

Inflexible experts

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Following on from my [previous article](#) on *Johnson v Williams* [2022] EWHC 1585 (QB), I felt it was only right to dedicate an entire piece to the starring role of the experts in that case.

The Court was trying to work out what had caused the Claimant's tear of the medial retinaculum (tendon of the knee that crosses the medial side of the kneecap). By any account, this was an unusual injury to have suffered. The Claimant's expert, Mr Ashok Paul, said that the only possible (and therefore likely) cause of the tear was surgical error. The Defendant argued that there were other plausible (although still unlikely) causes such as infection or the Claimant's failure to follow post-operative instructions.

For the Claimant's theory to be right, the surgeon would have had to have used repeated and excessive force, which was not something that an experienced surgeon was likely to have done inadvertently. Even if he had done, he would then have needed to have missed the damage which would have been immediately visible and missed the obvious fluid leak in several washout procedures.

Things started to go wrong for the Claimant's orthopaedic expert, Mr Paul, when he was taken to task over the claim on his CV that he was *"the Manchester United Orthopaedic Surgeon for 20 years"*. In fact, he had never been the exclusive surgeon for the Club. Whilst he had done some work for the Club, he had never been employed by them and there were other surgeons who did the Club's work too. The Judge remarked that *"such concessions extracted only after repeated questions highlighted a theme of his evidence which was a degree of overstatement and inflexibility..."*.

The highlight for the reader (but no doubt the low point for Mr Paul), came in cross examination about the cause of the tear. Mr Paul rightly acknowledged that causing and failing to notice the tear would be very unusual, but he stated that *"it happened in some cases"*, which progressed to *"it can happen"* and then *"it has happened"*. He was pushed to identify the literature he relied on in support of his position; there was none. Were his comments based on his own experience of such ruptures? No. Then came the killer blow:

Counsel: *Why are you saying 'It does happen'?*

Mr Paul: *Because it happened in this case.*

One wonders what the judicial equivalent of a facepalm emoji is.

The case is a good example of why a balanced and cautious expert is more compelling than an inflexible one. Whilst that positive description was used by the Judge to describe the Defendant's expert, Mr Sanjay Anand, he did not entirely escape judicial criticism. Having heard the Defendant doctor's evidence, Mr Anand changed his position in respect of the timings of the rupture. The Judge commented that *"this late change of position on behalf of the Defendant's expert did undermine both the credibility and reliability of some of Mr Anand's evidence"*.

Being an expert is a tough business, especially in a case like *Johnson* where the cause of the tear was, on either case, something very unusual. Experts must know the papers inside out. They must take a firm and consistent view and not change their position without very good reason. Against that, they are expected to

make appropriate concessions where necessary. Whilst *Johnson* is an entertaining read, it is a stark reminder of the tightrope that experts have to walk.

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