Annual Bond Solon Expert Witness Conference
Friday 8th November 2019
A Reflection on Civil Procedure Rules, Lord Woolf

Delighted to be here with you at this conference to discuss the role of expert witnesses. A subject which was highly controversial and important during the formulation of my report and the implementation of my recommendations.

I am pleased to follow Peter Goss, who is a former Court of Appeal Judge and the Senior Presiding Judge, who has made a substantial contribution to the reform of the position of experts as witnesses. Having retired, he may be wondering what he should do with the time available. Having listened to his measured contribution, I can only say I hope he will give many more talks of the same quality and clarity as we were privileged to hear this morning.

The public will benefit if he does so.

Sir David Foskett, who will speak later today and I were in the same chambers and I am sorry I will not hear his contribution which I am sure will also be of the highest quality. Until his retirement, he was an excellent judge and he has written extensively on the law in this general area.

I congratulate Mark Solon on his 25th annual conference and survey. I hope they will continue to be held in the future. This is a wish that many of those present, some of whom will have been trained by Bond Solon, will without doubt share.

Certainly, when preparing my recommendations in my report on Access to Justice, I was greatly assisted by Mark Solon. Over the years, Mark has made a substantial contribution to the development of the role of expert witnesses and the way they give evidence. He has helped to change their status.

Mark has summarised the problems that existed previously in the following words:

They lacked systematic training. They often acted as hired guns or opinions for hire. They did not understand the Court process, particularly cross-examination. They did not know how to write Court compliant reports that were intelligible to a lay person. They did not meet other experts to narrow the issues in dispute and they did not understand the basics of law and procedure as applicable to experts.

I made similar findings in my interim report of June 1995.

My response in my second report was largely an antidote to what was his impression. I approached the task with enthusiasm, not least because of an instructive case in which I was involved as a barrister when a young man. It confirmed that the criticisms had merit. Although I would not go as far as to adopt the description of him in the words of a senior expert witness at a training course that Mark was "*the love child of Stephen Hawking and a rottweiler"*.

The case of mine to which I have referred involved a plaintiff who I represented who was injured in a traffic accident. This resulted in his being paraplegic, for which he claimed damages for his terrible injuries. At the trial there was an issue as to how long he had to live because the longer he lived, the greater the damages he would be entitled to. The defendant insurers called an expert doctor , a retired specialist, who had a tremendous reputation in the Courts.

My expert was a neurologist called Ludwig Guttmann. He was a German and an émigré to this country. Later he became one of the most distinguished members of his profession in this country. He was knighted and was responsible for establishing the National Spinal Injuries Centre at Stoke Mandeville Hospital. He was made Director when that Centre first opened, a position he held from 1944-1996. However, at the time he was recommended to me, his English was still modest and to be frank, he did not make an impressive witness. Nonetheless, he gave evidence that indicated that my client's length of life prospects was substantially longer than indicated by the insurers' expert. Despite my efforts, I made little impression on that expert in cross-examination. However, during the lunchtime adjournment, Dr Guttmann convinced me he was right and cited examples of the survival rates of his patients which supported what he had said. Fortunately, I was able to allow my expert to confer with the insurer's expert. After their expert had discussed the matter with Dr. Guttman, he volunteered to go back into the witness box and give evidence supporting Guttman's evidence. This resulted in my client being entitled to substantially more damages than would have been awarded if the insurer's expert had not changed his evidence. It was indeed fortunate that the defendant's expert was a person of integrity.

Initially the insurer's doctor was totally wrong in his opinion but being a man of integrity who acted in a manner which was high commendable. But if he had not changed his evidence, a grave injustice could have been done.

Subsequently it became common knowledge under my expert's leadership, that Stoke Mandeville was one of the world's leading centres for treating paraplegics successfully, with the result that patients' expectations of life were substantially extended.

Under the system that existed prior to my reforms, I fear there would have been many cases where expert evidence could result in injustice.

In my interim report of 1995 recommendations were controversial so I indicated I would welcome broad-ranging comments. I took these comments into account in my final report (1996) when recommending the position how adopted in CPR 35 of the CPR and its accompanying Practice Direction.

In doing so I did not recommend the continental approach of Courts having their own experts who are similar to court officials. My reasons for rejecting the continental approach included the thought that so many issues could arise in litigation; in practice there could not be a competent expert attached to the Court who was qualified to deal with all the issues. Furthermore, it was likely that with the passage of time any court expert expertise would become out of date. What was needed to improve the situation was better judicial leadership and better case management. Accordingly, in devising my recommendations I followed the Overriding Objective of CPR spelt out in rules 1.1 and 1.4, requiring the Court to deal with cases justly and at proportionate cost. These largely results in the present CPR 35 and its accompanying Practice Direction. While these fall short of adopting the continental civil court's model of having inhouse court experts, there were at the time a radical solution which can fairly be said to have transformed the former situation.

Now the Court (that is, the judge) is in control of what, if any, expert evidence is given and not the parties (35.1, 2 and 4).

More radically, the expert's overriding duty is to be Court or Judge and not to the parties (35.3). In addition to the judge, confining the parties to only a single expert. Reports are to be in writing and exchanged between both sides.

There can be written questions to the opposing expert, which are generally to be answered in writing.

There are to be meetings where there are more than one expert between the experts. Usually they must not be asked to change their reports.

The rules are obviously intended to avoid the situation where the experts can give the impression they are "hired guns". Instead, they are intended to be almost quasi-judicial figures under a duty to assist in the achievement of justice.

The observance of the rules should help promote the avoidance of unnecessary expense and delay. For this reason, they should have the necessary expertise. Based on the Overriding Objective in the CPR 1.1 and 4, they should assist the Court to deal with cases justly and at proportionate cost.

Being an expert who complies with the rules is an honourable, distinguished and worthwhile occupation, which makes a magnificent contribution to the administration of justice.

It is no easy matter to be a good expert witness, but the contribution experts make is so substantial and it is very worthwhile.

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Final report (July) 1996, part 35 deals exclusively with experts and inter alia deals specifically with

Part 1 Duty to restrict expert evidence

Part 4 Power to restrict expert evidence

Part 5.5 A requirement for expert evidence to be generally given in a written report.

Part 6 Written questions to experts

Part 7 Single joint expert

Part 8 Power of the court to direct a party to provide information

Part 9 The contents of a report

Part 10 Use by one party of expert's report disclosed by another party

Part 11 Discussions between experts

Part 12 Consequence of failure to disclose expert's report

Part 13 Right to ask Court for directions

Part 14 & 15