

Caring for the expert

Elizabeth Waterman looks at the issues faced by experts who provide care and equipment reports

The relationship between an expert and their instructing solicitor is one that should be as smooth as possible, although a number of factors can make this difficult.

Tight deadlines are a source of stress for both experts and their instructing solicitors – often, when deadlines have been agreed with an expert, the deadline is brought forward. Also, although court timetables are produced well in advance, the expert is sometimes the last to know the dates they contain.

Ideally, experts should be given all available deadline dates and should receive clear instructions early enough to allow for them to do all the elements of the job requested of them.

This is especially important as experts, by the nature of their job (to retain expertise in their specialism), are not always available at the drop of a hat.

Industry support

Unmanageable deadlines also have the knock-on effect of reducing the pool of experts available. The medico-legal world has been portrayed in a rather negative manner in the media over recent months, and experts need to encourage and support their colleagues as they take their first steps into the world of the expert witness. Instructions need to be issued as early as possible to allow time for people to hone their skills.

Despite tight supervision and training systems, new recruits are often held back until cases are found that allow sufficient lead-time for them to prepare their first reports, while receiving in-depth feedback and support.

The skills needed to be a competent care expert are increasingly complex. As a result, inexperienced experts are being given instructions on complex cases and, therefore, they do not

have the opportunity to hone their skills on relatively simple cases.

The risk of trying out new experts is higher for the claimant and their solicitor because the “rookie” expert’s first case would challenge even an experienced expert. As well as having an in-depth knowledge of their specialist area of expertise and a broad understanding of a wide range of disabilities, experts need to have a greater knowledge of the system than pre-Woolf. They need to know, for example, the extra tasks involved in being a jointly appointed expert or the consequences of being intimidated by the opposition during an expert’s meeting.

Statutory Provision

Case law now adds to the complexities of the expert’s job. For example, since the *Sowden v Lodge* judgement experts are increasingly being asked to establish what provision for care might be made available to individuals by the statutory services. We are then asked to provide an opinion as to whether that care fully meets the claimant’s need and whether long-term provision can be relied on. Experts, therefore, now need to have a good understanding of statutory provision and the rules that govern claimant’s ability to access services. These services may or may not be free at the point of access and there are constant changes in statutory provision that need to be interpreted at the local, regional and national level. It is more important than ever for experts to retain hands-on work so that they are able to assist with both clinical and complex service provision issues, but this often comes at the expense of not being able to meet tight deadlines.

Helping the Experts

The expert’s duty is to the court, but they rely on the instructing party to provide detailed instructions as to what their report should contain. For the standard of all care reports to

improve industry-wide, the quality and detail of letters of instruction need to improve. Experts need to be told at the outset what topics the solicitor wants to be addressed so that the expert can be sure they have the right qualifications and experience for the job (it should go without saying that they turn down the work if they do not).

In return, perhaps all experts could respond to letters of instruction quickly to allow solicitors to approach another expert and/or provide the earliest date they can complete the work.

However, if the solicitor wants the expert to base recommendations on “putting the individual back into the situation that he would have been in had he not suffered the wrong” they should say this.

Attention to these key points should result, in the longer term, in experts’ improved ability to meet shorter deadlines, some experts changing the yardstick they work to, and the availability of more experienced experts increasing.

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