

The role of the expert witness: A guide for clinical imaging and therapeutic practitioners

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Abbreviations

CASE	Consortium for the Accreditation of Sonographic Education
CoR	College of Radiographers
CPD	Continuing professional development
CT	Computerised tomography
CV	Curriculum vitae
DATIX	Generic system that many NHS Trusts use to record incidents, near misses and never events
FASP	Fetal Anomaly Screening Programme
GDPR	General Data Protection Regulations
HCPC	Health and Care Professions Council
HMRC	His Majesty's Revenue and Customs
ICO	Information Commissioner's Office
IR(ME)R	Ionising Radiation (Medical Exposure) Regulations
IT	Information technology
NHS	National Health Service
NICE	National Institute for Health and Care Excellence
NMC	Nursing and Midwifery Council
PC	Personal computer
PII	Professional indemnity insurance
RCM	Royal College of Midwives
RCT	Register of Clinical Technologists
SCoR	Society and College of Radiographers
SoR	Society of Radiographers
UK	United Kingdom

Terminology

A wide range of legal terms are used within the documentation; the expert should be familiar with them.

Breach of Duty	<p>Is found to exist where the defendant fails to meet an existing standard of care required by law. This is a legal term and it is not in the remit of the expert witness to state whether or not a breach of duty occurred. However, it is the role of the expert witness to:</p> <ol style="list-style-type: none"> i. Advise on whether there is/are existing, relevant standard(s) of care in place (e.g. FASP, HCPC, IR(ME)R, NICE, SoR professional code of conduct); ii. Provide expert opinion on whether the action or inaction of the defendant, as described within the case documentation made available to the expert, aligned with or deviated from the standard(s).
Burden of Proof	<p>In a civil case, the claimant is required to prove that allegations set out in the case are true and that the defendant (or the 'other party') was responsible. This is called the 'burden of proof'. The standard of proof for a civil dispute is 'on the balance of probability'.</p> <p>NB: The standard of proof for criminal cases is 'beyond reasonable doubt'.</p>
Case Law	A law made by Courts or tribunals. Case law can set a precedent for subsequent cases to be judged against.
Civil Procedure Rules	A set of rules to enable the Court to act in a fair and consistent way.
Claimant	The party or person who makes/brings a legal claim (or complaint) in Civil Court proceedings.
Conflict of Interest	When there is a possible conflict that might impact the duty of the expert to remain independent. For example, if the expert knew and had worked with the defendant, this could have the potential to influence their opinion. ¹⁻³
Counsel	Another name for the barrister, or a group of barristers, engaged in a case.
Cross-Examination	Questioning of a witness by the opposing legal party.
Damages	A sum of money awarded by the Court as compensation to the claimant.
Declaration of Interest	<p>A statement signed by the expert witness declaring that they have followed relevant processes and complied with the code of practice for experts and their professional code of conduct, at the time of writing the report.</p> <p>NB: This is different to a 'conflict of interest'.</p>
Defendant	In civil proceedings, the party or person responding to the complaint arising from a claimant.

Duty of Care	<p>An obligation to act in a certain way or follow certain standards.</p> <p>It is usually fulfilled by application of the ‘Bolam Test’⁴ or the ‘Bolitho Test’⁵ in England and Wales, or the ‘Hanley Test’ in Scotland.⁶ The decision in a medico-legal case is based on the question of whether another professional of the same standing, level of training and experience would have practised in the same way in the same circumstances.</p>
Expert	Assists the Court on matters within their expertise.
Instructions	Request from the instructing solicitor detailing the questions to be answered by the expert witness.
Limitation Period	The period within which a person claiming against another person (‘the defendant’) must start Court proceedings.
Negligence	When harm is caused by an ‘act’ or ‘omission’, for example when someone has not fulfilled the duty of care.
Particulars of the case	Detailed facts of the case, including what the breach of duty was and the impact on the claimant.
Preliminary or Screening report	An initial report to help determine whether a negligence claim is likely to exist, based on the available evidence.
Professional Standards	Standards expected of a professional working in that field. For example, there are <i>The standards of proficiency for radiographers</i> , ⁷ published by the HCPC, ‘Standards of Proficiency for a Sonographer’ which is an appendix to the <i>Standards for Sonographic Education</i> , published by the Consortium for the Accreditation of Sonographic Education (CASE), ⁸ a <i>Code of Conduct and Ethics</i> published by the Society and College of Radiographers (SCoR) ⁹ and <i>The Code</i> published by the Nursing and Midwifery Council. ¹⁰
Statement of Truth	A statement confirming that the report clearly states the difference between facts and professional opinion and is an honest review of the information provided.
Subpoena	A writ (summons) to attend a Court of Law to give evidence.
Tort Law	<p>This relates to civil cases and relates to a ‘breach of obligation’.¹¹</p> <p>Negligence is the most common form of tort law and enables one person to claim damages from another person, who committed the wrongdoing. The claimant must show evidence that there was a duty of care, that the duty was breached and that, as a consequence of that breach of duty, harm was caused.</p>

Table 1: Terminology used in medico-legal cases

1. Introduction

An 'expert witness' is a person who provides opinion within the scope of their field of expertise through qualification, practice and professional experience to assist legal or formal proceedings (i.e. in a Court case, Judicial Review, tribunal or professional fitness to practice investigation/hearing). They can provide their opinion (through written report or oral testimony) on any matter, provided they are qualified and sufficiently experienced to give such an opinion.^{3,12,13} The Academy of Experts defines the role as follows:

An Expert Witness can be anyone with knowledge or experience of a particular field or discipline beyond that to be expected of a layman. The Expert Witness's duty is to give to the Court or tribunal an impartial opinion on particular aspects of matters within his expertise which are in dispute.¹³

Expert evidence provides the Court with information, explanation and understanding that is likely to be outside the experience and knowledge of a Judge (and/or a jury). Requests for the provision of expert opinion, usually via a written report, are made by the receipt of 'instructions' from the legal team representing 'the claimant' or 'the defendant'.

The primary duty of the expert witness is to enable the Judge and the Court to reach an outcome for a case, by giving a credible opinion that is independent and unbiased, and that falls within the scope of their expertise. As such, it is this duty that overrides any other obligation, such as responsibility to the instructing solicitor.

An expert witness report may also be requested in other situations, including but not limited to:

- 'Fitness to practise' investigations by a professional statutory regulatory body, such as the Health and Care Professions Council (HCPC), to determine whether to progress with a fitness to practise case;
- Assisting the Coroner during an inquest following the death of an individual(s);
- Providing expert opinion to the Judge/jury in Civil or Criminal Court case proceedings;
- Advising an instructing solicitor via a provisional report on whether to proceed with a case.

Court structures and processes can vary between England and the devolved countries, so it is important to be aware of the differences when undertaking work in other countries. The English Court structure is explained in this [simple chart](#).¹⁴ The vast majority of cases for which the imaging

practitioner will be instructed will be for Civil Court cases.

