

Chapter

1

The Expert Medical Witness

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These Courts rely on the professionalism and rigor of the experts who come before them.

Eleanor King J in *Local Authority v S* [2009] EWHC 2115 (Fam)

At least since 1282, when a coroner called a surgeon to advise whether an arrow injury to the chest could be fatal (Sayles 1936), doctors have been needed to assist the administration of justice. Dr Andrew Duncan, Senior, recognised this in 1795 in his University of Edinburgh lectures on forensic medicine: ‘Many questions come before the Courts . . . where the opinion of medical practitioners is necessary either for the exculpation of innocence or the detection of guilt . . . an opinion consistent with truth and with justice.’ This duty was identified by Percival (1803, p. 120): ‘It is a 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.’

The Role of the Medical Expert Witness

Expert evidence is only admissible if it is ‘information which is likely to be outside of the experience of a judge or jury’ because ‘[i]f, on the proven facts, a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary’ (*R v Turner* [1975] QB 834). So, ‘[i]f matters arise in our law which concern other sciences or faculties we commonly apply for the aid of that science or faculty’ (*Buckley v Rice-Thomas* (1554) 1 Plowd 118) and ‘[i]n matters of science no other witnesses can be called’ (*Folkes v Chadd* (1782) 3 Doug KB 157). Medicine is such a science.

Hodgkinson and James (2015, p. 10) divide expert evidence into five categories (Box 1.1).

Whether an injury was caused by a hammer or a knife is a matter of opinion (Category 1). To understand this opinion, expert medical evidence is necessary to explain terms such as ‘laceration’, ‘incision’ and ‘abrasion’ (Category 2). Expert evidence of fact (Category 3) falls into two sub-categories: (a) what ‘he or she has observed’, where the judge or jury is unlikely to appreciate the facts due to their technical nature; and (b) ‘his or her knowledge and experience of a subject matter, drawing on the work of others, such as the findings of published research or the pooled knowledge of a team of people with whom he or she works’ (*Kennedy v Cordia (Services) LLP* [2016] UKSC 6). This includes:

... evidence ... which is used to support or contradict the opinion evidence. This is evidence which is commonly given by experts, because ... they rely upon their expertise and experience ... So an expert may say what he has observed in other cases and what they have taught him for the evaluation for the facts of the particular case. (*Aktieselskabet de Danske Sukkerfabrikker v Bajamar Compania Naviera SA* [1983] 2 LI R 210)

Box 1.1 The Five Categories of Evidence Given by Expert Witnesses

1. Expert evidence of opinion, on facts adduced before the court
2. Expert evidence to explain technical subjects or the meaning of technical words
3. Evidence of fact, given by an expert, the observation, comprehension or description of which require expertise
4. Evidence of fact given by an expert, which does not require expertise for its observation, comprehension and description, but which is a necessary preliminary to the giving of evidence in the other four categories
5. Admissible hearsay of a specialist nature

Hodgkinson and James 2015, p. 10

It is a matter of fact (Category 3a) whether a wound is a laceration, an incised wound or an abrasion, but medical expertise is needed to describe it. The medical expert may also rely on a study of knife wounds (Category 3b). No medical expertise is necessary to describe the garment overlying the wound (Category 4).

Whereas at common law hearsay statements are inadmissible as evidence of the truth of what was said, one exception, *other than in Ireland*, is hearsay of a specialist nature (Category 5), such as an extract from the victim's hospital records. However, a statement from the records as to who the victim said caused the injury will be inadmissible hearsay.

In Ireland, medical records are still, strictly speaking, hearsay. Although they may be accepted 'as *prima facie* giving a reasonably accurate account of the events which they purport to record and of the opinion of the doctors from whom they emanate . . . [i]f in any particular they are contradicted by sworn testimony I shall reject such documentary record unless it is supported by other sworn testimony which I prefer' (*Hughes v Staunton* Prof Neg LR 244 (Irish High Court, unreported, 16 February 1990)). The records must be admitted or proved in the usual way (*McGregor v HSE* [2017] IEHC 504).

The Law of Expert Evidence

Until the court accepts you as an expert witness, it does not matter how well-qualified and experienced you are and how expert you think you are. Understanding this requires an understanding of several interrelated aspects of the law on expert evidence.

Admissibility

In *Kennedy*, relying in part on *R v Bonython* (1984) 38 SASR 45, Lord Reed and Lord Hodge identified four considerations which govern the admissibility of what in Scotland is termed 'skilled' evidence (Box 1.2).

