

COLLAS DAY | DISPUTE RESOLUTION

In the line
of Duty

15 years ago, the duties of the expert witness were by no means clear, and much essential clarification existed within individual court judgments such as the summation by Cresswell J in *The Ikarian Reefer [1993]* and HH Judge Toulmin in *Anglo Group Plc v Winther Brown & Co Ltd [2000]*.

Thankfully, with the ever-evolving civil procedure reforms, the role of the expert witness is considerably easier to define.

On 25 July 2008 the General Medical Council (“GMC”) published new guidance for doctors who act as expert witnesses.

The new guidelines entitled “Acting as an expert witness” will help to explain the boundaries within which medical experts operate for the legal profession. Doctors who serve as expert witnesses are essential to the judicial system and the resolution of disputes that require specialist medical knowledge.

When doctors act as expert witnesses, they assume a different role from that of a doctor providing treatment or advice to patients, but they remain bound by the principles of good practice laid down by the GMC.

The principles of Good Medical Practice include:

- The duty to be honest and trustworthy when writing reports or signing forms
- The duty to provide evidence without undue delay
- The duty to make clear the limits of your knowledge or competence

“Acting as an expert witness” provides supplementary guidance for doctors when giving expert evidence in court or tribunal cases. Just because they are working outside a clinical setting, doctors must not assume that their actions are beyond the boundaries of their professional responsibilities.

The New Guidelines for Expert Witnesses: the do’s and don’ts

Do’s

- Recognise your overriding duty to the court and to the administration of justice.
- Be clear about what you are being asked to do. If your instructions are unclear, inadequate or conflicting, you must seek clarification from those instructing you.
- Provide expert opinion within your field of expertise. If a question or issue falls outside of your area of expertise, you should make this clear.
- State the facts or assumptions upon which your opinion is based.
- Keep up to date with developments in your chosen field. As an expert witness, you must understand how to construct a court-compliant report, how to give oral evidence and the specific framework of law and procedure within which you are being asked to work.
- Explain where there is a range of views on a particular question.
- Inform those instructing you if you have cause to change your view on any material matter. If instructing advocates fail to disclose this change of opinion to the Court, you should inform the court. If you are unsure what to do, seek legal advice.

Don’ts

- Do not disclose confidential information other than to the parties to proceedings, unless you are so ordered to do so by law/ the court, or the subject consents.
- Omit to consider material facts which could detract from your concluded opinion.
- Allow your views about any individual’s age, sex, colour, disability or economic status prejudice the evidence or advice that you give.

- Use language or abbreviations that are overly complex. Where possible, you should use language that is suitable for a layperson and explain any abbreviations or medical terminology that you use.

Conclusion

If you accept instructions to appear as an expert witness, it is vital that you do so with confidence and in full knowledge of what is expected of you. The judicial system needs doctors who are confident in their abilities – and, more importantly, recognise the limits of their expertise. It is essential that your actions continue to justify the trust which the public, and the legal profession, place in you.

Should you require any advice on any of the issues raised in this article, please contact:

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