Specific legal procedures within the relevant country must be followed by the expert witness, as documented in the *Civil Procedure Rules*.¹⁵ Additional guidance is available in the *New Civil Procedure Rules* for Scotland¹⁶ and the *Practice Direction No 2 of 2021* for Northern Ireland.¹⁸ It should be noted that:

*While Part 35 of the English Civil Procedure Rules contains mandatory rules on duty and procedure that expert witnesses and their instructing parties in England & Wales must adhere to, there are currently no equivalent rules under Scottish law, and few rules of court that directly affect experts. Nevertheless, the compliance and conduct of an expert witness during a case held in Scotland can be critical to the outcome and/or the reliance placed on their evidence. Instructing parties are therefore advised to keep abreast of common law developments in this area, as well as ensuring that any experts they instruct have received up-to-date and relevant training on their role and conduct.*¹⁷

This document provides an introduction to some of the information a practitioner might need to consider when starting out as an expert witness. The document predominantly relates to civil cases, fitness to practise and other professional cases, rather than criminal cases. Guidance is primarily aimed at diagnostic and therapeutic radiographers and sonographers. The term ‘practitioner’ will be used to encompass these different professionals.

2. Types of witness

The eye witness or professional witness provides factual evidence, i.e. an account of what they saw/heard in relation to a case. Anyone, including a lay person or a professional, can act as an eye witness. A practitioner may therefore provide this evidence in their capacity as a lay person or in their capacity as a professional. The evidence they present will differ depending on the capacity in which they are acting. For example, a practitioner can provide evidence if they were present during a particular procedure and will have provided a written ‘witness statement’ in a professional capacity.

A typical template for such a statement is shown in Figure 1.

In the [Court name] County Court	Case number:
Parties	[Name] Claimant
	[Name] Defendant

WITNESS STATEMENT

1. I, [Name] of [Address] am [the Claimant in this claim]. The facts in this statement come from my personal knowledge *[or as the case may be]*.
2.
3.
4. etc
5. I believe that the facts stated in this witness statement are true.

Signed

Dated

Figure 1: Template for witness statement

A practitioner is rarely called as an eye witness in a professional capacity in Court. However, they may be called upon by an instructing solicitor acting on behalf of either the claimant or the defendant in a Court case. If they are required to attend Court to provide oral testimony, they take an oath or affirmation and will be asked questions to describe the facts of what they witnessed. They may then be ‘cross-examined’ by the other side.

The character witness can be called in certain cases to provide evidence, for example on the good character of a person accused. This may be used to help determine the outcome of a civil case or the sentencing in a criminal case. It is extremely uncommon to be called as a character witness in medico-legal civil cases.

The expert witness may be instructed by the instructing solicitor acting on behalf of either the claimant or the defendant in a Court case to provide an opinion because they are an expert in a particular field where the Court does not have the knowledge or subject expertise relating to one or more matters that are relevant to the outcome of case.

3. The role of the expert witness

The role of the expert witness in a Civil Court case is important in ensuring a fair process for both the claimant and the defendant. The role includes:

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- Providing an impartial opinion on specific issues in the case for the Judge and Court;
 - Enabling access to a ‘body of knowledge’ to advise the Court in a specific area of practice; a key skill of the expert witness is the ability to explain sometimes complex technical issues so that they can be universally understood by the untrained individual or audience;
 - Providing a robust, unbiased and well-reasoned report to advise the Court with regard to a particular field of practice (for example, diagnostic radiography or sonography);
 - Advising the Court on which professional standards, codes of conduct or statutory requirements or practice current at the time of the event are relevant to a particular case;
 - Providing a sound expert opinion, in the absence of relevant standards, protocol or guidance, on what would be ‘usual practice’ in the same circumstances, as described in the case documentation;
 - Serving as a ‘professional translator’ to the Judge and to the Court, providing clear definitions, explanation and significance of terminology relating to professional practice;
 - Careful evaluation and interpretation of the information, data and documentation provided (e.g. medical records and imaging reports) to provide clarity to the Court on issues pertinent to the particulars of a case;
 - Providing expert opinion on whether or not the standard of care expected to be provided by a reasonably competent practitioner performing an action or procedure under scrutiny was reached.

It is not the role of the expert witness to:

- Provide advice on the appropriate legal outcome in relation to a particular case; the practitioner, as an expert witness, does not advise on legal procedures, as this falls outside the scope of practice of the expert witness;
 - Determine whether a ‘breach of duty of care’ or negligence has occurred in a civil dispute; these are legal terms and, again, fall outside the scope of practice of the expert witness;
 - Provide guidance on whether a formal NHS trust complaint should be upheld; this is the remit of [NHS Resolution](#);
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- Determine whether a practitioner is fit to practise; this is the remit of the HCPC Fitness to Practise panel;
 - Provide opinion on liability or compensation in relation to an organisation or an individual subject in a particular case;
 - Provide or amend a report in order to align with what the instructing party would like to convey to the Court; the expert witness must remain impartial and independent, and serve the Court;
 - Record observations and provide opinion on all matters of medical significance for the Court proceedings; the expert witness has a duty to the Court to declare when matters fall outside their area of specific expertise. For example, a practitioner with no prior training, qualification or expert experience in radiological reporting would not provide testimony or opinion on radiological interpretation or the contents of a radiology report, and would be expected to decline such a case or line of questioning on these grounds.

3.1 Procedures and expectations of the expert witness

The following sections outline the procedures involved in the provision of either written or oral expert opinion. The process from the initial inquiry from an instructing solicitor to the provision of oral testimony in Court and the conclusion of a case is described, with specific guidance given in the construction of written reports, which are the most frequent requirement of the expert witness.

The Civil (and Criminal) Procedure Rules: Practice Direction 35

*The Civil (and Criminal) Procedure Rules*¹⁵ are clear on what is expected of the expert witness. The role and conduct of the expert witness in civil cases is explicitly outlined by the Courts in Practice Direction 35, clause 32,¹⁵ which specifically relates to how an expert witness's report should be presented:

An expert's report must:

- (1) *give details of the expert's qualifications;*
- (2) *give details of any literature or other material which has been relied on in making the report;*

-
- (3) *contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;*
 - (4) *make clear which of the facts stated in the report are within the expert's own knowledge;*
 - (5) *say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;*
 - (6) *where there is a range of opinion on the matters dealt with in the report –*
 - a) *summarise the range of opinions; and*
 - b) *give reasons for the expert's own opinion;*
 - (7) *contain a summary of the conclusions reached;*
 - (8) *if the expert is not able to give an opinion without qualification, state the qualification; and*
 - (9) *contain a statement that the expert –*
 - a) *understands their duty to the court, and has complied with that duty; and*
 - b) *is aware of the requirements of Part 35, this practice direction and the Guidance for the Instruction of Experts in Civil Claims 2014.¹⁵*

At all times the expert witness must be clear on what is fact (i.e. what can be proven or substantiated by evidence), what is assumption (an unsubstantiated but likely position) and what is their opinion (a considered view, which is open to scrutiny).

