

A TALE OF A TUB?

EXPERT WITNESSES CONFER AT THE CUTTING EDGE



ELIZABETH ROBSON TAYLOR AND PHILLIP TAYLOR MBE OF RICHMOND GREEN CHAMBERS REVIEW THE 2015 EWI CONFERENCE HELD IN SEPTEMBER 2015 AT CHURCH HOUSE, WESTMINSTER

When 'Gulliver's Travels' author and satirist Jonathan Swift wrote 'A Tale of a Tub', little did he realise the iconographic power of this somewhat homely image; a tub being a rather lumpen object. However with lawyers from time to time singled out as the victims of his satirical jibes, it's not too hard to imagine what he might have thought of that voguish term: 'hot tubbing'.

For a number of reasons, however, 'hot tubbing' has now become a hot topic, especially so at the recent Annual Conference of the Expert Witness Institute (EWI) held on 24th September 2015 in Central London, where it frequently emerged as the prevailing theme to which much discussion turned.

The conference focused on the essential role of the expert witness, who ideally provides a reassuring help in trouble for the barrister or solicitor dealing with a complicated case. The expert witness is he, or she, who is charged with the often complex task of putting forward reliable and accurate evidence that, more often than not, may determine the outcome of a case.

Magna Carta

'Hot tubbing' certainly featured in many of the discussions and debates. In this 800th anniversary year of Magna Carta, it was brought into play as a means of launching the conference, with the suggestion that the confrontation of the dissolute King John with the aggrieved barons at Runnymede might be, in a number of respects, a 'hot tub.' Well, er - not really - unless you are tempted to point out facetiously that King John had got himself into hot water.

In the modern context a 'hot tub' is fundamentally, an inquisitorial (rather than adversarial) discussion if you will, held usually in court with possibly the judge eliciting information from the advocates, and parties in a dispute, as well as, yes, the expert witnesses.

As King John was confronted by twenty-five barons attended, by some two thousand armed knights, the king's many previous opportunities for discussion had long since passed. As he was an illiterate despot, reasoned debate was not exactly his strong suit - so the notion that the events at Runnymede were some sort of medieval version of hot tubbing is whimsical at best. But it's a thought - and it was rather an effective way, as it happened, to kick off what was to be an important conference.

Insight and controversy

Chaired by Amanda Stevens, the Conference proceeded apace, with speaker after speaker imparting much useful, insightful and sometimes controversial comment on the future of the justice system in general and the varied role of the expert witness in particular. The Conference as a whole was distinguished in particular by useful, organized and high quality debate.

What emerged as the keynote speech was delivered by Dr John Sorabji. As Senior Fellow UCL, Judicial Institute - and Principal Legal Adviser to the Lord Chief Justice and the Master of the Rolls, he covered a number of important points. The first centred on the problem of Litigants in Person (LIPs) whose numbers have proliferated as an unintended consequence of LASPO. As litigants continue in droves to appear in court without the legal representation they cannot afford, court procedures have had to evolve and adapt in response. The role of judges has therefore undergone gradual change, and so has the use of experts.

Judges now find themselves participating more actively in proceedings, with a correspondingly more active role for expert witnesses. The overall objective is to adapt court procedures in line with CPR 3.1A which concerns case management and



unrepresented parties, i.e. where at least one party is unrepresented. The Rule includes the stipulation that 'the court must adopt such procedure at any hearing as it considers appropriate to further the overriding objective.'

What experts really think

With all this in mind, there were comments by Stephen Webber of the Society of Clinical Injury Lawyers on 'what solicitors really think of experts'. Other comments related to what experts think of solicitors, particularly the quality - or sometimes the lack of it - in the matter of solicitors' instructions. 'Pitiful' was one of the terms used. Generally, greater attention to precision, detail and accuracy was called for.

'We are flourishing!'

Another highlight of the Conference included the EWI Chair's address by Sir Anthony Hooper, which focused on the fact that there is still no formal certification procedure in place for expert witnesses. The matter however, has already been reviewed via a pilot study at University College London, anticipating the day when a proper system of certification is set up (and possibly a corresponding rise in fee levels for experts!). 'We are flourishing,' stressed Sir Anthony, elaborating in detail on the essential role of expert witnesses - and the vital contribution they make to the justice system and to justice itself.