

Experts' meetings – helpful process or waste of time and money?

How solicitors and courts can help the process

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⇒ AS A CARE AND OCCUPATIONAL therapy expert I have had many experts' meetings, pursuant to CPR 35.12, over the past 15 years. We have nearly 200 associates from health profession backgrounds, and experts' meetings are not an infrequent activity. Our experience is that most have worked really well and the outcome has been an agreed joint statement, produced in a reasonable period of time, documenting clear information that is helpful to both parties, in terms of resolving the claim, and to the court in terms of understanding the issues between the experts.

Some meetings have been painful and totally unhelpful to anyone! There is the expert who simply states at the outset they will not be changing their opinion regardless, thus failing to operate within the spirit (and probably the letter) of the CPR. Others refuse to engage in a 'discussion', ie talking, and only want to write comments into a written statement.

In my view, the success or otherwise has much to do with the experts themselves, their understanding of the process and willingness to engage in it – the latter even calling into question their understanding of their role as an expert witness and true remit under the CPR.

At the end of a joint statement we have always reaffirmed our duty to the court and following the publication, in December 2014, of the new *Guidance for the Instruction of Experts in Civil Claims*, experts must additionally confirm that they 'have neither jointly nor individually been instructed to, nor has it been suggested that they should, avoid or otherwise defer from reaching agreement on any matter within their competence.' Yet we have counterparts who state they have been instructed only to address scenarios opined by the medical experts instructed by their own party.

The 'success' of an experts' meeting or agreed joint statement does not equate to 'agreement', but rather to a true understanding of the issues between the experts, commitment to engaging in a discussion, involving listening to alternative views, and ability to document any movement from a previously articulated view, the reason(s) for such change and confirmation of what is agreed and not agreed.

So as expert witnesses what can we do to improve our performance in regard to experts' meetings? Timely preparation would appear to be the key – something that some busy experts seem to struggle with.

Can solicitors and courts assist?

Firstly, I do believe that time tabling could be better managed. What is the point of experts having joint discussions without the necessary evidence? We are busy people and to ask us to proceed on this basis probably means discussions will be longer, more costly and less effective; it probably means there will be more confusion as we attempt to define scenarios to be addressed; it possibly means that we will have to hold further discussions once the relevant evidence comes to light, and / or the parties proceed to hold settlement meetings with confused information.

In my own field of care and occupational therapy, it would be so much more sensible if the medical joint statements were available prior to our discussion, but all too often the court order directs filing of all the joint statements on the same day. Indeed, in certain cases, it would be most helpful to have other quantum statements, such as

physiotherapy, in advance of a discussion on care.

Secondly, I ask the question, is it appropriate to have two experts who have reported on the same topic, hold a discussion to 'narrow the issues' when they have not seen the same evidence? I think not! Surely all they are going to do is to 'disagree' on the basis that their views are formulated as a result of reviewing different evidence, essentially re-hash their own testimony to date and not move the case forward at all.

Thirdly, and in connection to the above point on evidence, with regard to quantum experts who have undertaken an assessment or examination of the claimant in order to formulate their costed recommendations, is it sensible to have a discussion to 'narrow the issues' when the two experts' assessments were undertaken at significantly different times with the claimant presenting completely differently at each? Undoubtedly the expert who assessed first is at a significant disadvantage and will have great difficulty persuading anyone, not least the opposing party and the court, of the provenance of their opinion.

In summary, I suggest the following

For experts

- Respect the process and your counterpart by preparing well
- Experts should determine the issues between them for discussion
- Experts could be proactive – with court orders being more available to them and adhered to, experts themselves can suggest re-examination of a claimant and provision of evidence seen by the counterpart
- Try to avoid repetition, cluster items and keep statements short, whilst maintaining clarity and reasoning.

For instructing solicitors

- Respect your experts and instruct them early
- Be aware of differences in assessment time frames and instruct for re-examination if necessary. Where this occurs the experts should produce an addendum to be served prior to the experts' meeting and in time for the counterpart to consider
- Collaborate with the opposing party to agree the relevant documents that should have been seen by both experts
- Collaborate with the opposing party to agree the issues for discussion – this is helpful even for a quantum experts' meeting where the experts are using a Scott Schedule to document their discussion.

For the court

- Recognise the need for certain experts to rely on other expert evidence and provide directions that facilitate timely filing of the same – for example, joint condition and prognosis statements being filed in sufficient time for care experts to consider before their own discussion
- Impose reasonable time frames for both the discussion and filing the statement thereafter, bearing in mind the complexity of some statements, the fact that in a quantum statement alternative costings may need to be calculated and that most experts are busy people with many other commitments. □