

Reflections on medico-legal work

Adolescent Forensic Psychiatry Special Interest Group Conference

December 2023

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Outline

- The role of the expert
- Practicalities
- Reflections on medicolegal work
 - The adversarial system
 - Legal processes vs clinical outcome
 - Pros and cons
- An audit of medicolegal work

What is an expert witness?

- A person accepted by the court as having relevant expert knowledge and experience outside that of judge and jury to offer an opinion
 - Expert psychiatrist
 - Expert on mental disorder
 - Have a particular role in some issues
- Distinction from professional witness:
 - Uses professional knowledge and experience to report facts
 - E.g. a patient's medical history and treatment
 - Cannot give an opinion
- It is important to be clear in which role you are acting

What is an expert witness?

- What qualifies you to be an expert?
 - An ability to assist the Court on matters within your expertise
 - Knowledge and experience
 - Training, qualifications and experience in relevant area
 - Impartial
 - Independent and objective
 - Reliable
 - Scientific basis for opinion
 - Credible
 - Believability

Types of cases

- Criminal
- Family
 - e.g. child care proceedings
- Civil
 - e.g. personal injury, medical negligence
- Court of Protection
- Inquests
- Tribunals
 - including providing a second opinion

Rules for experts

- Set out in rules and practice directions (at www.legislation.gov.uk)
 - Civil Procedure Rules Part 35
 - Criminal Procedure Rules Part 19
 - Family Procedure Rules Part 25
 - Practice directions
- Duty to help the Court on matters within their expertise
 - Overrides any obligation to the instructing party or from whom experts are paid

Practicalities

Receiving instructions

- Getting known
- Solicitors / CPS / litigant in person / Court
- Consider potential conflicts
- Fees and timescales
- Letter of instruction
- Material
 - Variable quantity – 30 pages to over 5,000 pages
 - Missing information

Writing the report

- Develop your own style by learning from others
- Different from usual clinical correspondence
- Separate fact from opinion
- The opinion must relate to the facts, which are analysed based on your knowledge, experience and professional processes
- Tip: repeated proof-reads and consider areas of challenge
- Joint expert statements
- Addendum reports
- (Conferences)

Oral evidence

- A skill in its own right
- Evidence-in-chief, cross-examination, re-examination
- Address answers to the decision maker (judge or jury)
- Referencing facts – awareness of your report
- Responding to skilled barristers
- Remember your role
 - State opinion
 - Responding to new evidence / unexpected questions
- Training and practice

Other practicalities

- Record keeping
 - Data security
- Getting paid
 - Legal aid
 - Getting paid
- Indemnity insurance
- CPD & appraisal

Reflections on medicolegal work

The adversarial system

- Most pronounced in criminal proceedings
- Dynamics between colleagues
- Understanding the process
 - The game and its rules
- Binary outcome
 - Law is black and white
 - Medicine (psychiatry) is multiple shades of grey

Legal processes v pragmatic outcome

- Specific legal issues vs the bigger clinical picture
 - Promoting the optimal clinical outcome
 - Navigating the legal processes
- Conferences with instructing solicitors / CPS / counsel
- Treating clinician vs expert witness roles

Pros and cons

- Pros

- Intellectually stimulating
- Improving psychiatric skills
- Additional income

- Cons

- Time
 - Existing work
 - Job Planning
 - Evenings & weekends
 - Admin burden