Tip: When reading through case documents and writing contemporaneous notes to form an expert's opinion, it is helpful to frame the notes in the following way.

Fact	Assumption	Opinion
<ul style="list-style-type: none"> • Witness of fact • Professional witness 	<ul style="list-style-type: none"> • Implication 	<ul style="list-style-type: none"> • A view of the expert with specialist knowledge and experience
<ul style="list-style-type: none"> • Documentary evidence 	<ul style="list-style-type: none"> • Unsubstantiated by written evidence 	<ul style="list-style-type: none"> • Subjective within their particular professional field
<ul style="list-style-type: none"> • Circumstantial evidence 	<ul style="list-style-type: none"> • Subjective • Hearsay 	<ul style="list-style-type: none"> • Accompanied by robust reasoning • Guides the Judge and Court

Example Notes		
<p><i>Mrs X, the claimant, attended St Elsewhere NHS Foundation Trust radiology department for X-ray examination on 08/09/2018 date... [Source: page 78 of 623 of medical notes in case documentation bundle]</i></p>	<p><i>It is an assumption that the radiography practitioner was qualified and trained in the procedure in question...</i></p>	<p><i>On review of the following documents, it is my opinion that the practitioner did / did not carry out the procedure in line with professional standards and guidance for best practice. (Reference the documentation/standards)</i></p>
<p><i>Following the intravenous administration of contrast media during the CT examination, extravasation occurred. [Source: page 2 of the DATIX incident report in case documentation]</i></p>	<p><i>In the absence of written consent, it is an assumption that informed consent was implied by the claimant prior to the procedure...</i></p>	<p><i>Based on the following, I believe the radiographer took reasonable actions and used adaptive techniques to avoid injury to the claimant.</i></p>

4. An overview of procedure

Some or all the following steps are part of the process for a civil claim (Figure 2). In many cases the full report is the final stage, whereas a smaller number of cases progress to a case conference meeting, with an even smaller number resulting in a Court appearance.

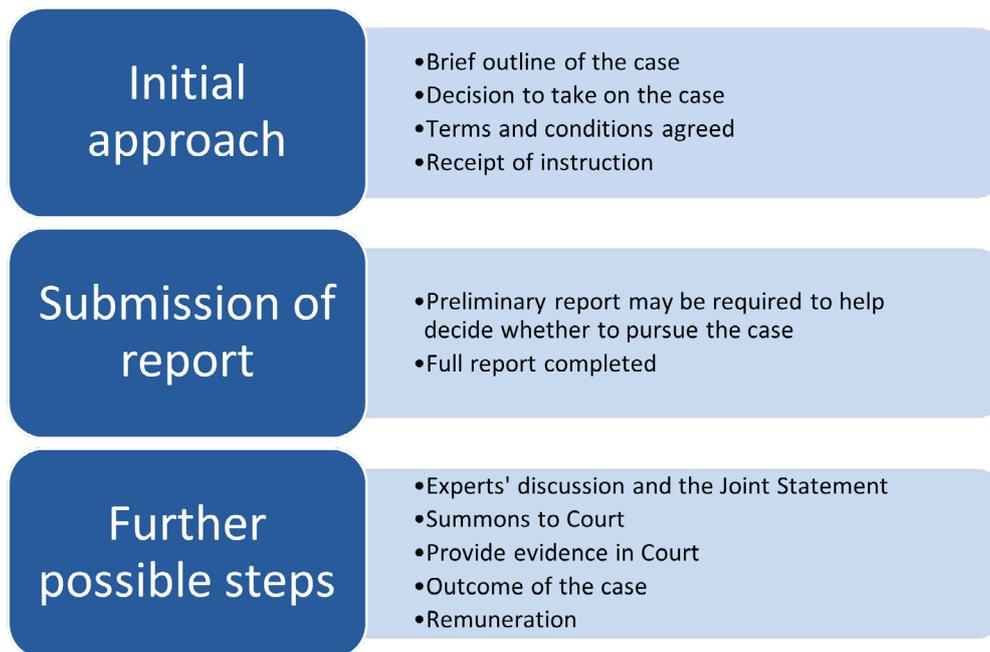


Figure 2: Steps that might be required of an expert witness in a civil claim

1. Initial approach – the expert witness will be contacted by the instructing solicitor (or a third party) to consider a brief outline of a case. Based on this, the expert witness will make a decision to take on or decline the case.
2. Terms and conditions agreed – time scales for receipt of the report, terms of business/rates will be confirmed between the expert witness and the instructing solicitor/party.
3. Receipt of instruction – once the expert confirms they will take on a case, full details and documentation will be sent to them, along with a letter outlining the specific questions raised by the legal team that the expert witness will be expected to answer. These are known as the ‘instructions’.
4. Submission of preliminary report – this will sometimes be required to provide guidance for the legal team to decide whether a Court case should be pursued.
5. Submission of full report – if the Court case proceeds, a comprehensive document outlining

the opinion of the expert witness for the attention of the Judge and the Court will be prepared by the expert witness.

6. Experts' discussion and the Joint Statement – to outline areas of agreement/disagreement between the expert witnesses instructed by opposing sides of the dispute.
7. Summons to Court – to provide verbal testimony in relation to the submitted written report.
8. Provision of evidence in Court – under questioning and cross-examination.
9. Outcome of the case.
10. Remuneration and conclusion of the case.

4.1 The procedure in detail: Taking instructions and negotiating fees

An expert witness will be provided with limited case details with which to determine whether their expertise will be suitable for taking on the case and confirm that there is no conflict of interest. At this point the instructing solicitor will normally want to see a copy of the expert's curriculum vitae (CV) and may require other documentation (see [Governance](#) section below). The instructing solicitor will also want to know that the expert has relevant clinical expertise current at the time of the case, professional standing and sufficient experience to provide credible evidence relevant to the case.¹⁹

Experts will need to negotiate their terms and conditions of engagement and these will vary depending on experience and other factors. Some agencies or legal aid cases will have fixed fees for a written report, otherwise most experts charge an hourly rate or part thereof. It is important that expectations of what constitutes a written report are clearly stated and also how additional work will be charged, particularly in relation to fixed fee arrangements. Instructing solicitors often ask for further information following receipt of the expert's report. The expert may want to charge for this additional work. The SoR is unable to specify what fees an expert should charge, but a number of organisations publish the results of surveys showing average hourly rates charged by expert witnesses.^{20,21}

The terms and conditions of appointment should include a range of considerations, including:^{20,22,23}

- Fees for writing a report
- Fees for attendance at meetings

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- Daily rate for Court attendance
 - Travel and subsistence costs; this might include things such as first class train travel, mileage charges for car travel, car parking
 - Timescales for payment of expert witness fees
 - Late payment charges
 - Cancellation charges for if a Court case or meeting is cancelled or postponed
 - Liability limits
 - Termination clauses
 - Intellectual property rights
 - Confidentiality