Assistance

Lord Reed and Lord Hodge said that these considerations apply to skilled evidence of fact as well as opinion, although, when the first consideration, assistance, is applied to opinion evidence, the threshold is *necessity* as expert evidence is unnecessary if the matters are within the experience or knowledge of the judge or jury. As Lawton LJ held in *Turner*: 'Jurors do not need psychiatrists to tell them how ordinary folk who are not suffering from

Box 1.2 Lord Reed's and Lord Hodge's Four Considerations Governing the Admissibility of Expert or Skilled Evidence

- (i) whether the proposed skilled evidence will assist the court in its task;
- (ii) whether the witness has the necessary knowledge and experience;
- (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and
- (iv) whether there is a reliable body of knowledge or experience to underpin the expert's opinion.

Kennedy v Cordia (Services) LLP [2016] UKSC 6

any mental illness are likely to react to the stresses and strains of life.' This is for the ordinary folk on the jury.

To assist, evidence also has to be *relevant* to a matter in issue. Relevance has a strict legal meaning derived from the sixteenth-century Scots legal term meaning 'legally pertinent'. It must be logically probative or disprobative of something which requires proof; evidence which makes the matter requiring proof more or less probable (*DPP v Kilbourne* [1973] AC 729). If it leaves the court no more certain as to the probability of the matter, it is not relevant and should not be admitted (*Bonython*). Expert opinion of uncertainty or inability to assist on the balance of probability may nevertheless assist a court when faced with opposing evidence.

Finally, the evidence has to be *reasoned*: 'Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert' (*Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH*, 1976 (3) SA 352).

Lord Reed and Lord Hodge quoted approvingly Lord Prosser: '[W]hat carries weight is the reasoning, not the conclusion' (*Dingley v Chief Constable of Strathclyde Police (No. 1)*, 1998 SC 548). Informing the court of the factors which made up the opinion allows the court, as appropriate, to take a different view (*Flynn v Bus Átha Cliath* [2012] IEHC 398).

Knowledge and Experience

Having the necessary knowledge and experience means being competent to assist: a "skilled person" . . . who has by dint of training and practice, acquired a good knowledge of the science or art concerning which his opinion is sought' (*R v Bunnis* (1964) 50 WWR 422). It is possible to 'acquire expert knowledge in a particular sphere through repeated contact with it in the course of one's work, notwithstanding that the expertise is derived from experience and not formal training' (Malek 2013, p. 1189).

Lord Reed and Lord Hodge summarised this, relying on *Myers v The Queen* [2015] UKPC 40:

The skilled witness must demonstrate . . . that he or she has relevant knowledge and experience to give either factual evidence, which is not based exclusively on personal observation or sensation, or opinion evidence. Where the skilled witness establishes such knowledge and experience, he or she can draw on the general body of knowledge and understanding of the relevant expertise.

An early example is that of a solicitor whose expertise in handwriting was acquired studying church registers (*R v Silverlock* (1894) 2 QB 766).

So, the expertise necessary to assist is defined legally by sufficient skill, acquired through education, training or experience. This should reassure doctors concerned that the 'status-based tests' of expertise set out by the General Medical Council's (GMC) expert in *Pool v General Medical Council* [2014] EWHC 3791 (Admin) represented a change in the law. The expert's tests are too restrictive and wrong in law (Rix, Haycroft and Eastman 2017).

What *Pool* illustrates, like Sir Roy Meadow's statistical evidence about sudden infant death syndrome (*General Medical Council v Meadow* [2006] EWCA Civ 1390), and the neuropathologist Dr Waney Squier's evidence about non-accidental head injury (*Squier v General Medical Council* [2016] EWHC 2739 (Admin)), is that the expert should not express opinions outside their field of expertise. This includes not questioning the validity of experts in other fields. In *Ali v Caton* [2013] EWHC 1730 (QB), the judge criticised a neuropsychologist for 'his mistaken questioning ... of (the claimant's psychiatrist's) views about J's hearing of voices'. The GMC's *Good Medical Practice* (GMP) (2019) states: 'You must recognise and work within the limits of your competence' and, in its *Acting as a Witness in Legal Proceedings* (AWLP), it states:

You must only give expert testimony and opinions about issues that are within your professional competence or about which you have relevant knowledge of the standards and nature of practice at the time of the incident or events that are the subject of the proceedings. If a particular question or issue falls outside your area of expertise, you should either refuse to answer or answer to the best of your ability but make it clear that you consider the matter to be outside your competence.

