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Experts and Lawyers: Effective Team Working

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Legal Instructions and Report Writing

- Types of expert reports
- Independence and impartiality
- Letters of instruction
- What the solicitor expects
- Content of the report
- Preparing for conference with counsel
- Amending the expert report
- Procedures
- Funding and payment

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Types of expert reports

- Desk top/provisional opinion or full report?
- Breach of duty
- Causation
- Condition and Prognosis
- Single Joint Expert

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Independence and impartiality

Letters of approach

- Enough information about case/defendant
- Independence and impartiality
- Up to date relevant experience
- CV and field of expertise
- Waiting list – be realistic!
- Funding/payment/deferred
- Fee estimate

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Letters of instruction and enclosures

- Sorted and paginated bundles – vital
- Chronology
- Relevant information including SUI report
- Statements (SUI, inquest, claimant)
- Radiology/imaging
- Privileged/disclosed reports
- Factual discrepancies
- Specific Questions

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What the solicitor expects from the expert

- Reporting within field of expertise
- Dealing with questions
- Literature in support of opinion
- Report on time
- Any other experts needed
- Time limits and the cost of delay
- **Court Directions Order**
- Extending time for service

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Content of Report - 1
Overview

- Summary of expertise
- Summary of facts
- Summary of other reports if relevant
- References to page numbers of records
- Factual disputes
- Range of opinion
- Respond to questions - quote the questions!
- Literature
- Statement of Truth/Duty of Expert (CPR Part 35)

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Content of Report - 2
Apply the correct legal tests

- Breach of duty - Bolam Test
  - Not "I would not" or "most would not"
  - **No** responsible body
  - Stand up to logical scrutiny?
- Causation
  - balance of probabilities "**would** have"
  - not "**may** have" or "**could** have"
  - Factual - what *would* and *should* have happened (Sido John)
  - Medical - what damage flows from the negligence?

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Content of Report - 3
Factual disputes

The Trial Judge will decide matters of fact

- Provide opinion based on each scenario
- Which scenario most likely given the nature of the injury?
- Quote from the records or statement if significant

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Content of Report - 4
Range of opinion

- Consider other potential opinions
- Explain why you have dismissed them
- Judges like this! (See Trials later)

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Conferences with Counsel

- Initial; before exchange; before JSM; before Trial
- Be prepared to explain the medicine
- Discuss the strengths and weaknesses
- Fine tune the allegations (LOC or POC)
- Amending your report before disclosure
- Considering the Defence
- Changing your mind - only with good reason

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Joint Meetings and Statements

After issue of court proceedings:

- Exchange of expert evidence
- Part 35 Questions
- Agendas for expert meetings
- Joint meetings
- Joint statements
- **Crucial stage - basis of evidence at trial**

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

- Falls backwards on stairs
- Found by a neighbour, another doctor, 2 hours after fall
- Vomited, dysphasia, GCS 9/15
- 06:52 admitted by ambulance to MRI
- CT scan ordered
- A&E Consultant, Dr Stewart,"chatted"; says GCS 15 and cancelled CT scan
- Review on CLDU; GCS 12-13; CT scan re-ordered – went ahead at 13:12
- SDH diagnosed and plan to transfer to Hope for surgery
- Seizure and delays in calling an ambulance

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

Hope Hospital

- Transferred to Hope Hospital ventilated
- 19.30 surgery at Hope Hospital
- Craniotomy to evacuate acute SDH and relieve raised ICP
- Severe post operative brain infection

Injuries

- Prolonged rehabilitation
- Developed hemianopia, cognitive impairments and depression
- Unable to return to work as a GP

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

Gathering evidence - facts

- Claimant's witness statements
  - claimant
  - doctor who found him
  - nurse in A&E
  - neurosurgeon from Hope Hospital
  - mother
- Medical records/disclosure
  - condition on and during admission
  - computerised records re scan ordering/cancellation
  - operation note from Hope Hospital

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

Gathering evidence

- Factual evidence: what *would* have happened if scan done earlier?
  - Witness statement from surgeon at Hope Hospital
    - Was damaging raised ICP present earlier?
    - Would Hope have accepted him as a patient?
    - Would Hope have operated if transferred earlier?
    - Was a damaging level of raised ICP present when Hope operated?
- Expert evidence: what *should* have happened: expert evidence
  - Accident & Emergency
  - Neurosurgery

Experts and Lawyers: Effective Team Working Experts at Trial

Raggett v Kings College NHSFT and others [2016]
Alistair MacDuff (sitting as a High Court Judge)

- "Impressive and highly expert witnesses doing their best to assist the court" (30)
- "Mr xxxx's evidence was less than satisfactory…..relied upon acceptance of every part of…(defendant witness')…account"(52)
- "evasive"(53)
- "consistent with joint statement" (69)

Experts and Lawyers: Effective Team Working Experts at Trial

Raggett v Kings College NHSFT and others [2016]
Alistair MacDuff (sitting as a High Court Judge)

- "Dr xxxx….was much less secure in his opinion" (81)
-
- "prepared to make appropriate concessions and to express honest opinions founded on the merits of the evidence and argument" (115)
- "impressive, reliable witnesses….(116)
- "I much prefer xxxx's evidence on this issue…" (124)

REMEMBER !

- THE CASE MAY GO TO TRIAL
- JUDGES (criminal/commercial/shipping/gas/oil)
- EXPLAIN THE MEDICINE
- FOCUS ON THE ISSUES
- APPLY THE CORRECT LEGAL TESTS
- EXPLORE THE RANGE OF OPINIONS

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Questions

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