4.2 On receipt of the case documents bundle

Once the expert witness has agreed to take on a case, a 'document bundle' will be sent from the instructing solicitor. This varies in size and is usually provided in electronic format or cloud storage and accessed via a secure link. The expert witness should check that all the documentation likely to be required to write the report is available. Depending on the type of case and/or examination, it may include, but not be limited to:

- Letter of instruction
 - Medical records
 - Witness statement(s) from the claimant (or on behalf of the claimant) and other relevant persons
 - Professional witness statement(s) (from individuals who were present during the incident)
 - Radiology/ultrasound request/referral information
 - Copies of clinical images taken during the relevant procedure(s)
 - Copies of the radiological/ultrasound report(s)
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- Associated referral documentation and reports
 - Consent form (if available/relevant; not all medical/imaging procedures have a written consent process)
 - Risk assessment (if applicable)
 - Other relevant patient information (e.g. copies of medical records including relevant test results, previous imaging reports, port mortem report)
 - Relevant local policy and standard operating procedures that were in place at the time of the incident
 - Incident investigation report (DATIX)
 - Serious investigation report
 - Outcome of a Coroner's Inquest (often provides a useful background to a case in the event that the claimant is deceased and subject to a Coroner's investigation)

The bundle should be clearly numbered and chronologically ordered, but this is not always the case. The expert witness will have to review the documents carefully as they start to prepare the written report. It is the responsibility of the expert witness to request any relevant documentation that has not been provided; if this cannot be supplied, the expert witness should be provided with a clear explanation as to the reason(s) for its omission.

4.3 Additional documentation

Research will be required to ensure that access to documents relevant to the time of the incident/case are available. These may include, but are not limited to:

- Regulatory body standards of proficiency, such as HCPC or NMC
- Relevant code of professional conduct, such as SoR, the Royal College of Midwives (RCM) or the Register of Clinical Technologists (RCT)
- Relevant policy documents from professional bodies
- Clinical guidelines at the time, such as local guidelines, NICE guidance, screening committee guidelines and standards, e.g. FASP or other national screening programme, national policy,

specialist interest group guides

- Patient information leaflets or NHS trust/healthcare provider website information relevant to the case
- Any relevant research pertinent to the case

4.4 Writing the report

The basic structure of a written report should follow a particular format that includes:

1. Contents page
2. Executive summary: short professional biography, brief outline of case and summary of opinion
3. Introduction: background context of the case and outline of instructions
4. Details of documents received and reviewed: these may be listed in an appendix to make the body of the report more concise
5. Findings: this will include substantiated and unsubstantiated facts and assumptions from the case documentation
6. Conclusions and opinion: inferences and opinions drawn from the facts, with clear reasoning
7. Declaration of Interest
8. Statement of Truth
9. Statement of understanding of, and compliance with, the expert's duty to the Court; and a declaration of awareness of the requirements of CPR 35, PD35 and the Guidance for the instruction of experts in civil claims²
10. Appendices
11. References and bibliography

4.5 Best practice and common pitfalls in the provision of written reports

The provision of expert reports is a skill that expert witnesses develop to enable them to advise the Court concisely and with credibility. Some best practice advice and common pitfalls are given below.

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- An expert should be familiar with and always adhere to the Civil Procedure Rules when providing a written report.^{15,24}
 - It is important to have a clear understanding of the role of the expert witness. From the initial receipt of instruction, the duty of the expert witness is to the Court, not the instructing party or solicitor.²⁵
 - It should be remembered that the expert's report will be read by those whose expertise is primarily in the law. Few, if any, of these individuals – including, most importantly, the Judge – will have extensive knowledge of the matters on which the expert's opinion is sought. The report must be clear, easy to follow and concise.
 - Providing too much information, or more than is specifically asked for, should be avoided.
 - All medical terminology should be described and clarified in lay terms. Any abbreviations or acronyms used should be spelt out in full the first time they appear in the report.
 - A contents page followed by a summary on the first page of the report are useful.
 - The report should include page numbers and a footer. A good tip is to imagine the report becoming unbound and dropped. Every page needs to be clearly identifiable, chronologically marked and referenced back to the original document.
 - Chronological dating of events is useful and provides flow to the document. What happened, when, and where? It can be referenced to the document bundle and is especially helpful when the bundle pages are not ordered chronologically.
 - Every effort should be made to avoid 'confirmation bias' or any other kind of unconscious influence on the case, based on reading the letter of instruction or from past experience. A useful test to apply to check for unconscious bias is to ask: "Would my opinion be the same if I was providing a report for the opposing party?"
 - The source of all statements of fact, assumption and opinion should be referenced to either the case documentation or the relevant professional standard, policy or guidance.
 - Opinion should be based only on the interpretation of the information that is provided within the documentation. If it is not documented, it should not be assumed that it happened. Identified facts should be substantiated by written evidence that can be referenced from the case document bundle. The relevant page number(s) where this can be found should be
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included.

- Where there is a range of clinical, medical and/or professional opinions, summarise that range and the reason(s) for the expert's opinion provided.³
- As the expert can be questioned and/or cross-examined in Court on everything written in their report, it is recommended that an opinion is provided only on matters that are addressed in the letter of instruction. Providing an opinion on other matters should be avoided, however helpful it may appear.
- Matters which fall outside the expert's scope of practice, clinical expertise or professional role should be clearly stated in the report and no comment or opinion given on them. For example, a sonographer expert should not provide an opinion on the report and/or images from a 'non-routine' ultrasound scan performed by a fetal medicine consultant.
- Assumptions that cannot be substantiated in the case documentation provided should be avoided.
- The use of legal terminology should be avoided. This is a common pitfall and can be avoided by only using terms that are within the scope of the expert's expertise and by clearly explaining terms and acronyms that others may not be familiar with. For example, instead of using the terms 'negligence' or 'breach of duty' that are primarily legal terms, alternatives could be used, such as "In my opinion, the practice documented followed the Standards of Proficiency for Radiographers published by the Health and Care Professions Council (HCPC) and the Code of Professional Conduct published by the Society and College of Radiographers (SCoR)" or "In my opinion, the practice followed the standards recommended by the NHS Fetal Anomaly Screening Programme (NHS FASP)" (or Antenatal screening Wales, Improving Health, Pregnancy and Newborn Screening Programme, HSC Public Health Agency, or Antenatal Screening Programme).
- References should be listed at the end of the report and must be relevant to practice at the time of the examination or incident. If national guidance is being quoted, it has to be contemporaneous to the time of the examination or incident. Reference to current professional guidance or policy that was not in publication at the time of the incident/case should not be included.
- It is important to ensure that elements such as the Declaration of Interest, Civil Procedural Rules and Statement of Truth are not omitted from the report.

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- Good organisation, document management, storage and disposal are essential.
 - An expert witness should have excellent knowledge, understanding and processes for maintaining competence and following the latest guidance, e.g. working as an expert witness, General Data Protection Regulations (GDPR) and financial regulations for self-employment.