It is permissible for an expert to research a topic to enhance their existing expertise by obtaining 'the views of others, including work colleagues, so long as he records where he went for that advice' (*R v Pabon* [2018] EWCA Crim 420).

Impartiality

In setting out the requirement for impartiality, Lord Reed and Lord Hodge relied on the guidance in *National Justice Compania Naviera SA v Prudential Assurance Co. Ltd (The Ikarian Reefer)* (No. 1) [1993] 2 Lloyd's Rep 68, which includes the duty and responsibility of the expert to present to the court evidence that is, and can be seen to be, the independent product of the expert uninfluenced as to form and content by the exigencies of the litigation and to provide assistance by way of objective, unbiased opinion on matters within their expertise. 'The duty of the expert is to be objective and wholly free from bias in favour of one party or the other' (*County Council v SB* [2010] EWHC 2528 (Fam)), which can be difficult as 'there is a natural bias to do something serviceable for those who employ you and adequately remunerate you' (*Lord Abinger v Ashton* (1873–74) LR 17 Eq 358) and 'whether consciously or unconsciously ... expert witnesses ... often tend ... to espouse the cause of those instructing them to a greater or lesser extent, on occasion becoming more partisan than the parties' (*Abbey National Mortgages plc v Key Surveyors Nationwide Ltd* [1996] 1 WLR 1534). In *Re M (Adoption: Leave to Oppose)* [2009] EWHC 3643 (Fam), an expert who only gave evidence on behalf of parents accused of child abuse was found to lack the expected detached objectivity.

One of the findings made against Dr Squier was that she failed to be objective and unbiased. In *Ali*, the judge criticised a neuropsychologist 'who lost the objectivity that is essential for a witness who is requested to provide independent expert evidence to the court'. In *Williams v Jervis* [2009] EWHC 1837 (QB), the judge criticised a neurologist who 'approached the case with a set view of the claimant and looked at the claimant and her claimed symptomatology through the prism of his own disbelief . . . From that unsatisfactory standpoint he unfortunately lost the focus of an expert witness and sought to argue a case'. In *Poole v Wright* [2013] EWHC 2375 (Civ), the court concluded that the evidence of the defendant's expert, who 'seems to have adopted the role of private investigator into the claimant's case', was not of a quality to assist the court.

As the expert's 'primary duty is always owed to the court and not to their client or the person who retains them' (*O'Leary v Mercy University Hospital Cork Ltd* [2019] IESC 48), it overrides any obligation to those instructing them. This duty is to provide unbiased opinion, not 'a partisan report which backs up his client at every turn' (*Nicholls v Ladbrokes Betting & Gaming Ltd* [2013] EWCA Civ 1963). In *Newman v Laver* [2006] EWCA Civ 1135, one of the reasons for not preferring a neuropsychiatrist's evidence was that he gave the impression of trying too hard to support a particular conclusion without sufficient independence. In *Vernon v Bosley (No. 2)* [1999] QB 18, a psychiatrist was criticised as irresponsible for expressing views at the end of lengthy personal injury litigation which were not easy to reconcile with his recent examination of the plaintiff for family proceedings, where he indicated that the plaintiff's health had dramatically improved. I once witnessed the cross-examination of a psychiatrist who had prepared his first report in the mistaken belief that he was being instructed by the defendant's solicitors. His second report was very different; by this time, he had realised that he was instructed by the claimant's solicitors. At trial, it was too late to avoid what the defendant's counsel described as 'the iron fist in the velvet glove'.

In *Vernon v Bosley (No. 1)* [1997] 1 All ER 577 CA, Thorpe LJ recognised the difficulty:

The area of expertise . . . may be likened to a broad street with the plaintiff walking on one pavement and the defendant on the opposite one. Somehow the expert must be ever mindful of the need to walk straight down the middle of the road and resist the temptation to join the party from whom his instructions come on the pavement . . . [T]he expert's difficulty . . . is much increased if he attends the trial for days on end as a member of the litigation team. Some sort of seduction into shared attitudes, assumptions and goals seems to me almost inevitable.

This can happen in conferences with counsel. So, attach a note to your file: 'I must remember, and perhaps point out, that I am not part of this team. I am providing independent assistance to the court.'

