

No wizards or wands

Chris Pamplin & Bernard Kat clarify the meaning of the term “psychologist”



In the 1990s, Duncan Scott, then the New Mexico Senator, became so fed up with psychological expert witnesses he proposed this amendment to a State Bill: “When a psychologist or psychiatrist testifies during a defendant’s competency hearing, the psychologist or psychiatrist shall wear a cone-shaped hat that is not less than two feet tall. The surface of the hat shall be imprinted with stars and lightning bolts. Additionally, a psychologist or psychiatrist shall be required to don a white beard that is not less than 18 inches in length, and shall punctuate crucial elements of his testimony by stabbing the air with a wand.”

The Ireland report

Most readers will think that goes a little too far. But the report “*Evaluating Expert Witness Psychological Reports: Exploring Quality*” by Professor Ireland of the University of Central Lancashire may give them pause for thought. A good deal of confusion has been thrown up by this report. Despite acknowledging that its qualitative methodology was one that precluded the possibility of knowing if its findings were representative, the report attracted much media attention. This was perhaps not surprising when its main conclusions (the validity of which have been challenged on the methodological limitations) included 20% of the psychologists being found to be “inadequately qualified”, 90% having no clinical practice, and 66% of reports being rated as sub-standard.

The Ministry of Justice analytical services team has begun looking at what type of short- and long-term research would be valuable on expert witnesses in the family court. Hopefully, that forum will help to ensure future attempts at research adopt a refined methodology that produces more light than heat.

But, while we wait for that process to wend its way to a conclusion, we are left with the problem that many are now confused about: what one should actually be looking for in a psychology expert witness?

Titles and qualifications

The Health Professions Council (HPC) has statutory responsibility for the registration of professional applied psychologists. Only psychologists who are registered with the HPC may use titles protected by the HPC (clinical, counselling, educational, forensic, health occupational, sports and exercise, registered or practitioner psychologist).

The term “chartered psychologist” refers to a grade of membership of the British Psychological Society (BPS). The BPS is authorised to confer that title by its Royal Charter, and use of the title is legally restricted. It is granted only to psychologists who have achieved and maintain appropriate professional qualifications and experience that have been vetted by the BPS.

Registration by the HPC and chartered membership of the BPS require that the psychologist:

- has appropriate qualifications and experience;
- is in active practice according to the current professional standards; and
- has undertaken appropriate on-going professional development.

Neither registration with the HPC, nor membership of the BPS is mandatory, so a psychologist can be fully qualified and currently in practice without being registered by either body.

It will be noted that neither the HPC nor the BPS has any power to protect the basic title “psychologist”. Regrettably, a person does not need to be in any way qualified in psychology to use the title “psychologist”.

It is important to be aware that registration by the HPC or chartered membership of the BPS does not itself qualify a psychologist as an expert witness, nor does lack of registration or membership disqualify them from working as an expert witness.

“Current practice”

The Ireland report suggested that “there should be an expectation that psychologists providing court reports should continue to hold contracts with relevant health,

government or educational bodies (eg NHS, prison service, local authority, etc) or demonstrate continued practice within the areas they are assessing”.

However, a significant number of fully qualified psychologists are self-employed or work for commercial, not-for-profit or charitable organisations. This is likely to become more common because of the current reforms of public sector services and restrictions on public finances. Furthermore, public sector contracts of employment may limit the work, such as forensic work, that an employed professional psychologist can undertake outside their core duties.

Recent pilot projects of multi-disciplinary expert witness teams, building on the previous pilot that arose out of the Chief Medical Officer’s 2006 report *Bearing Good Witness*, have attempted to set up expert witness teams within the NHS. As reported in NLJ (“Relative values”, NLJ, 27 April 2012, p 580), despite the recent Family Justice Review (FJR) pushing for yet another pilot of multi-disciplinary expert witness teams, this approach does not seem to be dealing with the problem of a shortage of expert witnesses. If, as the FJR report stated, persuading the NHS to embrace the idea “is likely to be a matter of financial incentives as well as persuading NHS providers that such work is consonant with the values of the NHS”, one wonders how the recent capping of fees by the Legal Service Commission (LSC) will play out.

Therefore, the suggestion that psychologists who are providing court reports “should continue to hold contracts with relevant health, government or educational bodies” may be a simple rule but it ignores the realities of professional work in the public sector. More generally, it ignores the wide variety of relevant and valid professional practice undertaken by professional applied psychologists in the commercial, not-for-profit and charitable sectors. It is a suggestion that also runs the risk of fettering the choice to be made by litigants to adduce such evidence as they wish. It is for the court to determine what weight to apply to such evidence.