4.6 Case conferences

Case conferences are held to explore cases further and help make decisions about whether there is a case to answer, where common agreement can be made and if a case may progress further. There are two types of case conference and a different approach is needed for each. Case conferences are common, whereas joint expert conferences are less so.

4.6.1 Case conference with Counsel and other experts

This is a meeting between the barrister (Counsel) instructed by the instructing solicitor and other experts instructed by the solicitor in the case. It is a meeting between experts and Counsel 'on the same side' to explore whether or not, based on the reports provided by all the experts, there is a case to answer. In an obstetric ultrasound case the experts might include a sonographer, a fetal medicine specialist (who will have provided an opinion on what did happen or should have happened following referral) and one or more relevant paediatric specialists. This type of conference is quite a common occurrence so it is likely that this would happen fairly early in an expert's career.

A conference bundle may be sent prior to the meeting. This will include all the documentation which Counsel wishes to discuss with the experts. There may or may not be a formal agenda. If no conference bundle has been produced, the expert should have their report to hand, together with any reports from the other experts which have already been sent.

The discussions will be led by Counsel and frequently follow the clinical order of events. The instructing solicitor will be present, but rarely takes part in the meeting other than to confirm any 'technical' queries from Counsel. It is likely, therefore, that Counsel will want to start with issues relating to the practitioner's expert report(s). Be aware, however, that the mental agenda that Counsel will be following may be very different from that which an expert might anticipate. It is important to remember that matters that are of importance to a very sharp legal mind are not necessarily those which an expert in the clinical field may consider to be so. The expert must also be prepared to explain clinical and/or imaging issues clearly and be able to expand on and/or justify how they reached the opinions presented in their report. These situations can feel uncomfortable,

particularly if the opinions of other experts differ. It may be helpful to remember that it is an individual expert's opinion on the matters covered in their report that the Judge will rely on, and not that of anyone else.

It is helpful if an expert takes their own notes during the conference as an aide memoire until a copy of the conference notes are received. Counsel may request that an expert consider amending their report as a result of the meeting. The instructing solicitor will normally write to the expert following the conference enclosing a list of Counsel's suggestions for considering in the revised report. During or following the conference, if the expert has changed their opinion, it is likely that they will be requested by Counsel to express this in a revision of their initial report. This is acceptable practice, but a report must never be amended or any parts changed in a way that does not reflect the expert's true, though now altered, opinion. This is outlined in the Statement of Truth.

4.6.2 Joint expert conference

Where experts have been instructed for opposing sides of a dispute, the experts may be invited to a 'case conference' to discuss their findings and opinion in their submitted reports. Experts' reports from both sides will have been exchanged prior to this conference. It is important to become familiar with the opinions and views of the equivalent expert from a thorough reading of their report.

The purpose of a case conference between experts should, wherever possible, be to:

- Discuss and identify the issues in the case that both experts agree on and provide clear rationale for any disagreement;
- Identify what action may be taken, if any, to resolve outstanding issues between the two expert reports; this does not always form part of the conference or the joint report.

An agenda will need to be agreed between the instructing solicitors for each side for the joint expert conference. At times there may be two separate agendas, so all questions must be answered in the meeting. An expert may or may not have been asked to comment on the draft questions prepared by their side during the preparation of the agreed agenda. The conference should take place in a neutral location, rather than in one or the other solicitor's office. The only individuals present should be the experts involved in the case.²⁶ At the start of the meeting, it should be agreed between the experts who will take notes and prepare the draft report of the meeting for revision and subsequent agreement between the experts. The discussion should focus on the independent views of the experts, regardless of any request or influence from the instructing party. The experts

should comment only on matters relating to the case and those that are within their areas of expertise.

For a case relating to diagnostic radiography practice, typical questions posed to the expert witnesses for discussion might include:

- *Is it accepted that the decision as to whether a radiograph is required on an urgent basis is a decision for the treating clinician and not the radiographer?*
- *Is it accepted that the decision as to whether to transport a patient to the radiology department either on a bed or in a wheelchair is a decision for the clinical staff who were caring for the patient and not the radiographer?*

For a case relating to routine obstetric ultrasound practice, typical questions posed to the expert witnesses for discussion might include:

- *Do you agree that the department concerned was following the Fetal Anomaly Scan Programme's (XX year) recommendations for performing a routine 20-week scan?*
- *Do you agree that there is a Fetal Anomaly Scan Programme requirement to image the fetal spine and its skin covering in sagittal section at the routine anomaly scan?*
- *With reference to the ultrasound scan performed on XX, XXX (Day, Month, Year), do you agree that the image taken at 13:14:15 shows the fetal spine and skin covering in sagittal section?*
- *Do you agree that the image is of the standard recommended by the Fetal Anomaly Scan Programme's (XX year) guidelines?*
- *If not, why not?*

Where opinion is sought on a particular outcome or incident, the appropriate response is “on the balance of probabilities...”, i.e. on what outcome would have been most likely.

The outcome of the conference is a jointly prepared statement (signed by both experts) that sets out clearly:²⁶

- The issues on which the two experts agree, and the basis of such agreement;
- Any issues on which the experts do not agree, and the rationale for any disagreement;

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- Any further issues that have arisen as a result of the conference but were not included in the original instructions or agenda for the conference;
 - The responses to all questions raised by the instructing party, as outlined in the conference agenda;
 - A list of further actions, if required, to resolve any issues; this may involve further discussion between the two experts (see comments above).

A joint statement should be drafted, signed and sent to the instructing party shortly after the conference (usually within seven days).

It may become necessary for experts to amend their own reports as a result of the meeting, or where further evidence or documentation is disclosed throughout the case. The expert should only make amendments to their report following instruction from their instructing solicitor. Experts must never amend or change any parts of a report in a way that does not reflect their true opinion. This is outlined in the Statement of Truth of the Civil Procedure Rules.

4.7 Giving evidence in Court

Once the decision has been made for the case to proceed to trial, the instructing solicitor will request dates of non-availability from the expert. Such a request is normally for dates six to eighteen months in the future, and for a period of five to ten days. Non-availability should relate only to unavoidable future absences such as pre-booked annual leave or accepted invitations to professional meetings. Once the Court has listed the case for trial, an official subpoena will be sent to the expert requiring their attendance at the Court for a specified number of days between specified dates.

On the rare occasion that an expert is required to attend Court, it is important to remember that although instructions received are on behalf of the client, the expert's primary duty is to the Court. An expert must remain impartial and objective at all times, representing their profession with integrity. Civil proceedings may be held in the High Court, County Court, or any of the various specialist tribunals which hear different civil claims (e.g. employment tribunals).



Witness Summons

In the	
Claim no.	
Claimant <small>(including ref.)</small>	
Defendant <small>(including ref.)</small>	
Issued on	
Fee Account no.	