Such 'unconscious partisanship' has been described by Langbein (1985): '[An expert witness] experienced the subtle pressures to join the team – to shade one's views, to conceal doubt, to overstate nuance, to downplay weak aspects of the case.' The risk is of exaggerating your opinion and misleading 'the team' only to have to retreat at the experts' meeting or, worse, under cross-examination. By then, the costs of the litigation, and the potential damage to your reputation, will have increased. As Lewis (2006) put it in the context of clinical negligence:

It is worth emphasising that claimants' lawyers do not want to be given a case simply to please them, whether out of sympathy, or a natural inclination to oblige, or because that is perceived as the way to more cases and fees. It is easy enough to offer a finding of substandard treatment at a distance and in writing; but it is quite another to defend it under cross-examination. It does the patient no favours if a case initially supported by the expert has to be discontinued at a later stage when he realises what he is up against.

There is also a risk of bias where the treating doctor becomes the medical expert. In *Vernon v Bosley (No. 1)*, Thorpe LJ observed that '[i]n the field of psychiatry it may be more difficult for those who have treated the plaintiff (claimant) to approach the case with true objectivity'. In *A London Borough Council v K* [2009] EWHC 850 (Fam), the judge criticised a general practitioner who 'had an unconditional loyalty to the mother repeatedly demonstrated during the investigations leading up to [the] hearing and in his evidence, [who] was irredeemably under her influence, speaking more than once of a "bond of trust" between them'. In *Re B (A Child) (Sexual Abuse: Expert's Report)* [2000] 2 WLUK 784, the court held it to be 'elementary' that a psychiatrist who was treating the children should not give evidence as an expert in care proceedings on behalf of one of the parents. Former Supreme Court Judge Lord Hughes of Ombersley, in guidance for advocates (Inns of Court College of Advocacy 2019), states: 'The necessary relationship of trust between treating clinicians and their patients may be inconsistent with a duty to the court to provide truly independent evidence.' However, Braithwaite and Waldron (2010) point out that 'the treating doctor is likely to know far more about the patient than an outsider who has seen the patient for a few minutes or an hour or two'.

In *Ireland*, it is normal practice for the treating doctor to prepare the report for litigation, but such reports are invariably confined to condition, prognosis and factual causation. Indeed, if a treating doctor is *not* called to give evidence, the court may look askance at what it will often consider is an omission. In *Dardis v Poplovka* [2017] IEHC 149, while the judge considered that he could not draw a specific inference from the failure to call the treating doctor, it could not 'just be ignored as if he had been airbrushed out of the story. Where a plaintiff elects not to call one of his treating doctors . . . this places a question mark over this aspect of the plaintiff's case'. Furthermore:

It may be said that in general where it is necessary to resolve a conflict between the expert medical evidence given by treating physicians on behalf of a plaintiff, applicant or claimant . . . and medical evidence given by those physicians examining and advising on behalf of the defendant or respondent . . . unless there is compelling evidence or other good and sufficient reason to do otherwise, the court is entitled to prefer the evidence of the treating physicians in relation the provision of advice and treatment afforded to their patient having due regard to the professional duty of care owed in the provision of such services. (*Flanagan v Minister for Public Expenditure and Reform* [2018] IEHC 208)

As Hodgkinson and James (2015, p. 185) comment:

The issue is always one of fact, degree and proportionality but, in general, the more serious and prolonged the symptoms and the treatment regime, the greater the faith that the patient puts in his treating doctors, the more central the doctor is in the treatment regime and the more psychological/psychiatric injuries involved, the less likely the court is to permit a treating doctor to give expert evidence.

Reliability

As Lord Reed and Lord Hodge observed in *Kennedy*, what amounts to a reliable body of knowledge or experience depends on the subject matter of the proposed expert evidence. As observed in *R v Dlugosz* [2013] EWCA Crim 2: '[I]n determining the issue of admissibility, the court must be satisfied that there is a sufficiently scientific basis for the evidence to be admitted.'

Lord Reed and Lord Hodge recognised in *Kennedy* that 'where the subject matter . . . is within a recognised scientific discipline' it would be easy for the court to be satisfied as to reliability. Most doctors should be confident that their subject matter is within the recognised scientific discipline of medicine. However, some psychiatrists should note the advised wariness of the Canadian courts 'in accepting evidence of experts in the behavioural sciences' (*R v McIntosh* [1997] OJ No. 3172, 117 CCC (3d) 385 (Ont. CA)) and their conclusion that 'the testimony of experts in the behavioural or "soft" sciences is not amenable to assessment with the criteria established for weighing scientific evidence' (*R v Orr* [2015] BCJ No. 366 (CA)). Experts offering such evidence should be prepared to be tested on 'the evidence, research or studies on which [the] opinions were based' (*Orr*).

