

# RadcliffesLeBrasseur



## Healthcare Briefing

June 2010

### Jones -v- Kaney [2010] EWHC 61 (QB)

Expert witnesses currently enjoy immunity from civil claims in relation to evidence given in Court and with regard to documents prepared for the purposes of civil proceedings.

Readers may recall the case of *Meadow v GMC* in which the Court of Appeal considered whether expert immunity included immunity from disciplinary proceedings. It was held that it did not, as the essential purpose of such proceedings was the protection of the public.

The principle of immunity in civil claims has come under attack in the recent case of *Paul Wynne Jones -v- Sue Kaney*. The case related to allegedly negligent opinion given by a psychiatric expert. The Defendant expert applied to have the claim against her struck out, on the basis she was protected by expert witness immunity. Her application succeeded at first instance as the Court accepted that it was bound by the law as it currently stood.

The Claimant argued that (a) immunity can no longer survive in the light of the previous House of Lords decision in *Hall-v- Simons*, which abolished the right to immunity previously enjoyed by barristers; and (b) that expert immunity was inconsistent with the right to a fair Trial pursuant to Article 6 of the European Convention on Human Rights.

The Judge stated: *“although I conclude that it remains good law, I doubt as to whether (it) will continue to remain so for the reasons canvassed...I conclude that there is a substantial likelihood that on re-examination by a Superior Court with the power to do so, it will emerge that the public policy justification for the rule cannot support it”*.

The Judge accordingly granted a certificate to enable the Supreme Court to consider whether they wished to grant the Claimant leave to appeal. Permission has now been granted to appeal to the Supreme Court.

It is clear that this area of law is under attack. From the comments of the first instance Judge, it is equally apparent that there is a view in some judicial quarters that such immunity, at least in its present form, can no longer be justified.

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