To

You are summoned to attend at *(court address)*

on of at (am)(pm)

(and each following day of the hearing until the court tells you that you are no longer required.)

to give evidence in respect of the above claim

to produce the following document(s) *(give details)*

The sum of £ is paid or offered to you with this summons. This is to cover your travelling expenses to and from court and includes an amount by way of compensation for loss of time.

This summons was issued on the application of the claimant (defendant) or the claimant's (defendant's) legal representative's whose name, address and reference number is:

Do not ignore this summons

If you were offered money for travel expenses and compensation for loss of time, at the time it was served on you, you must –

- attend court on the date and time shown and/or produce documents as required by the summons; and
- take an oath or affirm as required for the purposes of answering questions about your evidence or the documents you have been asked to produce.

If you do not comply with this summons you will be liable, in county court proceedings, to a fine. In the High Court, disobedience of a witness summons is a contempt of court and you may be fined or imprisoned for contempt. You may also be liable to pay any wasted costs that arise because of your non-compliance.

If you wish to set aside or vary this witness summons, you may make an application to the court that issued it.

The court office at: _____
is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.
N20 Witness Summons (05.14) © Crown Copyright. Reproduced by Thomson Reuters (Professional) UK Ltd.

Figure 3: Example of a witness summons to attend Court

A schedule of examination of the evidence will be agreed in advance by the two parties. The instructing solicitor will inform the expert nearer the time when, within that time frame, Counsel would like them to be present in Court. It may be that the expert's evidence is given early in the trial, but the expert is then asked to continue to attend to listen to the evidence from the other expert witnesses (such as the medical consultant experts). An issue that Counsel has not previously considered, but which further exploration of would benefit the case, may be picked up during the proceedings. Counsel may therefore seek the opinion of one or more of the experts who have already given their evidence, been cross-examined and been discharged from their duty. Rarely, Counsel may request from the Judge that one or more experts be recalled to give further evidence. In such situations, the expert should be prepared to be recalled to the witness box to give additional evidence to the Judge, and also to be cross-examined further. Experts can attend throughout the case should they so wish, irrespective of whether or not they have been discharged from their duty

to the Court. It is a personal matter whether or not to charge for attendance on the days when not required to give evidence or be present.

Any additional requirements or reasonable adjustments that an expert might need should be discussed with the instructing solicitor in advance of the trial.

Appearing in Court can be a challenging experience, both mentally and physically. An expert will need to consider how they prepare themselves for this, for example by using relaxation, mindfulness or breathing techniques.

When attending Court to give evidence, there are a number of things to consider, including:

- Checking which Court the case is to be heard in, finding the location and checking whether there is parking nearby, if required;
- Planning to arrive in good time for the hearing;
- Court listings are visible at the entrance to the Court and, following security screening, there is a reception for guidance;
- Dressing appropriately, as for a formal meeting or event;
- Bringing personal and professional identification;
- Being familiar with how to address key members of the Court:
 - A Committee Chairperson (or a Magistrate) is addressed as ‘Sir’ or ‘Madam’
 - A County Court Judge is addressed as ‘Your Honour’
 - A High Court, Appeal Court or Supreme Court Judge is addressed as ‘My Lord/Your Lordship’ or ‘My Lady/Your Ladyship’.

The following points on the process of giving evidence should be noted:

- An oath/affirmation will be required, for example “I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth the whole truth and nothing but the truth”. The expert will be expected to stand when giving the oath, unless they have a disability.
- Prior to giving evidence, an expert will be asked to explain why they are an expert in their

particular area by briefly outlining their qualifications and professional experience relevant to the case.

- There are three stages to a witness giving evidence in Court:
 - i. Examination-in-chief:** the legal team from which the expert received instructions will ask pertinent questions on their report;
 - ii. Cross-examination:** the opposing legal team will question the expert on their report;
 - iii. Re-examination:** the opportunity for clarification on any matters arising during cross-examination.
- It is likely that all the evidence submitted to the Judge will be provided in the witness box in a series of paginated files. The expert will be directed to the appropriate document within these files by the examining barrister. The report in the Court files will therefore be the version of the report which the expert's solicitor, under Counsel's guidance, submitted to the Court. This is the version with which the expert needs to be fully conversant.

The expert does not take a copy of their report or any notes into the witness box.

Only evidence that the expert has previously submitted can be referred to in Court. Thus, contemporaneous notes are not admissible evidence and cannot be used.

- The expert should sit facing the Judge and turn to face the barrister who is asking questions, rather than sitting facing the barristers' bench. When responding to questions while giving testimony, time should be taken to consider the response. The expert should speak slowly and clearly and answer the question succinctly.
- Answers should be kept as concise as possible. The longer an answer, the more subject matter is being given to the opposing barrister to use in their cross-examination. If in agreement with the question being asked, the expert should answer "correct" rather than "yes".
- All responses should be addressed to the Judge rather than the barrister (who is likely to be writing notes based on the response given).
- Ask for any question to be repeated, if necessary. If unsure of the answer, the expert should

state that they are unsure.

- The Judge can be asked for guidance in responding, if necessary.
- Once the expert has finished giving evidence and being cross-examined, and the Judge has no further questions, the expert will be discharged from their duty to the Court. The expert must not leave the Court or hearing until invited to do so by the Judge/panel chair. It is possible that the Judge may ask for the expert to be recalled later in the trial to answer further questions that have arisen from subsequent evidence of other experts.
- There is a time delay between giving evidence and the publication of the Judge's report from the case. Full details of the case will be within the Judge's report, an example of which can be found in [Mordel v Royal Berkshire NHS Foundation Trust \[2019\]](#).²⁷
- The outcome of a case, at any point in the proceedings, may not always be disclosed to the expert witness.

The expert should remember that whether physically attending Court to provide evidence, or doing so via video conference facilities, the expert's duty to the Court remains the same.

When giving evidence virtually, for remote hearings, the expert should make sure that the following are considered:²⁸

- Prepare in advance, check and familiarise themselves with any IT equipment and software, e.g. PC/laptop, camera, speakers, headset, Wi-Fi required. Ensure that these are fully functioning and that any software required, such as Microsoft Teams or other videoconferencing platforms, is downloaded and functioning well.
- A test call is recommended prior to the formal hearing to check the functionality.
- Ensure that the area the expert will be sitting in front of is clear and uncluttered and does not pose as a distraction. A plain background gives a professional appearance, so posters, books and other objects behind the expert may need to be removed. Alternatively, a screen can be used. Most video conferencing software has background filters that could be used.
- Ensure there will be no distractions during the testimony. The call should be made from a private, quiet office, free from interruptions such as phone calls, doorbells, other people or animals.

-
- The expert should position themselves so that they are in the centre of the frame with the camera at eye level, speaking directly at the camera.
 - ‘Eye contact’ should be maintained by looking directly at the camera lens rather than at the images on the screen of the speaker or the expert when giving testimony. This will give the appearance of looking directly at the person speaking while listening to questions and providing responses.
 - The expert should have access to the digital copy of their report. This can be shared using the ‘share screen’ function, if required.
 - A nearby glass of water and anything else that is required for comfort during the hearing is helpful.

