement has come at the expense of good, old-fashioned customer service. The personal touch.

Do we rely on technology too much? Are chat bots, apps and portals what our clients really want and need? What happens when things go wrong? People need reassurance, they need to be able to pick up the phone, or send an email, and feel as though somebody is taking a personal interest in resolving their issue rather than "chat" to a faceless bot or send messages via portals.

I recently won back a client from a rival supplier. When I asked what it was that brought them back to us they said that they felt as though they were a number, rather than a client. It was the personal touch that was missing from their communications; they didn't feel as though they ever spoke to the same person twice. There wasn't a familiar voice at the end of phone when things went wrong (as things inevitably do in conveyancing!).

In our experience 90% of orders go through with little to no intervention required. But that 10% is where relationships are made and broken. This is where knowledge, experience, and expertise really make a difference. Recognising that the conveyancer is almost certainly under pressure, whether it be from the client, agent or the other side, and being able to take that weight off and deal with the issue through to completion is a critical part of the business relationship.

Whether it's a query on a report back which requires clarification, or chasing up an expedited service. It's about trusting that the job is going to get done right, first time.

GEODESYS
Conveyancing covered

How will the cost-of-living impact gifts in Wills?

REMEMBER A CHARITY IN YOUR WILL
Help the work live on...

Today, almost six in ten (59%)1 people in the UK feel their finances are worsening, one in four households are struggling to pay the bills2 and, inevitably, this means that many people are having to hold off from donating to good causes3.

The irony of this is of course that, as people struggle to heat their homes, pay the rent and put food on the table, demand for charitable services becomes all the more urgent. We're now at the point where 9 out of 10 food banks fear they won't be able to meet the public's needs4 and reduced funding means services may well face cuts or even closures, whether that means fewer people to field calls to mental health support lines, cutbacks on sports facilities or community outreach services and all manner of charitable services.

In this environment, income from charitable legacies is vital, strengthening charities' resilience for the years to come. Gifts in Wills now raise £3.5 billion for good causes annually and, for many, that income has become the defining factor as to whether organisations can keep their doors open, whether they can pivot to deliver services in new ways and – in some cases – even to enhance their support for those in need.

What's more, in a challenging economic world, gifts in Wills – which won't leave a donor's bank account until after the donor has passed on – can be not only a deeply symbolic and meaningful decision, but an attractive and practical offering. And this is where legal professionals are playing an increasingly important role.

Role of solicitors and Will writers

Our tracking study indicates that one in five Wills handled by UK legal advisers (22%) now include a donation to charity.5 The public is twice as likely to make a gift when a professional adviser references the charitable option. And solicitors and Will-writers alike are seeing growing demand for end-of-life planning that reflects people's deep connections with good causes.

While charitable Wills were once perceived to be the domain of those who are child-free, there is far greater awareness now that people of all backgrounds – those with family and without – often feel a strong desire to leave the world a better place. Gifts in Wills can be a fantastic way of shaping the world they leave behind for future generations. And when it comes with such a generous tax benefit, this is a welcome bonus.

Again, donors often hear about the potential tax break on legacy gifts from legal advisers explaining that such donations are exempt from Inheritance Tax, and that, if they choose to give 10% or more, the remaining IHT bill is reduced further still - charged at 36% rather than 40%. Supporters are unlikely to make fiscal savings that exceed the cost of their donation, but for those who wish to support good causes, that reduction can be a strong incentive.

Although there are multiple avenues for will-writing, the impartiality and ability of solicitors to offer experienced and tailored advice to clients is all the more valued when it comes to making informed decisions about people's inheritance and how good causes can benefit.

Free campaign supporter scheme for legal advisers

Through our Campaign Supporter scheme, which includes some 800 Will writers and solicitors who commit to making relevant clients aware of the option of leaving a charitable gift in their Will, we see growing demand for legacy giving. And the impact of that shift is considerable. If each of those advisers were to have even just one conversation next year leading to a gift in a Will, this would likely raise around £4 million for good causes. And when those conversations are happening daily, imagine what a difference this could make.

