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THE LAWYER

HE NEWSPAPER FOR THE LEGAL PROFESSION

Expert Witnesses
How to make meetings meaningful

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How to make meetings meaningful

Keith Carter argues that expert witness meetings are often futile and says a definite change of emphasis is needed

Meetings between experts as a means of isolating areas of disagreement are undoubtedly helpful.

Such meetings can speed up the resolution of an action and help to minimise costs by pinpointing some of the differences relatively early in a case, and certainly before going to court.

But some experts are finding these meetings futile. This is largely because although some solicitors say "meet with the other side and see what you can agree", they really mean "see if you can get your opponent to agree with us".

IMAGE BANK

Meetings: communication at the outset can save time and expense later on

To allow the expert to negotiate an agreement would require solicitors to relinquish control of this aspect of the case, which is something they may not be willing to do, or indeed may not be appropriate.

For the solicitor to instruct their expert not to agree, however, or else require the expert to refer any points of potential agreement back to their instructing legal team, clearly contravenes the very idea of experts being impartial.

How then can uninhibited dialogue between experts be achieved without the need for the solicitor to relinquish authority of this aspect of the case?

One approach may be to concentrate on assessing areas of disagreement between the experts. This would allow the court to immediately see the areas of dispute between the parties without inviting the expert to negotiate an agreement.

Within this change of emphasis there are a number of practical steps which might help experts and solicitors to work together more effectively.

Firstly, it is useful if lawyers bring their expert up to speed on essential case facts, notably the full status of the claim.

Also, all relevant reports should be disclosed in good time before the meeting.

The meeting, if it is to be a full and frank exchange which speeds up settlement, is extremely important. Both experts and solicitors should prepare for it as they would the actual trial.

Prior to the meeting, however, it is valuable for the expert to provide a note to their solicitors indicating where areas of disagreement exist.

This is an important factor in the process because it may have implications for the conduct of the case, particularly if there has, for example, been a payment into court.

The outcome of the meeting or joint statement should be signed by both experts.

This may lead to a settlement, but if the case does end up in court, the results of the experts' meeting should help concentrate legal proceedings and save the court's time.

The meeting of experts is undoubtedly of value. However, to direct and indeed safeguard both experts and lawyers, clear and agreed guidelines are needed.

Keith Carter is the principal at Keith Carter & Associates, employment consultants.

EXPERTS' MEETINGS: THE WAY AHEAD

An approach to enable both the legal team and experts to work together more effectively:

- experts' reports should be exchanged in good time prior to the meeting;
- areas of disagreement should be highlighted and written up for the instructing solicitor;
- make sure the meeting is really necessary, as it may impede an early settlement;
- the meeting's agenda should be set in advance;
- solicitors must bring experts up to speed, making them aware of the status of the claim, disclosing all medical evidence, and making sure the witness has seen the relevant report – only material disclosed should form the basis of discussion;
- experts should meet with the aim of isolating their areas of disagreement;
- experts should prepare a joint statement for their legal team.

If the case still goes to trial, then the results of experts' meetings will concentrate court proceedings and save time. This approach encourages experts to hone down their areas of disagreement and empowers them to give the court independent advice.

Although this may appear at odds with Lord Woolf's suggestion that experts should meet in the spirit of agreement and compromise, such a debate between experts is a positive way forward. Not only does it allow experts to do their professional duty, but it assists the lawyers and the courts to decide a just and final settlement.