5. Governance

There are a number of matters the expert witness needs to be fully conversant with before taking on the role. These include:

- **General Data Protection Regulations and the Data Protection Act**
Consideration of GDPR is essential for anyone undertaking expert witness work. Secure transfer and storage of documents is the responsibility of the expert. A certificate approved by the [Information Commissioner’s Office \(ICO\)](#), while voluntary, can be a good way to demonstrate compliance with GDPR.²⁹ The College of Radiographers (CoR) recommends that experts have the certificate from the ICO to demonstrate compliance with GDPR.³⁰ There is an associated cost with this application. Some instructing solicitors expect to see this certificate prior to sending document bundles to an expert.
- **Professional indemnity insurance (PII)**
As an expert is liable for the opinion they give in medico-legal cases, they must have adequate PII in the event that they are pursued for a breach of professional duty. This might include, for example, professional negligence or breach of GDPR.

It is unlikely that professional body PII will cover expert witness work. The SoR PII does not cover expert witness work.

Bond Solon has published an [interview with Ntegrity](#), a company that provides insurance for expert witnesses, explaining the insurance requirements for the expert role. Ntegrity offers a discount for experts who have undertaken certain Bond Solon courses.³¹

The SoR cannot recommend specific insurers. An expert must therefore explore this area themselves to ensure they obtain the most appropriate insurance to meet their requirements.

- **Tax and national insurance liabilities**

Any earnings from expert witness work will need to be carefully documented. An expert is responsible for paying income tax on any earnings where these exceed the HMRC threshold, with additional national insurance payments potentially required.³² It is the expert's responsibility to ensure that accurate records are kept, appropriate documentation completed and annual tax returns submitted.³²

It is wise to maintain a log of all cases, agreed terms of business (fees) and other relevant information for ease when communicating with instructing solicitors/third parties and in case there is a need to chase up remuneration for work carried out.

- **Business set-up**

An expert witness may want to set up a separate business as a sole trader or limited company. Further information and advice can be accessed from [the HMRC website](#) or by contacting the HMRC helpline.³²

6. The College of Radiographers' expert witness list

The CoR holds a list of members who undertake expert witness work. Members of the SoR who wish to apply to join the list must demonstrate that they are working at expert level within their field of practice. An application may be accepted for entry to the list once an introductory training course has been completed. The CoR aims to hold one such event annually, where possible or viable. This is free to members who are provisionally accepted onto the list and is included as continuing professional development (CPD) activity.

The CoR acts as a contact point for liaising with instructing solicitors and expert witnesses. Experts are not required to act through this CoR list. However, the CoR does receive regular communication from solicitors and agencies working on behalf of solicitors looking to source experts. The expert witness can decide whether to put their name forward for any cases relevant to their scope of

practice and experience. The CoR puts forward all names of experts who elect to have their name put forward. Solicitors then decide whom to approach, obtain CVs from and appoint.

7. Continuing professional development

7.1 Professional development

Expert witness work is an excellent development opportunity for specialist and consultant radiography practitioners/sonographers to stretch their knowledge, experience and skills. It also takes them outside their 'comfort zone'. The learning opportunities and transferable skills are rich. It can improve skills such as the development of successful business cases and professional proposals, based on learning about optimising the use of language to engage and inform the reader at an appropriate level.

The receipt of criticism is also a skill to develop. The expert witness must be prepared for their opinion and professional standing to be scrutinised and even doubted, both inside and outside the courtroom. Understandably, this can be challenging, but also of great value: handling criticism well is the mastery of both the professional and expert witness.

Peer review of written reports is to be encouraged, as is supervision and mentorship. Feedback from instructing legal teams is scant, so it is up to the expert witness to seek opportunities to improve. On submission of the report and invoice for work undertaken it is always worth asking for feedback and enquiring about the outcome of the case, if possible. The ultimate positive feedback, of course, is being asked to provide another report or being recommended: this is ultimately how the expert witness's case load builds, making the economic considerations of this role more workable.

7.2 Expert witness training

An essential part of being an expert witness, in addition to the professional skills, experience and knowledge, is being fully conversant with the medico-legal process and requirements of an expert witness. An expert witness must have appropriate training and on-going CPD for their role as an expert.³³ A number of companies offer CPD courses, conferences or university-certified qualifications.

Anyone being accepted onto the CoR list of expert witnesses must have undertaken an introductory study day offered by the CoR in association with Bond Solon ([section 6](#)).

The CoR strongly recommends further training such as that offered by Bond Solon in conjunction with Cardiff University or other accredited training providers. The CoR is not in a position to provide reimbursement of expenses for additional courses outside of the introductory study day, as members undertaking this type of work will be operating a business and earning additional income.

7.3 Mentorship

Once an expert is accepted onto the CoR's expert witness list, they can access an online collaboration platform. This provides an online discussion forum to share ideas, ask questions and obtain advice from experienced experts. In addition to this, some experienced experts have offered to provide informal mentorship to new experts taking on their first cases.

Where an expert witness would like to access a mentor, initial contact is made via the SCoR professional officer responsible for the expert witness list. It will not always be possible to identify a suitable mentor.

Mentorship is an informal process, with the mentor providing support only. The expert witness mentee remains responsible for their own opinions and submissions to the Court. Mentoring will generally be on process only. However, an expert witness is permitted to discuss the issues of a case with a colleague (i.e. someone who shares their area of expertise); the fact of that discussion does not need to be referenced in the report, nor does it need to be agreed with the instructing solicitor; it is simply a matter of the expert using a colleague as a sounding board and for the exchange of ideas, and thus formulating their own opinion. That discussion could, logically, include the colleague pointing out gaps in the thinking, which the expert themselves would then need to follow up and reach their own conclusion on.

In preparing their report, an expert witness cannot approach someone whose field of expertise is different to their own and ask for that person's opinion, as the expert witness would be going outside their own area of expertise. For example, the Courts have encountered an issue arising out of the discussion between expert witnesses and the drafting of a joint statement. One of the two experts in a particular case showed their supervisor the draft of the joint statement, before signing it, and discussed it with their supervisor. The Court ruled that that was not appropriate; the discussion and the joint statement are solely for the expert witnesses involved in that discussion and for no one else.^{3,24}

Contact time should be agreed between the mentor and mentee in advance. The CoR asks mentors if they will consider providing such mentorship free of charge, but accepts that the final decision on whether to charge a fee is that of the mentor. Any fee should be agreed in advance between both

mentor and mentee. The mentee agrees that any advice from the mentor is provided voluntarily and on a “this is my personal experience and best advice” basis. The instructed expert witness mentee bears the full responsibility of the duty to the Court and for the content of their opinion. The mentor bears no liability in negligence if the mentee expert witness falls below the standards of the reasonably competent expert.

