



3 St. Andrew Street,
Plymouth PL1 2AH
DX 8290 Plymouth 2

T. 01752 661659

F. 01752 601346

E. info@devonchambers.co.uk

W. www.devonchambers.co.uk

PERSONAL INJURY UPDATE

A concise, practical update, for the busy practitioner

Expert witnesses lose immunity from suit

Jones v Kaney [2011] UKSC 13

SUMMARY

- Expert witnesses are no longer immune from suit.
- This applies to evidence given in court and views expressed in their reports.
- *Stanton v Callaghan* (1998) EWCA Civ 1176 overruled.

- Lay witness immunity remains.
- Privilege remains in respect of claims for defamation.

THE FACTS

- The Defendant drove into collision with the Claimant motorcyclist.
- The Claimant was stationary, waiting to turn right at a junction.
- The Defendant was drunk, uninsured and disqualified.
- Liability was admitted.
- The Claimant suffered significant physical injuries, with psychiatric consequences
- The Respondent consultant clinical psychiatrist prepared two reports.
- In the first, she said that the Claimant was suffering from PTSD.
- In the second report, she said C did not have all the symptoms of PTSD.
- A psychiatrist for D said that C was exaggerating his physical symptoms.

- A joint statement was ordered.
- A discussion took place by telephone.
- The Defendant's expert prepared a draft joint statement.
- The Claimant's expert signed the joint statement without amendment or comment.
- The joint statement was very damaging to the Claimant's case.
- C suffered no more than an adjustment reaction in response to the accident.
- His symptoms did not amount to PTSD.

- Further, they agreed that C's behaviour was suggestive of conscious exaggeration.

- When challenged on the joint statement, the Respondent said -
 She had not seen the opposing report at the time of the telephone conference.
 The joint statement as drafted did not reflect what was agreed by telephone.
 She had felt under some pressure in agreeing to the joint statement.
 In her view, C had been evasive rather than deceptive.
 In her opinion, C had suffered from PTSD which had subsequently resolved.
 She was happy for the joint statement to be amended.

- C applied for permission to change expert but this was refused.
- As a result, the claim settled for significantly less than was otherwise expected.

- The Claimant/Appellant brought a claim against his expert in negligence.
- The claim was struck out.

ON APPEAL

- There was no justification for the following assumptions -
 If experts were liable to be sued they would be discouraged from acting.
 Immunity ensured that the expert performed his duty to the court.
 Immunity allowed the expert to give an opinion adverse to the client's case.

- There was no conflict between the duty owed to the client and to the court.

NOTE

- *Kaney* means that experts are now in the same position as advocates.

- This was apparently the first case to involve a challenge to expert immunity
- Experts are prone to disciplinary proceedings regarding their fitness to practice.
- Experts can be liable for wasted costs.

Our Personal Injury Team:

Stuart Frampton

Russell James

Edward Bailey

Matthew Dors

Nicola Isaacs

This update prepared by: Stuart Frampton

Telephone 01752 661659

Fax 01752 601346

DX 8290 Plymouth 2

Email clerks: peterdadge@devonchambers.co.uk

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