

solicitors have asked them to. Although new consultants working in the NHS will readily satisfy some of the prerequisites for expert witness work, they are unlikely to have the necessary expertise, clinical experience and professional recognition to warrant the status of an expert witness. For this reason, such work should be declined by the new consultant.

**Declining to prepare reports**

If a consultant decides not to agree to prepare a report for a solicitor, this decision should be conveyed promptly. You should return the letter of instruction and all enclosures, with a brief covering letter. If the request was in respect of a person not known to you, you may take the opportunity to declare your future availability or to explain that you do not wish to be approached again for such cases.

**Conclusion**

Knowledge of the good practice expected of consultant psychiatrists working in the NHS in respect of contractual obligations, confidentiality, sharing information with patients and private practice, together with clarity about

the differences between professional and expert witnesses should allow the new consultant to make timely informed decisions about whether to accept or decline a request for a medico-legal report.

**About the author**

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# Medico-legal work of psychiatrists: direction, not drift

Commentary on... 'You are instructed to prepare a report'<sup>†</sup>

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**Summary** Newly appointed consultants should not 'simply drift into (medico-legal) work because solicitors have asked them to'. They should already have had expert witness training. This is a challenge for training scheme organisers and consultant trainers. There should be no shortage of training opportunities. Core training should include the preparation of 'ghost' reports drafted by trainees but owned by the consultant. Higher training should provide opportunities for trainees to prepare reports in their own right albeit under supervision. Background reading and experience of court are also needed. Such training should avoid newly appointed consultants having to decline solicitors' requests to prepare psychiatric reports.

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A specialty registrar recently asked me how trainees can get started preparing and giving expert psychiatric evidence. I hope that Dr Thompson's paper<sup>1</sup> does not deter trainees and newly appointed consultants. In the introduction she identifies one of the problems – if all higher trainees in

psychiatry need to master the competencies involved in medico-legal work, how can trainees acquire such competencies, outside forensic psychiatry, if opportunities are so scarce?

Of course trainees and consultants, whether or not newly appointed, need to decide whether to accept or decline medico-legal work, and Dr Thompson's analysis of

<sup>†</sup>See education & training, pp. 269–272, this issue.

the issues involved in this decision-making is more comprehensive than I have hitherto seen. However, her paper does not address the fundamental issue of how to ensure that all newly appointed consultants are competent to prepare medico-legal reports subject to having the appropriate expertise, and do not, in Thompson's words, 'simply drift into this work because solicitors have asked them to'. The challenge for training scheme organisers and consultant trainers is to ensure that there is a smooth transition between the medico-legal work of the higher trainee and that of the newly appointed consultant. A hiatus risks decay in competence.

Considering the number of psychiatric reports prepared for the courts and the number of psychiatrists preparing them, there should not be a scarcity of training opportunities. Except when occasionally I have had psychologists with me for work experience, it has been rare for me, since I left the National Health Service (NHS), to have a psychiatric trainee attached to me for medico-legal experience. Scheme organisers need to ascertain what training opportunities their NHS consultants can provide but also what other consultants can provide. Consultants, especially those outside the NHS, should be proactive and make scheme organisers aware of what they can offer. The fact that some NHS consultants may be doing medico-legal work as 'private' work or that consultants outside the NHS may need to be approved for training purposes should not be an obstacle to trainees being able to take advantage of the training opportunities they can provide.

## Medico-legal training – where to begin

The starting point for all trainees, preferably beginning during their core training, should be to observe a consultant prepare a medico-legal report. This begins with study of the letter of instruction and its enclosures and ends with discussing the outcome of the case, which may be long after the end of the attachment. At the same time the trainee should have available some specimen reports to read and then discuss with the consultant and, if possible, other trainees.

## Creating training opportunities

### *Trainee*

There are various methods for allowing the trainee to develop their medico-legal competencies. The trainee can make notes during a consultation with the patient and then prepare their own report to compare with that of the consultant. A variation on this, and ideally adapted for group training, is to provide a set of papers, including the letter of instruction, and a consultation transcript from which each trainee prepares a report. Sooner or later the trainee should be given the opportunity to work up their own case. This starts with the consultant observing the consultation and exploring the history or mental state as appropriate. The report will be a 'ghost' report drafted by the trainee in the consultant's name and with a sentence that refers to their role and also the trainee's own abbreviated curriculum vitae included as an appendix. When the consultant has sufficient confidence in the

trainee, instead of the consultant being present for the whole consultation, the trainee should present the case to their consultant, as they would in a new patient clinic, again providing an opportunity for the consultant to clarify the history and confirm mental state findings. The consultant has to be confident as to the facts and needs to have personal knowledge of the patient's mental state. The report will still be a 'ghost report' but the consultant will have to own the opinion albeit that it will be fashioned out of the trainee's draft opinion.