Remember A Charity runs a free Campaign Supporter scheme for solicitors and Will-writers, providing promotional resources and guidance for referencing legacy giving with clients.

Find out more at www.rememberacharity.org.uk/solicitor

Two-thirds of UK adults have not named a guardian for their children

Almost two-thirds of UK parents have not named guardians for their children in the event of their death, statistics have revealed.

New research by charity will-writing campaign Will Aid found 65% of parents have not named a guardian for their children aged under 18, creating uncertainty over who would look after them if they died.

Legal guardians should be appointed in a person's will – and in cases where one is not chosen, courts often appoint a guardian on behalf of the deceased. This could see someone's preferred choice not be appointed.

Peter de Vena Franks, Will Aid campaign director, said: *"Thinking about death is never a nice experience, but it is so important when considering who will look after your children should the unfortunate happen.*

"Courts work hard to do what is best for your children under such difficult circumstances, but they could have a different view of what is best than you.

"Therefore, the best way to ensure your children are looked after in the way you would like is to name a guardian in your will."

Kevin Logan, legacy and tribute fundraiser at partner charity the NSPCC, said: *"It is so important to name a guardian for your children in your will as it ensures your children are looked after by those you trust the most.*

"When doing so, it is important to consider who is best-suited to provide your children with the best possible care and how they will give the love, nurture and support every child deserves.

"You can also become a guardian for the next generation by leaving a gift in your will, helping charities like us and the other eight partner charities to continue our vital services."

The survey also found more than half of UK adults (54%) have not made a will.

Will Aid runs every November and sees participating solicitors waive their fees for writing basic wills in return for an upfront donation to Will Aid.

The suggested donation for a single will is £100, or £180 for a pair of mirror wills.

Donations are then shared between the nine partner charities, many of which are responding to the cost of living crisis and war in Ukraine.

The campaign has raised more than £22million for charity since its inception in 1988.

Peter added: *"This is a very stressful time for households across the UK, but thankfully participating Will Aid solicitors are here to take away the stress of will-writing throughout November.*

"This is the perfect time to get your affairs in order and support some fantastic charities. To anyone who is yet to make a will – all I have to say is 'why not now?'"

For more information and to find a Will Aid solicitor, visit www.willaid.org.uk.

The Respite Association

Caring for Carers

The Respite Association was born on May 16th 2001. A group of people, all with first-hand experience of the stress put on carers, had come to realise that there was very little support available for those caring for loved ones. That small but committed group of people decided that the best way forward was to create an organisation whose sole aim was to care for the carers by providing respite.

When you are caring for someone the task can be overwhelming. You can be 'on duty' for 24 hours a day, seven days a week, with no breaks or holidays. This is too much to ask of anyone.

So what do we actually do?

We are a small charity that makes a big impact. We provide short term assistance by funding appropriately qualified respite care for people with disabilities, long-term physical or mental health conditions, and those who are terminally ill in order that their regular unpaid carer can be allowed to take a much needed break.

Breaks can take the form of anything from enabling attendance at an evening class to a weekend break or longer. We also provide free week long seaside holidays to enable carers to recharge their batteries. In 2021 we purchased our first bricks and mortar respite facility – a purpose built holiday bungalow in Cornwall. We also have a caravan in North Wales.

Who will we help?

Many of the people who are at home caring for loved ones are forced to live on very limited incomes. It is these people that we are working to help.

What does it cost?

Whilst providing suitably qualified carers in the home or funding a temporary place in a residential care centre can be expensive, the benefits to the carer are beyond measure. The cost and level of support varies dramatically from a few pounds to several hundred. Our average grant is around £450.

"Of all the unsung heroes in the world, carers come top of my list. It is humbling to read of the love, time and dedication that carers give so constantly to others: their voices are seldom heard, as they so seldom complain. When they DO call for help we must react at once, with support and understanding and gratitude.

And lovely money: what seems like peanuts to larger organisations would be a godsend to the Respite Association, as it means that we can help ease the burden (which would be intolerable in our own lives) and bring some comfort, escape and freedom to those who give their all to others every day and night, week after month after year.

