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## SELECTING AND INSTRUCTING YOUR EXPERTS

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### Dealing with experts

- I am often approached and rarely instructed
- The medical records are a mess and incomplete
- I report
- I hear nothing for six months
- I receive a list of detailed questions with a deadline of a week
- I hear nothing for a year and am then asked to cancel my holiday for trial
- I don't know the result of the claim and am still waiting for payment

Try to see things from the other person's point of view



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### Dealing with experts

- Without expert evidence the case goes nowhere
- Treated well experts will:
  - Accept instructions
  - Help screen cases for free
  - Understand when you make mistakes
  - Help you get the best possible results
  - Work to deadlines to help you out
- Build your own expert network
  - Take opportunities to meet experts/build relations
  - Cultivate a team approach with your case experts



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### How to choose the right expert

- Specialism
- Experience
- Robust
- Fair and balanced
- Outside their discipline
- Junior/over the hill
- Partisan
- Conflicted

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### Which expert first?

- Start with the weakest link?
- Start with breach of duty?
- Start with causation?
- Is a joint instruction appropriate?
- Pros/cons

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### Which speciality – often overlap

- Midwife/Obstetrician
- A&E/Orthopaedic/Podiatrist
- Psychologist/Psychiatrist
- Spinal surgeon/Neurosurgeon
- Breast surgeon/Oncologist/Radiologist/Histopathologist

**Be guided by your experts!**

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## Where to find your expert

- Firm database
- AvMA
- Counsel
- Solicitors
- Other experts
- APIL

**A good recommendation is invaluable!**



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## Letter of approach

- **Keep brief (1 page)**
- Anonymity? (GDPR)
- Background
- Issues
- Likely defendant (check for conflict)
- Are you the correct expert?
- Hourly rate, total fee, timescale, availability for conferences (in for the long run)



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## Letter of instruction

- Timescale
- Enclosures
- Summary of facts/medical chronology
- Summary of medical evidence
- Relevant law (consent – Montgomery reminder?)
- Pagination/literature
- Identify missing documents
- Specific questions
- Fees

**An early conference date in the diary can keep matters on track!**



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## Privilege issues – Manage your expert evidence

- CPR 35.10
- (3) expert's report must state **substance of all material instructions**, whether written or oral, on which report is based
- (4) **those instructions shall not be privileged** against disclosure, but the court will not
  - (a) order disclosure of any document, or
  - (b) permit cross examining in court,

unless satisfied that there are reasonable grounds to consider that the instructions given were **inaccurate or incomplete**

**Check reports CAREFULLY before service**



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## Sensitive issues arising from reports

Dealing with sensitive issues arising from reports

1. A supportive report can be devastating news
2. Breach of duty but no causation
3. Me/my loved one is going to die
4. Life expectancy

**Client care can make a huge difference**



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