MATHEWS Open Access Journals

Special Issue: 2017

ISSN 2474-3666

Case Report | Mathews Journal of Case Reports

The Joint Statement Process: Differing Opinions on A Potential Case of Post Traumatic Stress Disorder

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Received Date: 28 Apr 2017

Accepted Date: 02 May 2017

Published Date: 09 May 2017

Citation: Hetherton J, Payne L and De Haro L. (2017). The Joint Statement Process: Differing Opinions on A Potential Case of Post Traumatic Stress Disorder. M J Case. 2: S004.

Special Issue: *"Trauma: an overview of its incidence and effects in the community".*

Handled By Editor: *Hugh Koch, Clinical psychologist, Cheltenham, U.K, Visiting professor to Stockholm University. Sweden.*

ABSTRACT

A unique aspect of UK civil litigation involves the use of the Joint Statement, prepared by opposing experts pre-hearing. This paper illustrates how the Joint Statement process was deployed in a case of Trauma and highlights to some of the more typical areas of potential disagreement between experts.

KEYWORDS

Joint Statement; PTSD; DSM-V; Claimant; Defendant.

DISPUTE RESOLUTION PROCESS

Dispute resolution is a key component of the civil litigation process – if not the key component. It is the means for disagreeing parties to come to a greater understanding of each other's opinions, short of court attendance. Dispute resolution whether direct or by alternative routes such as mediation, has gained wide spread acceptance among both the general public and legal and medico-legal professions in recent years. Dispute resolution, in its general interpretation, requires, under Civil Procedure Rules Practice Directions, that parties limit oral expert evidence to that which is reasonably required and, where possible, matters requiring expert evidence should be dealt with by the Joint Statement Process [1].

Joint statement discussions provide a vehicle forum for a concise exchange of views and opinions, particularly in relation to complex cases, between opposing experts. In those where Post Traumatic Stress Disorder is a possibility, there is, rarely a difference of opinion regarding the nature of the accident (Criterion A of PTSD as defined by DSM-5). Differences tend to emerge in relation to the extent to which the claimant experienced trauma symptomatology and the duration of such symptoms. The following case illustrates this.

THE CASE

The case concerns a 32 year old female who was an evening manager at a small supermarket. On locking up and placing money in the safe, an armed man with his face covered, ordered her to open the safe and empty its contents. In a terrified state, she did this. The man then fled the premises prior to informing her that if he observed any efforts on her part to contact the police she would be shot. Approximately five minutes after the robber had fled, she did contact the police who immediately attended the scene. She gave a statement and at her own request was taken home. She had recently separated from her husband and was renting a flat. The next morning she was arrested and charged with conspiracy to rob the supermarket, a charge she strenuously denied. She was dismissed from her job two months after the incident. Eight months after the incident all charges against her were dropped. The assailant was not found. On being dismissed

from her job, she experienced significant financial difficulties, involving the potential loss of her home. With homelessness imminent, she presented to her local council who offered her accommodation but at a location so far away she would have to take her two children out of their schools. She did not want to do this, so approached family members who lent her money for her rent. Her growing debts were an additional source of stress for her.

DIAGNOSES

Claimant's expert

When assessed by her solicitor's psychological expert, nine months post-accident, she reported experiencing, immediately after the index incident, nightmares, intrusive thoughts, flashbacks, attempts to avoid thoughts about the incident, avoidance of conversations about the incident, avoidance of the area in which the incident took place, a heightened sense of danger, loss of interest in usual activities, feelings of detachment from others, concentration difficulties, sleep disturbance, a heightened startle reaction, hypervigilance and increased irritability. She denied experiencing any impaired recall of the event or an inability to experience positive emotions. As well as these trauma related symptoms, she also experienced intense stress about her finances and her ability to secure alternative employment given her dismissal and being investigated by the police. She also experienced anger and distress at how she had been treated by her employers. The expert made a diagnosis of Post Traumatic Stress Disorder (DSM-5 309.89) [2] in a context of anxiety and low mood pertaining to her legal, financial and work situations. The expert felt that her stress was a normal reaction to extraordinary, negative life events and that this aspect of her presentation did not warrant a psychiatric diagnosis. A course of 16 sessions of cognitive behavioural therapy and Eye Movement Desensitisation was recommended with the expectation that her trauma symptoms would significantly improve four months from the start of therapy. This therapy did not actually take place.