These are my heroes: these are the stars I admire and applaud. Knowing that every gift to Respite will bring happiness touches me hugely."

Patron

The Respite Association, Highfield Barn, Lewdown, Okehampton, Devon EX20 4DS
01566 783383 help@respiteassociation.org
www.respiteassociation.org

The Respite Association is a Registered Charity No: 1193232 (Formerly 1086598 from 2001 to 2021)

Registered with FUNDRAISING REGULATOR

Home Office needs urgent overhaul, new statistics show

The Law Society

Immigration statistics for year ending September 2022* provide further evidence of poor and slow decision-making at the Home Office that may delay or deny justice for people claiming asylum in the UK, the Law Society of England and Wales said.

"People fleeing persecution and war – from Ukraine, Afghanistan or Syria for instance – may try to seek sanctuary in the UK," said Law Society Deputy Vice President **Richard Atkinson**.

"Far too many people are waiting far too long for a decision on their request for sanctuary in the UK.

"A staggering 148,533 individuals were waiting for a decision from the Home Office on their claim for asylum in the year to September 2022 (up from 87,995 in Sept 2021) [i].

"We know from today's data that 77% [ii] of applicants were recognised as refugees at initial decision - a quarter of them were children (3,780 of 12,581 people) in the year to September 2022 [iii].

"In the year to September just 16,400 initial decisions were made by the Home Office [ii], barely denting the backlog.

"The number of people waiting longer than six months for a decision on their asylum claim has nearly doubled in that time, to 97,717 in September 2022 - up from 56,520 in September 2021[i]. Data is not available to show how much longer than six months people are being left in limbo.

"We can also see from the data there is still a problem with the quality of Home Office decision-making. 52% of decisions were overturned when appealed [iv].

"There is no doubt the Home Office is under pressure, and it must be properly resourced to ensure lawful, timely decision-making.

The number of people claiming asylum in the UK was approaching 86,000 in the year to Sept 2022 (15,269 of whom were children), up from around 45,000 in the year to September 2021 [v].

"The government should honour the UK's obligations to refugees, as enshrined in the United Nations Refugee Convention.

"The government points to resettlement routes as an alternative to arriving in the UK without prior permission but for most people who flee conflict or persecution there is no resettlement scheme available and so there is no safe and legal route for them to come to the UK.

"In the year to Sept 2022 just 1,391 [vi] people were resettled to the UK, a tiny fraction of the total number of people who sought sanctuary in the UK in that time.

"The UK should have a properly functioning immigration and asylum system which reflects the values of British justice – it should be fair, efficient and provide timely, lawful decisions."

* See the stats in full at: *https://www.gov.uk/government/statistical-data-sets/immigration-statistics-data-tables-year-ending-september-2022*

[i] Asylum applications awaiting a decision, Asy_D03: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118032/asylum-applications-awaiting-decision-datasets-sep-2022.xlsx

[ii] Asylum summary Sept 2022, Asy_02a https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118222/asylum-summary-sep-2022-tables.ods

[iii] As above, asylum summary, Asy_03b and Asy_03a

[iv] As above, asylum summary, Asy_05

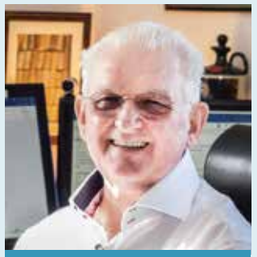
[v] As above, asylum summary, Asy_01b

[vi] Asylum applications datasets, Asy_D03: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118033/asylum-applications-datasets-sep-2022.xlsx

The Law Society is keen to engage with members who wish to share their expertise with the Law Society to promote the rule of law and mitigate damage caused by current issues, one example being the Home Office and asylum seekers. The Law Society issues regular news releases which will be circulated to the membership going forward. **Please contact me if you wish to be involved at https://www.lawsociety.org.uk/about-us/our-governance/council-constituencies-and-current-members/shama-gupta**

Shama Gupta
Council member for Derbyshire, East Staffordshire and Nottinghamshire

