

COMMENT

EVALUATING EXPERT WITNESS PSYCHOLOGICAL REPORTS: EXPLORING QUALITY (THE IRELAND REPORT)

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The day that concerns were expressed to me as a local authority educational psychologist working with looked-after children about a 'poor' expert psychological report, was the day I was motivated to extend my practice to serve family courts. The assessment concerned a child with whom I was involved. At the time, I tried to communicate my concerns, but failed. Moreover, the implications of the subsequent family court decisions made on the basis of the assessment by that particular expert psychologist concerned me greatly. Thus, when I read that the recent Ireland study had found that two-thirds of the reports in the sample were rated as 'poor' or 'very poor', I was reminded of that day.

The Family Justice Council (FJC) turning their attention to the quality of expert psychological reports is, I think, a real strength of the Ireland study, and in my view is long overdue. This is particularly so, given the concerns emerging in news and social media from families who view themselves as unjustly treated by family courts. Ireland is right to expose poor practice. She is right also, to draw attention to the title of 'psychologist', currently unprotected by regulatory bodies. The championing of greater use of educational psychologists and others as experts in family courts is welcome too.

However, I am concerned about the reliability of some of the findings. There are several crucial methodological and ethical issues, as well as factual errors in her study. These suggest that the study is flawed - fundamentally so. Yet the research was part-funded by the FJC, published by the University of Central Lancashire and welcomed by the British Psychological Society (BPS). Indeed, it has been widely cited and presented as 'fact' in national news media. There are five matters of concern.

First, Ireland claims that one-fifth of psychologists in the sample were not qualified. She states that Health Practitioners Council (HPC) registration to practise *and* full membership of an applied division of the BPS is a 'good indicator' of qualification to practise and to provide court assessments (Ireland, 2012 p14). However, this is not correct. It is registration with the HPC *or* chartered membership of the BPS that is a good indicator that the psychologist is a fully qualified and currently in practice. However, neither is mandatory for professional applied psychologists practising in the UK. Further, HPC registration or BPS chartered membership does not relate to qualification to act as an expert witness (National Centre for Applied Psychology, 2012).

Second, Ireland's application of the US '*Daubert* criteria' (named after the US Supreme Court case *Daubert v Merrell Dow Pharmaceuticals* [1993] 509 US 579) to assess the quality of the specialist content of expert psychological reports in family proceedings in the UK has caused confusion. The criteria for the use of expert evidence outlined in the case (per Blackmun J at pp 512-515) are fourfold: whether the expert evidence theory or technique can be (and has been) tested; whether it has been subjected to peer review and publication; whether it has known or potential error rate, and standards controlling its operation; and whether it has attracted widespread acceptance within a relevant scientific community. Ireland refers to these in her report. Also, she states that the Law Commission (2009) considered the *Daubert* criteria for inclusion in the 'UK system, albeit with amendments' (Ireland, 2012 p 5). However, Ireland fails to note that the Law Commission considered this in relation to *criminal* proceedings only – not civil and family courts. There are significant procedural and evidential differences between the two. Further, Ireland fails to refer to the Final Report of the Law Commission. Here, the Commission highlights that the *Daubert* criteria were considered 'insufficiently effective for criminal proceedings' (Law Commission, 2011 p83). Therefore, it did not recommend use of the *Daubert* criteria *per se*, but rather, the use of a 'basic reliability test' and a range of 'generic factors (insofar as they appear to be relevant)' for a trial judge to determine whether an expert's opinion evidence is sufficiently reliable (Law Commission, 2011 p138-140. See also: Part 1, Schedule 1 to the Criminal Evidence (Experts) Draft Bill).

Third, Ireland refers to the Civil Procedure Rules, but makes no reference to the Family Procedure Rules 2010, in particular Part 25, which refers to experts and assessors. In proceedings relating to children, the court's permission is required to instruct an expert (and where possible a single joint expert). This process involves preliminary enquiries, followed by a written proposal by the proposing party to consider which psychologist is best placed to provide expert opinion about questions that are not within the skill and experience of the court (Family Procedure Rules, 2010 para1.3(c)). Therefore, the court plays a key role in deciding the suitability of experts. Frequently, court instructions include questions about which placement is likely to best meet the child's needs, or to matters which Ireland suggests are the 'remit' of social work (Ireland, 2012 p 24). In addition, the expert's report, must comply with the requirements set out in Practice Direction 25A (Family Procedure Rules 2010 para.3.3). Ireland fails to acknowledge this.

Fourth, I was somewhat baffled by Ireland's suggestion that psychologists should engage in practice 'outside' the sole provision of expert reports. This is misleading. Engagement in practice in health services, local authority or criminal justice settings does not necessarily increase legitimacy, quality of practice or quality of continuing professional development.

Fifth, conflict of interest and/or undisclosed interests are evident. Ireland and one of her colleagues sit on the expert committee of the FJC representing the BPS (Family Justice Council, 2010). Yet, the Report was not only commissioned by the FJC, but offered to Ireland in a single tender (Family Justice Council, 2012). These associations were not disclosed in the report. Further, Ireland mentions psychometric tests that would 'perform well against *Daubert*' (Ireland, 2012 p 19 see also p 34). However, her involvement; and that of her colleagues involved in the study, in the training of some of these tests via their private limited companies (Eclipse Psychological Services *et al.*, 2011; 2012; The International Organisation for Forensic Practitioners, 2012; The International Organisation for Forensic Practitioners and Eclipse Psychological Services, 2013) is not acknowledged in the report.¹ Further, in the recommendations of the report, Ireland states that further training is required of expert witnesses and the judiciary (Ireland, 2012 p 34). Again, her involvement in such training remains undeclared (see Association of Child Psychologists in Private Practice, 2008; Cardiff Metropolitan University, 2011; University of Central Lancashire and Assessments for court and community treatment service, 2012).

The quality of expert psychological reports should always be of the very highest standard. But equally, publicly-funded research should be rigorous and critically peer-reviewed before publication. More importantly, the concerns set out above suggest that the findings in the Ireland report, as it stands, may be insufficiently reliable. Yet, it may have brought into question the integrity and competence of all suitably qualified and experienced psychologists in practice and working for family courts. Thus, if fewer vulnerable children and families have access to an *independent* psychological assessment of their strengths and needs, if more family courts (already perceived as 'secret') make life-changing decisions on less *independent* evidence, then unfortunately the Ireland report could cause more harm than good.

References:

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1. Jane Ireland is the director of Paragon Psychological Services Ltd. (company no. 06931712); Carol Ireland is director of Bowland Psychological Services Ltd (company no. 07805327); and Fiona Wilks-Riley is director of Eclipse Psychological Services Ltd. (company no. 05464457). Also, Jane Ireland and Carol Ireland are directors of the International Organisation for Forensic Practitioners (company no. 07766917).

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<http://www.rcpsych.ac.uk/pdf/PGCERTEXPERTWITNESS2012.pdf>.

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