

Family fortunes

Mark Solon anticipates the shake-up for expert witnesses in family courts

	e	x	p	e	r	t	w	i	t	n	e	s	s		
1	s	o	c	i	a	l	w	o	r	k	e	r	30	X	
2	-	-	-	-	-	-	-	-	-	-	-	-	* *	X	
3	-	-	-	-	-	-	-	-	-	-	-	-	* *	X	
4	p	s	y	c	h	o	l	o	g	i	s	t	70	X	
5	d	o	c	t	o	r							80	X	

IN BRIEF

► How will the single family court impact upon expert witnesses?

The single family court to be introduced next April hopes for fewer but better expert witnesses. “Fewer” can be achieved easily, given that restrictions on fees and time-scales are leading to grumblings within the ranks, but what about “better”?

When I asked Lord Justice Ryder, at a Westminster Legal Policy Forum seminar on family justice reform in July, about the likely impact of the new environment on expert witnesses, he commented that numbers would be reduced by “the gateway of the new test”, which is to ensure that an expert is used only where necessary.

He pointed out that there had never been a problem with “experts who subscribed to quality standards, usually through their own professional bodies, but also through referral agencies and those who have trained them” but that “it was the experts who quite often were time expired, who had not kept themselves up to date, who weren’t subject to CPD in their own organisations, who delivered materials that were not necessarily what the court expected”.

He added that the court will be seeking “a time scale that is likely to be 12 to 18 weeks at the absolute outside. If an expert can’t perform the task within that remit... the court will consider whether the

timetable that government imposes upon us needs to be extended”.

Fall in family

The number of expert witnesses used in family courts is already falling. In June, a CAFCASS survey found that experts were instructed in 70% of family court cases involving care applications, compared with 92% in 2009.

Experts who are critical of the regime but still seek further instructions are reluctant to go on the record. An expert witness with 20 years’ experience of family courts comments anonymously: “The government’s expectation that matters should be concluded within a reasonable period of time along with the drive to get value for money is entirely understandable. One also has to agree that there was an over-reliance on expert witnesses in some cases, but we have arrived at the point where the non-medical expert is now unlikely to be instructed in a family matter due to a number of factors.”

Qualified medical experts such as doctors and psychologists receive around £70-£100 an hour—not always enough to attract them now that this year’s changes to the Civil Procedure Rules require extra admin, such as accurate costs estimates, in a climate where experts are no longer immune to being sued for professional negligence following the judgment in *Jones v Kaney* [2011] UKSC 13.

Social workers are less keen to fill the gap since October 2010 when the

Legal Aid Agency (formerly the Legal Services Commission) capped their family court fees at £33 an hour in London and £30 elsewhere. Plumbers in London, meanwhile, charge around £80 an hour.

Ignoring reality?

The anonymous expert witness continues: “Experts’ fees are potentially due to be cut by a further 20% this autumn. Not all experts work for a health trust where overheads are taken care of. The government argues that we will not need so many experts so if the number available drops due to the further cut in fees it will not be a problem.

“This illustrates the underlying philosophy driving the changes, which is to impose expectations that ignore reality. An experienced expert who is in demand is not going to be waiting for the phone to ring, ready to swing into action and complete an assessment within two or three weeks. It takes time to read and consider a bundle, carry out interviews and write a helpful report.

“Some non-medical experts who are not in clinical practice have rightly been criticised for long mechanistic reports that add little. However, some possess experience no others in the court arena are likely to have, for example in the area of parental denial where infants have been non-accidentally injured. Will justice be served if children who previously were able to rejoin their families safely are now adopted? The politicians are willing to throw the baby out with the bath water to achieve their targets, without stopping to ask what impact the changes are having on the whole purpose of the existence of the family courts.”

Targeted training

With the decline in the use of medically qualified expert witnesses, those social workers who still feel up to the challenge are under intense pressure to meet the required standard. Targeted training is a precautionary measure which helps to render them bullet-proof in day-to-day work and at hearings.

At the Bond Solon Expert Witness conference in November, Lord McNally will present the results of the Ministry of Justice consultation *Standards for Expert Witnesses in the Family Courts*. It is expected that use of experts will be controlled even more tightly, with the social worker increasingly seen as an expert in his or her own right, leaning on expert evidence.

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