

Expert Witnesses - are you one?

Our legal system is an adversarial one in which a patient has to prove blame in order to receive compensation for injury sustained during medical treatment – the issue of “no fault compensation” (as in New Zealand) has been discussed on many occasions but so far has been rejected in the United Kingdom.

Our system relies on the Courts receiving evidence from “Medical Experts” as to the standard of care which should have been provided. Both the Claimant and Defendant will seek reports and then it is up to the Court to weigh the evidence and decide on the standard of care. A review of the process by Lord Justice Woolf produced the “Civil Procedure Rules” – the most important change was that reports by Experts were prepared for the Court rather than for each individual “side”.

Solicitors often struggle to obtain reports in the smaller specialties as many Consultants are unwilling to undertake this work – this is understandable as on occasions it requires being critical of care provided by a colleague. However the system can only work if these reports are provided. We are only human and therefore there will almost certainly be occasions when the standard of care, for whatever reason, falls below which we would like to have provided – we should therefore not take it personally if a medical report is critical. If a patient deserves compensation they do have to attribute blame.

The Society is often approached by Solicitors asking for suitable Experts. The Executive did consider providing such a list but the Academy of Medical Royal Colleges has advised against this – it would imply endorsement of particular Experts. The Executive therefore proposes to maintain a list which would be made available to enquirers and it would then be up to the solicitor to establish contact and decide on the suitability of an Expert – there is no fixed definition but essentially the Courts are looking for information on the standard of care at the time of the incident. In the past, Experts were often those who had retired and therefore had the time available. The Courts are likely to discount evidence from someone who has been out of practice for some time. However, a patient can bring a claim up to 3 years after becoming aware that there may have been a problem – by definition a child does not become aware until they are 18. Thus paediatric cases can go back 21 years – someone able to give evidence on the standard of care applicable 21 years ago will almost certainly be retired!

You will be receiving a letter from the Society asking if you wish to be included on such a list. It is important in the current era that anyone undertaking medical expert work has undergone training in preparation of reports and presentation of evidence.

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