### *Specialty registrar*

Specialty registrars should have the opportunity to prepare their own reports. This is easier in forensic psychiatry attachments but the challenge is to make this possible for specialty registrars in other specialties. It should be possible to arrange attachments to consultants who can provide such opportunities. There are better opportunities in forensic services where it is possible for the consultant to negotiate with regular instructing solicitors or the Crown Prosecution Service for the report to be prepared by a specialty registrar under their supervision. It is unfortunate that some branches of the Crown Prosecution Service now take the mistaken view that specialty registrars are not sufficiently experienced to prepare reports in murder cases. I belong to a generation of consultants whose training as senior registrars was greatly enhanced by preparing murder reports under the supervision of our consultants. When I was in the NHS, I obtained the agreement of some solicitors to transfer my instructions to my senior/specialty registrar in suitable road traffic or industrial accident personal injury cases as well as suitable criminal cases. In most, if not all, specialties, higher trainees should have the necessary clinical expertise to assist the courts on many of the matters about which the courts seek opinions from psychiatrists. An important exception are cases of alleged psychiatric negligence but useful training can be provided by giving the trainee the body of a report and asking them to write their own opinion for discussion with the consultant.

## The medico-legal bookshelf

Some background reading is important. This should start with the Royal College of Psychiatrists' *Court Work*.<sup>2</sup> A prerequisite for medico-legal work is some knowledge and understanding of law and procedure. *The Criminal Justice System: An Introduction*<sup>3</sup> is a very readable and succinct introduction to the criminal justice system in England and Wales, and this can be complemented by *Advising Mentally Disordered Offenders: A Practical Guide*.<sup>4</sup> *The Expert Witness: A Practical Guide*<sup>5</sup> has useful chapters on the English legal system, the criminal courts and the civil courts. *Experts in the Civil Courts*<sup>6</sup> is a more detailed and very comprehensive introduction to the role of the expert in civil proceedings. Lord Justice Wall's *A Handbook for Expert Witnesses in Children Act Cases*<sup>7</sup> is not only the book for experts in family proceedings but many of the chapters are applicable to experts in general. Baroness Hale's *Mental Health Law*<sup>8</sup> should be on every psychiatrist's bookshelf already. For capacity issues I recommend *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers*.<sup>9</sup> A law dictionary is also useful.

For reference purposes, I recommend *Smith and Hogan Criminal Law*<sup>10</sup> and *Blackstone's Criminal Practice*<sup>11</sup> which is published annually. There is a companion, *Blackstone's Civil Practice*, but this is probably not as useful in civil cases as *Criminal Practice* is in criminal cases. For medical law the standard reference work is *Medical Law: Text, Cases and Materials*.<sup>12</sup> For personal injury cases, I recommend *Mullany and Handford's Tort Liability for Psychiatric Damage*<sup>13</sup> and *Clinical Negligence*.<sup>14</sup> Richard Jones has written indispensable manuals on the Mental Capacity Act and the Mental Health Act.<sup>15,16</sup>

Trainees and consultants should also get used to reading relevant law reports. Many law reports are accessible on the internet from the British and Irish Legal Information Institute ([www.bailii.org](http://www.bailii.org)), Her Majesty's Courts Service ([www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)), Mental Health Law Online ([www.mentalhealthlaw.co.uk](http://www.mentalhealthlaw.co.uk)) and Family Law Week ([www.familylawweek.co.uk](http://www.familylawweek.co.uk)).

### Court familiarisation

Sooner rather than later the trainee needs to find out what happens in court. The first time the expert gives evidence should not be their first time in court. Consultants should take their trainees to court. It is also informative to sit in the public gallery in a few cases but even better is to sit with a judge and benefit from his or her tuition. Television and film can be useful, for example, TV series *Kavanagh QC* or *Judge John Deed*, but not *Perry Mason*. Do not, however, expect all judges to have such interesting private lives as Judge Deed. I have written two fully scripted teaching plays, one based on a homicide in a psychiatric hospital and the other based on an accident at work, which allow participants to dress up as policemen, barristers and judges and in other costumes, as barristers and judges do every day, and have fun as well as learn about court procedures. There are details of these on my website ([www.drkeithrix.co.uk](http://www.drkeithrix.co.uk)).

### Profession-wide measures to ensure consultant medico-legal capability

If the courts are going to continue to have available psychiatric expertise for the resolution of disputes and the administration of justice, the profession is going to have to ensure that new NHS consultants are not in a position where, as Dr Thompson suggests, they should probably decline solicitors' requests to prepare a report. Although the decision to accept or decline medico-legal work is a personal decision for every psychiatrist, subject to any contractual obligations, psychiatry as a profession has a responsibility to ensure that its members are not subject to the 'complaint made by coroners, magistrates and judges, that medical gentlemen are often reluctant in the performance of the offices, required from them as citizens qualified by

professional knowledge, to aid the execution of public justice'.<sup>17</sup>

It should be possible to create training opportunities and so organise consultants' work activities and contracts that the probity issues to which Dr Thompson refers are not obstacles to trainees and consultants being involved in medico-legal work, and that new consultants have not only the necessary expertise, clinical experience and professional recognition to undertake such work, but that they have had appropriate training as an expert witness.

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