Immunity from disciplinary proceedings for experts

Expert protection - The High Court grants experts immunity from disciplinary proceedings

Meadow v General Medical Council [2006] All ER (D) 229 (Feb)

In 1999, Professor Sir Roy Meadow gave evidence in the trial of Sally Clark, who had been accused of murdering her two baby sons. Her defence maintained that the two boys had died as a result of cot death. Whilst giving expert evidence for the prosecution as an experienced paediatrician, Professor Meadow maintained (quoting a Government report) that the chances of two cot deaths in the same family was 1 in 73 million. In an attempt to clarify just how rare an occurrence this was likely to be, Professor Meadow suggested that this was the equivalent of backing an 80-1 outsider in the Grand National 4 years running. He did not, however, make it clear that the same study also concluded that one cot death in a family increases the risk of a second. Sally Clark’s conviction was eventually overturned on appeal, after it was discovered that the results of significant microbiological reports had not been disclosed at her original trial. Ms Clark’s father subsequently brought a complaint to the GMC alleging that Professor Meadow’s evidence, and in particular his use of statistics, had been severely flawed.

Professor Meadow was found by the GMC to have acted in a manner likely to mislead the jury, especially by his reference to the statistics quoted above. Although there was no suggestion that Professor Meadow had intended to mislead the jury, the GMC found him guilty of serious professional misconduct and struck him off the medical register. Professor Meadow appealed to the High Court.

The High Court’s decision

Mr Justice Collins held that honest, albeit mistaken, expert evidence given in good faith should not, save in exceptional cases, merit a referral to the witness’s relevant professional disciplinary body. He was concerned that the threat of a subsequent review of an expert’s evidence by the relevant regulatory body would deter potential expert witnesses from being prepared to take instructions. Consequently, he considered that the rule that a witness should not be exposed to the risk of his evidence being tested in another forum should also cover disciplinary proceedings. Expert witnesses, like witnesses of fact, already have the comfort of immunity from civil suit in relation to evidence given in court. In the judge’s view in the Meadow case, justice would be better served by experts giving evidence without the threat of disciplinary proceedings, even if their evidence later proved to be flawed. Mr Justice Collins stopped short of granting experts absolute immunity, reserving to the judge the ability to refer an expert to their disciplinary body where he felt that their conduct “fell so far below what was expected of [them] as to merit some disciplinary action”. The decision to strike Professor Meadow off the medical register was, therefore, overturned, as the GMC should not have considered the complaint made by Ms Clark’s father.

Implications

This decision has been welcomed by the Expert Witness Institute, in the light of claims that Professor Meadow’s case, in particular, had deterred some experts from giving evidence. The precise boundaries of the immunity will have to be established on a case by case basis and it remains to be seen what circumstances will justify a referral by a judge to an expert’s disciplinary body. The GMC have appealed and so the position could alter. However, for now, the decision confirms an important point - that an individual who acts as expert should not be at risk of disciplinary proceedings instigated by those affected by his expert evidence. Only a judge can make a referral to an expert’s disciplinary body and this will only be appropriate where the expert’s shortcomings are “sufficiently serious”. Whilst the Meadow case relates to a medical expert, the
The principle established is equally applicable to other fields of expertise, for example, where an accountant, surveyor or investment banker acts as expert. This decision should, therefore, give all those asked to act as expert confidence that, provided they act in good faith, they should not face disciplinary proceedings should their evidence later be called into question.

Whilst the Meadow case will clearly give experts some additional comfort, the decision does have its limitations. The immunity from disciplinary proceedings confirmed by the decision is not absolute and it remains to be seen when referrals will be deemed appropriate. In addition, the decision does not affect the position in relation to witness immunity from civil action and so experts are still at risk of being sued in relation to their advisory work undertaken for clients in the earlier stages of proceedings.