The report's suggestion that in order to be an expert a psychologist should be able to "demonstrate continued practice within the areas they are assessing (eg treatment provision)" is seriously misleading. It appears to be based on an inappropriate analogy between psychologists and medical doctors. It is entirely appropriate and long-standing good clinical practice for psychologists to apply their expertise in assessment, diagnosis and prescription independently of practice as a therapist. In fact, many professional applied psychologists both within and outside the NHS are not therapists at all; they provide assessments, advice, supervision and other forms of consultancy.

Choosing your psychologist

So, given that background, how might a lawyer validate someone's claim to psychological expertise? Well, the general pattern is two levels of qualifications (undergraduate + postgraduate degrees) plus years of experience in the appropriate field of work.

There are two straightforward cases. If the psychologist uses one of the nine HPC-protected titles the lawyer can simply check against the HPC website (www.hpcheck.org). Alternatively, if the psychologist is described as being a "chartered psychologist" simply check on the BPS website (www.bps.org.uk/psychology-public/find-psychologist/find-psychologist). If the expert is both chartered and uses one of the HPC-protected titles then there can be little doubt about their qualifications.

To clarify whether a particular type of psychologist is right for a particular issue, the lawyer can consult pages on the HPC and BPS websites about the various types of psychologist.

Grades of BPS membership also provide useful information. Psychologists with postgraduate qualifications will normally be AFBPS or FBPS (although sometimes you see (A)FBPs instead). A psychologist who uses MBPS may not have a postgraduate qualification and so may not be appropriate as an expert witness.

In general, academic psychologists, ie those who research and teach but do not offer professional services to the public, do not need to be registered or chartered. Check their qualifications with their university.

Many English-speaking psychologists from abroad come to work in this country. Normally they will be registered with the HPC, which will have established

equivalences between their training and UK training. If not, the lawyer should be alert to the need to investigate further.

Referring to the latest edition of the *UK Register of Expert Witnesses*, of the 128 expert witnesses describing themselves as some kind of psychologist, there are 14 terms used (see table below). The vast bulk of these experts are covered by the HPC. In addition, 68 of them are chartered and so covered by the BPS.

Two types of psychologist deserve special mention. A "child psychologist" will normally be an HPC-registered clinical psychologist who has specialised in work with children or an educational psychologist. A "neuropsychologist" will normally be an HPC-registered clinical or educational psychologist with post-qualification experience or training. In both cases, the person may instead be an academic research psychologist with at least a PhD in a topic relevant to the lawyer's case.

If someone is neither HPC-registered nor a BPS member, the lawyer would want to investigate their postgraduate qualifications. Diplomas and certificates are usually relevant only as add-ons to Doctoral-level or Masters-level qualifications and are not qualifications in their own right. In case of doubt about the level of a qualification, advice may be sought from the BPS.

Number of expert witnesses in Edition 25 of the *UK Register of Expert Witnesses* claiming particular types of psychological expertise.

Description	HPC title?	n
Adolescent Psychologist	No	2
Adult Psychologist	No	1
Child Psychologist	No	4
Clinical Psychologist	Yes	66
Consultant	No	53
Counselling Psychologist	Yes	2
Educational Psychologist	Yes	12
Family Psychologist	No	2
Forensic Psychologist	Yes	13
Health Psychologist	Yes	3
Medical	No	1
Neuropsychologist	No	5
Occupational Psychologist	Yes	1
Systemic Psychologist	No	1

And what counts as adequate experience to claim the requisite level of expertise? The lawyer should review the psychologist's CV for at least two years in the area of work (but ideally many more years) and evidence of continuity of relevant professional practice.

Conclusion

As always, the duty of care for instructing a suitable expert witness lies with those who advise the client. Despite the less than desirable professional regulatory controls on the terms "psychologist", is it really feasible to adopt the highly restrictive definition proposed by the Ireland report?

And what happened to Mr Scott's suggestion that all psychiatrists should appear in pointy hats? It is reported that he tacked his amendment onto a Bill in 1995 and, despite its clearly satirical nature, it passed with a unanimous Senate vote. The amendment was then removed from the Bill prior to receiving House approval, so it never did become law.

NLJ

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