When experts pay for their failings


Chris Makin

You may have read lots of articles and blogs from me about inadequate or incompetent experts, and having an expert who doesn't know his job doesn't help your case. There are often costs consequences, a strident example being *Patricia Andrews & Ors -v- Kronospan Ltd* [2022] EWHC 479 which I discuss at length in my blog at *https://chrismakin.co.uk/expert-meeting-leave-well-alone/.* There, you may remember, an expert had charged £225,000 (an enormous sum, far higher than I have ever charged!) but was over two years late in delivering a Joint Statement of Experts. Then, when enquiries were made, it was revealed that the expert had been in very frequent contact with instructing solicitor, who had played an active part in compiling the joint statement.

The outcome was that the judge decided the expert had no regard for their independent duty to the court. The instructing solicitor was permitted to appoint another expert to start the task again, £225,000 was wasted and there was probably an order for costs lodged by the other side.

But what we don't know in this and similar cases is who paid for the damage caused by the incompetent expert; we don't even know if the experts were paid for their misguided efforts.

Now it's different, because now we do have a case where the expert was himself ordered to pay wasted costs.

1. Third party costs order

The case is against Dr Chris Mercier following *Martine Robinson -v- Liverpool University Hospital NHS Trust* in Liverpool County Court at reference F95Y511.

Dr Mercier was an expert witness in a dental negligence case. An indication of his performance may be gleaned from the very first paragraph, Background, of the judgment in the costs order:

"This was a claim for dental negligence brought by Mrs Robinson, against the Defendant hospital trust, for treatment she received at Aintree Hospital. At the conclusion of her evidence, Mr Gray on behalf of the Claimant withdrew her claim. [Mr Maddison for Defendant asked that a third party costs order be sought against Dr Mercier in view of the evidence he had given. I granted that application.] Unfortunately, Dr Mercier had blanked his screen at this stage in the proceedings having left to pick his son up from school. It is not clear how much he heard. In the same vein, his screen was blanked throughout much of the first day of the proceedings. His second witness statement suggests that he was similarly not present for some of the hearing prior to giving evidence."

Pausing there, it is not wise for anyone to ignore a judge when he has the power to make an order against one, and an expert can arguably not do their job effectively if they have not heard the preceding evidence. A judge rightly gets upset when a witness walks out of the courtroom at key stages, but it is just as offensive when a witness turns off Zoom during a remote hearing.

In the main trial, the matter in issue was confusion over the extraction of a molar. Mrs Robinson was a nervous patient, and had to have a molar extracted under general anaesthetic. References were made to UL7 and UL8. On the day of the operation, the oral surgeon had before him an early referral but not the record of a later referral, and it was admitted that this was a breach of duty. The surgeon did not extract UL7, believing it could be restored.

"Dr Mercier for the Claimant argued that no reasonable dental surgeon could have concluded that the UL7 was restorable as at that date...Mr Webster for the Defendant disagreed as to restorability...and it would have been negligent to remove it."

So this was a clear conflict of expert evidence, as to whether the Defendant should have extracted UL7 as the Claimant contended. As the judge said, "...the Claimant's case in respect of breach of duty and causation rested solely on the expert evidence of Dr Mercier."

The Defendant averred that Dr Mercier should not have been giving expert evidence at all, that he had an ongoing duty to assess whether he was an appropriate expert, and that he failed in that duty.

2. The law

In his review of the law, the judge made reference to *Philips -v- Symes (No 2)* [2004] EWHC 2330 (Ch) where Peter Smith J found that the court should not remove from itself the power to make a costs order against

an expert who, by his own evidence, *"...causes significant expense to be incurred, and does so* ***in flagrant reckless disregard of his duties to the court.****"* (My emphasis)

There was a reminder that the court, when making such an order, should report the matter to the expert's professional body; so this is another danger facing the incompetent expert, which could have serious adverse effects on their practice, and not just as experts.

