

**The 2004 Healthcare Conference**

25 - 27 April 2004  
Scarman House - University of Warwick

Justice for Damages  
By Richard Barr solicitor  
[www.richardbarr.org](http://www.richardbarr.org)

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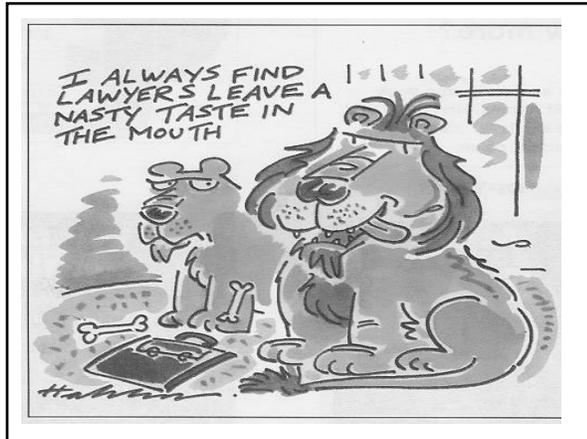
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**Working definition of Actuary**

- An actuary is a person who passes as an expert on the basis of a prolific ability to produce an infinite variety of incomprehensible figures calculated with micrometric precision from the vaguest of assumptions based on debatable evidence from inconclusive data derived by persons of questionable reliability for the sole purpose of confusing an already hopelessly befuddled group of persons who never read the statistics anyway!

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## Lawyers v Actuaries

Google search results:

- Results 1 - 10 of about **393,000** for "lawyer jokes"

But

- Results 1 - 10 of about **67** for "Actuary jokes".

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## The general view of Lawyers

- "The first thing we do, let's kill all the lawyers."

*William Shakespeare*

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## Lawyer Joke

- What do you have when you bury six lawyers up to their necks in sand?

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Lawyer Joke

- What do you have when you bury six lawyers up to their necks in sand?
- Not enough sand

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The only actuary joke I can understand

- What do you call an actuary who is talking to someone?

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The only actuary joke I can understand

- What do you call an actuary who is talking to someone?

- **Popular**

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## Power point problems....

(I'm only a lawyer I can't work machines)



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## Tonight's speaker



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## MMR: A brief history

- 3 brands introduced in 1988
- 2 brands contained the Urabe strain of mumps virus, associated with significantly increased incidence of viral meningitis
- those brands suspended in Canada 6 months before being introduced in UK
- Urabe vaccines withdrawn to huge press coverage in 1992

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Urabe MMR vaccines withdrawn in 1992



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The law

- Consumer Protection Act 1987
- Good point: no need to prove negligence.
- Bad point: 10 year limitation and date of supply
- Still have to prove causation – there's the rub (Shakespeare again)

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The vaccine damage compensation scheme

- Single payment of £100,000
- Very hard to obtain
- Grossly inadequate amount. Never paid for autism cases
- Contrast with US scheme

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### How we started

- Scepticism
- We listened to the clients: their stories
- Astonishing similarity of accounts
- Collection of other similar symptoms
- Surprising lack in safety studies
- Legal aid – battles won and lost

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### Using in house scientists

- Vital in a case like this
- Provide resource for busy experts
- Constantly monitor new developments
- Argue with the experts
- Co-ordinate different views
- Quarrel with the barristers!

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### Gathering evidence

- The world of medical and scientific literature
- Trying to work with the government
- Experts.
- We were on our own

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## A tiny taster of the science

- Mechanisms of damage
- Persistence of the virus
- What the test results showed
- Brand effect
- Double hits
- Problems with testing

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## What it is like to run a case - the coal face: experts

Problems with experts (herding cats)

“It scares the sh\*t out of me”

The four types of expert we encountered:

- Jobsworth
- Bigger off
- Defendant
- Yes, I’m sceptical but....

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## Dr Andrew Wakefield

- A brave man
- A good scientist
- Not a maverick
- May well be right

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What it is like to run a case - the coal face: testing

- Urine containers in the office
- Charts on the walls.
- Diet sheets
- The peripatetic nurse
- 5 laboratories around the world
- Flying samples

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What it is like to run a case - the coal face: the court proceedings

- David and Goliath in court: outnumbered, out-resourced:
  - Our team: one firm, 5 barristers and half a dozen lawyers
  - Their team: 3 firms, 15? Barristers, 30? lawyers
- Going to bed when everyone is getting up
- The portacabin days.

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What it is like to run a case - the coal face: The treacle trail

- "In the event, the timetable proved too tight for the claimants... but that should not detract from the extreme efforts that were made on behalf of the claimants by both experts and lawyers, particular when it is recognised that most of the time the claimants were wading through a trail of litigation treacle laid by the defendants.
- "Nor should it detract from the steps that had been achieved against all odds, or the determination to take the necessary further steps given time."

*Jeremy Stuart Smith QC speaking in court on 6 October 2003 following withdrawal of legal aid.*

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## Paper treacle

(Expert reports piling up as they were finished)



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## People treacle

(The claimant team at work on a Sunday – stopping for a quick KFC)



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## The reports go off

(me training for my new career as a courier. I am the one with grey hair)



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The precious fluid (how to obtain CSF samples against the odds)

- Reason for needing CSF.
- Ethics problems and UK hospitals
- The Americans to the rescue

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The Detroit experience:

- Getting 7 autistic children to the USA
- Hospital cancelled on arrival
- Alternative arrangements
- Only my mother and the pope....
- The attempt to obtain an injunction against us, and the race across michigan state
- Bizarre encounters at airports
- It was worth it.

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“Mrs Fink” enjoying a drink

(We had to buy a seat for our box of dry ice and CSF specimens. We called it Mrs Fink)



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## Bits and bobs

- Whistle blowers
  - The Newcastle experience
  - Vets find the same thing
- Single vaccines
- The media
- Single measles vaccines

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## What the DoH said about single measles vaccines

- “MMR vaccine will replace measles vaccine in the second year of life, or after this if appointments have been missed.  
**For children whose parents refuse MMR vaccine, single measles vaccine will be available**”

*From Immunisation Against Infectious Disease (HMSO)  
1988. page: 60*

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## The future of the MMR cases

- They won't go away
- Will the playing field ever be level in a case like this?
- Government enquiry?
- Why did autism go up so much?

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## Compensation culture



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