8. The value and challenges of being an expert witness

8.1 Value

There are many benefits to being an expert witness, including the opportunity to look at the profession from an entirely different angle, which brings forth new insights and improvements for professional practice. Undertaking the review of a case enables transparent exploration, questioning and critique of delivery of healthcare, which can assist an expert to drive improvements in their own practice. Having a deeper understanding of the legal process can assist personal and professional development, but also improve the way an expert teaches others, which in turn develops the service to patients and the quality of care.

An expert has the opportunity to look at practice from different perspectives and identify trends and themes arising from their work. This knowledge can be used to impact their own local practice but can also lead to changes in national policy and practice. For example, recurrent cases involving the extravasation of contrast media during CT examinations or the use of consent during imaging procedures have highlighted a potential gap in the consent process, particularly in the discussion of complications from the injection of contrast media. The expert can highlight such cases to the professional body or special interest groups, which has the potential to improve patient outcomes and reduce litigation cases and costs to the NHS, enabling funding to be redirected to patient care.

8.2 Challenges

The learning from working as an expert witness provides a salient but important reminder that the impact of a healthcare professional’s role and action on an individual patient or family is not always positive.

Expert witness work requires excellent time management skills and protected time to complete the work. Caseloads can be unpredictable, with different timescales, requiring a degree of organisation to balance this work with professional and personal life.

The work is challenging, often requiring long periods of intense concentration, cross-referencing, research and writing. At times, solicitors might provide a summary of their interpretation of the case in their approach or in the letter of instruction. There is potential to be swayed by this information. An expert will need to develop strategies to be aware of this and ensure that they provide an unbiased report.

An expert might not be informed of the outcome of a case, and this can at times be frustrating. An expert works alone and cannot share confidential information with others, although they can ask for support from a mentor, within the limits of confidentiality. There can be a sense of fulfilment when a case has the 'outcome' that an expert feels is fair and just. However, there can also be disappointment if the outcome is the converse.

An expert will need to consider their mental health and response to stress. It is important that the expert explores coping mechanisms that work for them when under pressure, particularly if meeting with Counsel or attending Court. There are also added pressures of workload, delays in decisions about whether a case will go to Court and competing demands on an expert's time. The SoR [RADIATE: Wellbeing](#) site has resources that might help experts to consider their own wellbeing and psychological support.

9. Conclusion

The role of the practitioner as expert witness is both a commitment and a privilege. Seldom is the practitioner able to review the entire medical/health journey of a patient. Yet in the process of developing the expert report, medical records in their entirety often need be reviewed. The health or ill health and circumstances of another life are witnessed.

This emerging field is a new opportunity for the sonography and radiography professions to embrace. The CoR has an expert witness list covering a range of specialties and currently serves as the conduit for legal partners and the Courts to contact a suitable individual when in need of expert opinion. Initial training in partnership with [Bond Solon](#) is available for those with the required clinical expertise who are interested in taking up this work. Experts would be expected to undertake further training to develop their skills and competency to undertake this valuable role. Experts will also need to continue to update their knowledge of legislative changes in the country to which they are undertaking the role. Whilst the legislation is very similar in all four countries, changes may develop due to specific case law in the future.

The expert witness also has a role in improving clinical practice. They can identify trends and themes arising from this work that can inform service developments and, potentially, changes to national policy and practice guidance.

There are many personal and professional benefits to being an expert witness, including the development of professional and transferable skills, leadership, confidence, presentation skills and succinct and accurate report writing techniques.

Members of the SoR who are interested in developing this area of practice can review further information on the [CoR's website](#).

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Appendix 1: Useful case law and relevant cases

A small selection of relevant cases that have shaped medico-legal cases are given below. Expert witnesses are advised to keep up to date with relevant case law.

Bolam v Friern Hospital Management Committee [1957] 1 WLR 583⁴

“...not guilty of negligence if acting in accordance with a practice accepted as proper by a responsible body (not necessarily the majority) of skilled practitioners in that particular profession.”

Known as the ‘Bolam Test’, this was rejected in 2015 following *Montgomery v Lanarkshire*.³⁴

Hunter v Hanley [1955] ScotCS CSIH_2 (04 February 1955)⁶

The Scottish equivalent of the Bolam Test; in order to establish liability in alleged deviation from usual practice, it must be proved a) *“that there is a usual and normal practice”*; b) that usual practice was not followed; and c) that the course of action adopted was one that no other professional *“of ordinary skill would have taken”* if carrying out routine care.⁶

Montgomery v Lanarkshire Health Board [2015] UKSC 11 (11 March 2015)³⁴

Patients must be informed of all material risks of a procedure. ‘Material risk’ applies if *“a reasonable person in the patient’s position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it”*. Failure to do so amounts to a failure to obtain informed consent.^{34,35}

Mordel v Royal Berkshire NHS Foundation Trust [2019] EWHC 2591 (QB)²⁷

This case highlights the importance of informed consent for screening examinations (Down’s screening in pregnancy in this case) and the role the practitioner should take in ensuring that the woman or pregnant person fully understands what test they are being offered and why this is being offered, before recording their decision as to whether or not they accept the test.

Appendix 2: Additional learning resources

It is important to keep up to date with the latest documentation and guidance, as these can change. [Bond Solon](#) provides resources on its website and a newsletter with regular updates on policy changes, relevant case law and training for expert witnesses. [The Academy of Experts](#) also provides information and training, along with an option to sign up to its newsletter.

The elearning for healthcare module [13_08 Image Interpretation - Forensic Radiography: The Imaging Practitioner as an Expert Witness](#) provides access to statements, such as the Statement of Truth and Statement of Compliance. In the resources section there are templates including an invoice template and expert written report template.

Appendix 3: A check list for preparing to become an expert witness

- ✓ A current CV (relevant to the details of the case)
- ✓ Current indemnity insurance
- ✓ Compliant with GDPR with an ICO certificate - <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/>
- ✓ A log of cases with dates and remuneration for tax purposes

Templates for:

- ✓ A written expert witness report (preliminary and full)
- ✓ A joint expert witness report
- ✓ Template emails/letters for:
 - Accepting instructions for a case, including terms of business
 - Declining instructions for a case
 - Requesting further information to compile a report
 - Submitting a written report
 - Submitting a joint report following a case conference
 - Submitting an invoice for remuneration
 - Acknowledgement of remuneration

Appendix 4: Acknowledgements

This document has been developed by experienced expert witnesses to support those interested in taking on expert witness work or developing their role further. The expert witness role is an important one for practitioners to undertake and we are extremely grateful for the time and effort experts have put into writing this document.

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Appendix 5: Quality Standard for Imaging

This guidance relates to sections XR 107, XR 501 to XR 508, XR 510 to XR 516, XR 601 to XR 603, CT 802 to CT 805, IR 801 to IR 807, MR 802 to MR 809, NM 802, NM 803, NM 805, NM 806 and US 801 to US 804 of the [Quality Standard for Imaging](#).