3. Dr Mercier's oral evidence

The arguments focused on the limited experience of Dr Mercier, a general dental practitioner, compared with the defence expert Mr Keith Webster, an oral and maxillofacial surgeon. Dr Mercier's failings are illustrated in this exchange:

Q Can you speak to the standards attributable to an oral/maxillofacial surgeon?
A I believe so.
Q You have never actually occupied that position having never actually been an oral and maxillofacial surgeon, have you, no?
A No, that's correct.
Q Since 2000 you have never had a patient on a table under general anaesthetic?
A Correct.
Q Would you say you are as well placed as Mr Webster to speak to the standards to be applied to the evidence of an oral and maxillofacial surgeon?
A No, Mr Webster is an oral and maxillofacial surgeon so he is going to have more experience in a hospital setting that I have.
Q My question was are you as well placed. Would you accept you are not as well placed to speak to-
A Yes.

It is clear that Dr Mercier accepted he was outclassed when he didn't even wait to hear the whole of the last question. He clearly was the wrong expert.

There was then discussion of the *Bolam* test, yet *"That is the test that Dr Mercier is purporting to apply when he gives evidence before the court in relation to a claim of dental negligence. It is right that at no point in any of his written or oral evidence did he himself refer to that test."*

You will recall that the *Bolam* test asks the expert to say what, in his opinion, the reasonably competent professional would have done in the circumstances. By failing to make reference to *Bolam*, one must question whether Dr Mercier knew what was the fundamental test he was expected to apply to the evidence.

4. The judge's view of the expert

There are disparaging remarks by the judge, such as:
"The report itself reaches wholly unsustainable conclusions."

"...what he does not do is address his mind in any way to the standards to be applied to an oral and maxillofacial surgeon."

"Dr Mercier's witness statement it seems to me entirely misses the point."

"His opinion fluctuates to whatever he feels will win the case."

"Dr Mercier's evidence is simply absurd and his inability to recognise that is extremely concerning."

There is more, but you get the picture. It's all damning stuff.

5. The outcome

It was clear which way the judge was thinking. Two sentences say it all:
"The application before me is predicated on the specific assertion that it should have been obvious to Dr Mercier at the outset, and at various stages throughout the proceedings, that he was not the appropriate expert to opine on the management and treatment afforded to the claimant on 8 November 2016." and

"I conclude that Dr Mercier has shown a flagrant reckless disregard for his duties to the court and that he did so from the outset in preparing a report on subject matter in which he has no expertise."

And therefore: *"All costs claimed within the Defendant's cost budget are therefore caused by Dr Mercier's flagrant disregard for his duty to the court..."* and the judge found that those costs, £50,543.85, must be paid by Dr Mercier.

6. The moral

It is very simple; as so often, the answer is in CPR. At part 35.3(1), I emphasise the three key words: *"It is the duty of experts to help the court on matters* ***within their expertise****."*

It should have been apparent to this witness, and of course to the lawyers who instructed him, that oral and maxillofacial surgery is not **within the expertise** of a general dental practitioner. Any expert, when offered an assignment, must think carefully whether they have appropriate expertise. The consequences of biting off more than one can chew can be grave.

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Chris is a fellow of the Institute of Chartered Accountants where he has served on the Forensic Committee, and as an ethical counsellor; he is a fellow of the Chartered Management Institute, a fellow of the Academy of Experts where he serves on the Investigations Committee, and a mediator accredited by the Chartered Arbitrators.

He practises as a mediator, from his home in West Yorkshire and his rooms at 3 Gray's Inn Square, London WC1R 5AH, telephone **020 7430 0333**. He has mediated 100+ cases so far, on a huge range of subjects, with a settlement rate to date of 80%. For more see his website with videos:

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Ensure your expert has the necessary expertise for the case

The recent judgement by Mr Justice Turner in Eaton v Auto-Cycle Union Ltd & Ors [2022] EWHC 2642 (KB) is a stark reminder to Instructing Parties of why you should always ensure the Expert Witness you appoint has the correct expertise for the case.

In this case, the claimant asserted that straw bales which had been used as a race track barrier should not have been removed and replaced with tyre barriers.

The judgment reads:

26. Mr Parrish gave evidence on behalf of the claimant. He described himself as a "rider, driver, team manager, owner and commentator in many fields of motor sport".

