Being an Expert Witness

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Dento-legal expert

'But I'm not an Expert', I explained 12 years ago when I was first asked to write a dental report about a patient. My mind was put at rest when I was told that by virtue of my 25 years in practice, I would be considered an expert in general practice. How foolish of me to be so flattered that I actually believed this.

I now found myself confronted by the philosophical dilemma of necessity *versus* sufficiency. By virtue of my 25 years in practice I had the necessary experience, but as I soon found out, that in itself would not be enough to be an Expert.

What followed was a very steep learning curve. The challenge I faced was rooted in the fact that it is not sufficient to simply be a knowledgeable practitioner with years of experience (and a belief that you had experienced a myriad of different dental challenges) with a firm grasp of clinical dentistry. Being an Expert also requires clear thinking, some legal knowledge and a period of training.

There are two aspects to being an Expert.

The first is clinical. Perhaps as a general dental practitioner, specialist endodontist, dentist with a special interest, a dental academic, oral surgeon or maxillofacial consultant – the list goes on. You will have spent a great deal of time achieving your professional standing and participated in continuing professional education to maintain and extend your knowledge.

The other involves you as an Expert Witness. This is a separate role and has its own disciplines and skills. In order to be able to communicate your professional knowledge in a legal setting, you must have at least a basic knowledge of the law and be aware of the associated practices and procedures.

Surprisingly, dental experts invest a large amount of time and money on their clinical CPD but often have no training as an expert witness. They prepare reports without any independent appraisal and tend to learn by trial and error as they go along.

The Civil Procedure Rules (CPR) were introduced in April 1999, as a result of Lord Woolf's extensive review of civil justice and are sometimes called the 'Woolf Reforms'.

The reforms represented a radically different approach to civil litigation; not only the way litigating parties and their lawyers should conduct themselves, but also how experts should approach their role. Further major developments in the CPR came into effect on 1 April 2013 following the Jackson Review of the costs of civil litigation.

In his review Lord Woolf found serious fault with the old system of expert evidence. He pointed out the central tension which exists between the experts as a paid agent of one of the parties and as an independent witness giving assistance to the court. He identified the danger of Experts being transformed into 'additional advocates of the parties' – guns for hire! It is imperative that Experts write reports and give evidence that is impartial, objective and unbiased.

The CPR defines an Expert in very general terms in Part 35.2(1): 'A person who has been instructed to give or prepare expert evidence for the purpose of proceedings.'

Thinking of becoming an Expert?

1. Get some training!

The BDA is holding a 'Dento-legal matters' seminar to explore the basics of expert report writing, gain tips on preparation for cross examination in court and experience a mock trial. Attendees can gain insight into this intellectually stimulating field from renowned dento-legal experts, barristers and solicitors.

Bond Solon, as part of Cardiff University, also offer Expert Training days covering a basic explanation of the legal system, report writing and crucially, training on how to give evidence.

As an alternative Mike Hill is a clinical negligence barrister at Parklane Plowden Chambers who runs courses with Mike Young, author of 'The Effective Clinical Negligence Expert Witness'.

2. Find a mentor

See if you can find an experienced expert who will mentor you or give you some advice and support. This can be invaluable since it can be quite a lonely experience when forming an opinion for your report.

3. Obsessive compulsive behaviour can be an asset

As an Expert, mistakes can be very costly – not only financially, but also in the way they impact on someone else's life and livelihood. You owe it to the profession to carry out your research and report writing to the very highest standards avoiding small mistakes which may have a significant effect later on.

Not only can Experts be criticised, but they can also be reported to their regulatory body or become the subject of litigation. In the recent case of *Arksey v Cambridge University Hospitals NHS Foundation Trust*, the judge said that the expert's evidence '*fell far below the standard to be expected of a reasonable, competent expert witness, both in relation to the preparation of his reports and in relation to his preparing to give evidence. I could see no excuse for this whatsoever.*'

Once trained, getting your first instructions can feel like an uphill struggle. Speak to solicitors, indemnifiers and other experts to get your foot on the first rung of the ladder – never forgetting that this is a separate discipline that requires regular updates just like your other day job! ♦

Further information

To book a place on the 'Dento-legal matters: what you need to know' seminar at the BDA on Friday 3 April, visit www.bda.org/events/seminars/dento-legal-matters-3-april-london.

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