Defendant's expert

When assessed by the defendant's psychological expert 18 months later (27 months post-incident), she reported having experienced fewer symptoms immediately after the index accident. She described experiencing nightmares, avoidance of the area in which the accident took place, feeling much less interested in significant activities, sleep disturbance, and increased irritability. She reported experiencing anxiety about her work and financial situations and intense anger about how she had been treated by her employers. At the time of the defendant's report she was working and was slowly paying off her debts. The expert made a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood reactive to the index incident and index-incident related stressors (police investigation, loss of her job, financial difficulties). The duration of clinically significant symptoms was assessed as eight months i.e. until the charges against her were dropped. It was considered that whilst therapy may have been helpful in the early months after the incident, it was no longer required.

Points of agreement

Both experts agreed that the index incident met Criterion A for PTSD as it clearly involved threatened death. They also agreed that she had experienced considerable stress, distress and anger after the incident reactive to being arrested, feeling abandoned by her employers in being dismissed from her job, and experiencing significant financial difficulties. Both experts agreed that her recall of symptoms could be affected by the passage of time between the two assessments.

Points of disagreement

The expert disagreed on the extent to which she had experienced sufficient trauma symptoms to fulfill a diagnosis of PTSD.

FACTORS INFLUENCING DIFFERENCES IN OPINION

Assessment Methods

The claimant's expert had used a semi-structured interview that included questions on symptoms that comprise the diagnostic criteria for PTSD as defined by DSM-5. The defendant's expert used an unstructured interview that involved asking the claimant what symptoms she had experienced after the index accident with less focused questioning; this yielded fewer symptoms. The issue of differing assessment methods was discussed. The defendant's expert felt that using a semi-structured interview was problematic in that it was potentially too leading i.e. the claimant could admit to having symptoms they had not actually experienced. The claimant instructed expert felt that the unstructured interview was problematic in that some symptoms that compromise the criteria for PTSD are more subtle and might not be spontaneously reported even though they are significant diagnostically e.g. having a heightened startle reaction; making efforts to suppress thoughts and feelings about the index event. It was the claimant-instructed expert's opinion that this could lead to under-reporting of symptoms that had been experienced and a diagnosis of PTSD being missed.

Medical Records

The GP records indicated multiple consultations for psychological symptoms in the post-incident phase. They included, initially, mention of nightmares, being too afraid to go to the

area where the incident had taken place, low mood and loss of interest in usual activities. The primary focus however was stress, anxiety, low mood and sleep disturbance reactive to both the trauma of the robbery and post-incident events: her arrest, dismissal and financial difficulties. She also discussed experiencing intense anger towardsemployers. The claimant-instructed expert felt that it was reasonable that her challenging life stressors dominated her GP consultations given that the basics of her life were under threat: potential impending homelessness and potentially being unable to provide for her children. In this context, the expert felt it was entirely reasonable that these factors were discussed with the GP, rather than specific trauma symptoms. The defendant-instructed expert however, took the intermittent reference to trauma symptoms in the GP records as evidence that she did not have PTSD.

CONCLUSION

The two experts maintained their differing opinions (consistent with their initial reports) outlining for the Court the reasons for their respective, differing positions as detailed above.

A balance is always necessary to maintain between individual professional opinion (clinical and medico-legal) and increasing consistency on interpretation of evidence and multi-sourced data. The court requires that the appropriate range of opinions has been considered by both experts in their initial report and subsequently when they undertake the joint opinion direction. Training and continuing education might also address within speciality clarity and reliability of initial opinion, as well as how best to accommodate the several issues raised above in the formulation of future joint opinions. The challenge of joint opinion discussions is to produce reliable and robust evidence whether this be from an individual expert, two experts discussing matters professionally or in court.

Whither Resolution of Trauma Claims?

The ultimate aim of the civil claims system is to deliver justice, which in evidential terms, correlates with the most robust evidence, which has been tested by both adversarial and inquisitorial methods by the lawyers, experts and judge. Any and all methods of testing the validity, reliability and therapeutic/human reasonableness of available evidence should beutilised.

It is incumbent on all parties to develop ways of understanding and resolving disputes in the most effective and efficient manner. It is interesting to note that the Joint Opinion process which reconciles many aspects of the adversarial and inquisitorial processes is unique, in principle and in practice, to the UK system and, in many ways, leads the way still as a practical vehicle for dispute resolution [3].

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