27. Mr Jowitt gave evidence on behalf of the defendant. He is a qualified engineer with experience in accident reconstruction and the examination of safety fence systems following collisions.

28. Unhappily, Mr Parrish cut a rather sorry figure in the witness box. Quite simply, he lacked the necessary expertise to substantiate and justify his conclusions. It thus came as no surprise to me that the claimant's written closing submissions placed no specific reliance upon any part of his evidence.

29. At the centre of the claimant's case, as originally framed, was the assertion that the straw bales should never have been removed because they were safer than tyre barriers. However, I am sorry to say that, Mr Parrish's evidence to this effect was entirely devoid of scientific foundation or logical analysis.

30. Mr Jowitt, in contrast, performed laboratory tests which demonstrated that straw bales are significantly stiffer than a tyre wall. Accordingly, in this regard, the deployment of straw bales would have made the barrier generally less rather than more safe. Mr Parrish was simply unable to counter these findings having carried out no tests of his own.

In short, make sure your Expert Witness has the right expertise for the case and also make sure they have had training in being an Expert Witness so they truly understand their duty to the Court.

Using technology to optimise communication in Private Client law practice

Craig Matthews, Director of Lifetime Planning at LEAP Legal Software, explores how firms can utilise technology to instil effective communication methods within Private Client law practice.

In a fast-evolving world where advances in technology, world events and developing societal perceptions are all contributing to change, thriving private client law practitioners are realising the importance of using technology to update and optimise client communication methods.

Private client work poses the second highest risk of all legal services, as far as professional indemnity is concerned. Completing this work properly, conscientiously, and comprehensively, using effective, best practice communication methods, is vital. Practitioners are constantly looking at how best to communicate with clients directly and advise clients in terms of communicating with their families.

The risks are so great and the work so important that time is needed for private practice lawyers to consider each client estate and prioritise services to fulfil client's needs properly. The personal service provided is key and the documents produced are some of the most important documents your clients will ever own. It is their legacy, set out in words, printed, and signed under witness. The legislation around the advice given and the data captured is considerable.

Software can help with defining and communicating the best product offering and, at the same time, add efficiencies to processes to ensure this work remains profitable and is not a "loss leader". It is important to mention that a technology optimised client communication strategy should always be focused on enhancing the value of the service provided. It should not be focused on keeping costs low to win business and then upsell additional services. The Law Society Wills and Inheritance Scheme specifically prohibits this practice. It does not need to replace traditional methods entirely but should optimise your ability to communicate with your clients in the most appropriate way for them.

Embracing the right technology can enhance communication and transform the productivity and efficiency of a department without detracting from the critical work performed by the solicitor. Clients of private practice lawyers require high levels of service and the guarantees associated with a reputable law firm.

One of the gaps that technology can fill is to assist with communication, both with testators drafting the documents and with the executors or beneficiaries dealing in the administration of an estate. A paper-based approach can be backed by a digital approach and vice versa, providing the client with the ability to choose which works best for them.

Providing client access to a client portal with the ability to review draft documents, to annotate, to ask questions and to send messages is no different to the service that clients undergoing a conveyancing transaction have come to expect. The client portal becomes a method for ongoing communication where clients can access their documents and review their wills at any time. A personal asset register provided when, for example, a will is drafted and updated from time to time can simplify estate discovery and help build client relationships.

An assumption that clients don't want a digital first or digitally backed service should be re-evaluated. Increased adoption of technology amongst Gen X, those born between 1965 and 1980, continues to rise. Certainly, the following generations, millennials or Gen Y born between 1981 and 2000, will all expect to use technology to facilitate communication and data exchange. Their communication with their solicitors will not be an exception.

Private Client services is an often overlooked and undervalued area of practice and now is a good time to facilitate law firm growth, with communication playing a critical role.

Implementing advanced technology will ensure firms maintain a flexible approach to embracing both traditional and digital methods of communication, and therefore position themselves to meet the needs of individual clients and estates for years to come.

For more information, please visit www.leap.co.uk.

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