The Criminal Procedure Rules (CrPR) set out factors which the court may take into account in assessing whether there is a sufficiently reliable basis for expert opinion, especially expert scientific opinion, to be admitted (Box 1.3). This mirrors an obligation on the part of the expert to provide such information as the court may need to decide on the reliability of their opinion. So, anticipate 'a new and more rigorous approach on the part of advocates and the court to the handling of expert evidence' (*R v H* [2014] EWCA Crim 1555).

In *R v Gilfoyle* [2001] 2 Cr App R 5, expert evidence on 'psychological autopsy' was ruled inadmissible partly because there were no criteria by which the court could test the quality of the opinions and no substantial body of academic writing approving the methodology. Piper and Merskey (2004) have cogently argued that it is impossible to make a diagnosis of dissociative identity disorder reliably and have suggested that the US and Canadian courts cannot responsibly accept testimony in its favour.

Box 1.3 Factors which May Be Taken into Account in Determining the Reliability of Expert Opinion

- (a) extent and quality of data, validity of methods by which obtained;
- (b) if relying on inference, proper explanation of its safety;
- (c) if relying on method, proper account of matters, such as degree of precision or margin of uncertainty, affecting accuracy or reliability;
- (d) extent to which others have reviewed material on which expert relies and their views;
- (e) extent to which opinion based on material outside field of expertise;
- (f) completeness of information available to expert and whether took account of all relevant information (including its context);
- (g) if there is a range of expert opinion, where the expert's opinion lies and whether their preference has been properly explained;
- (h) whether methods followed established practice and, if not, whether the reason for divergence properly explained.

Criminal Procedure Rules CPD V Evidence 19A: Expert Evidence 19A.5

Credibility

The expert witness has to be credible. This is a judgement based on such matters as impartiality, independence, plausibility, believability, trustworthiness, conviction, reputation and demeanour. The court reaches this judgement on the basis of the expert's performance in court, particularly in the witness box. It may take into account judicial comment in other cases and findings of regulatory bodies. Furthermore, CrPR 19.3(3)(c) requires the party serving an expert report to serve with it notice of anything of which it is aware which might reasonably be thought capable of undermining the reliability of the expert's opinion or detracting from the expert's credibility or impartiality. But mere complaint to a regulator or even an allegation of professional negligence may have no relevance or bearing on the expert's credibility (*Everard v Health Service Executive* [2015] IEHC 592).

Do not be afraid of providing an opinion which those instructing you wish that they had not obtained. Your report may go to the back of the file, but not your credibility. When the solicitor or counsel wants an opinion upon which she knows she can rely, she will come back to you.

Some counsel file expert reports under the name of the expert. If your opinion has been 'black' when instructed by the claimant's solicitors and 'white' when instructed by the defendant's solicitors in similar cases, expect a tough cross-examination.

Weight

The court has regard to the weight of the expert's evidence, that is its cogency or probative worth in relation to the disputed facts. Weight is itself a question of fact; a matter of common sense and experience that the judge or jury decides. 'Expert testimony, like all other evidence, must be given only appropriate weight. It must be as influential in the overall decision-making process as it deserves: no more, no less' (Bell 2010). In practice, expert evidence is regulated 'by way of weight rather than admissibility' (*Re M & R (Minors)* [1996] 4 All ER 239). In the brain damage case of *Dixon v Were* [2004] EWHC 2273 (QB), instead of ruling the evidence of a general psychiatrist inadmissible, the court decided the issue on weight: '[A]s neuropsychiatry deals with problems arising or appearing to arise after brain damage, whereas general psychiatry is principally concerned with illness, [the neuropsychiatrist's] evidence is entitled to particular weight.'

As Hodgkinson and James (2015, p. 31) comment:

... the most effective way of assessing expertise is, rather than conducting a difficult exercise based almost entirely upon the limited evidence as to qualification, experience and skill at the admissibility stage, to hear the witness's substantive evidence and use this as the basis upon which to judge not only the quality of his evidence, but his competence to give it.

The Duties and Responsibilities of the Medical Expert

The doctor's duty 'to aid the execution of public justice' (Percival 1803) gives justice a pre-eminent position for medical experts among the four basic principles of medical ethics: respect for autonomy, beneficence, non-maleficence and justice. There is also a role for virtue ethics which inform such characteristics as would be identified in the credible expert witness (see 'Credibility' above). They include honesty and trustworthiness: 'You must be

honest and trustworthy when giving evidence to courts or tribunals' (GMP). The duties of the medical expert witness are the duties of an expert witness and the duties of a doctor.

The Duties of the Expert Witness

The duties of an expert witness have been refined over the years by judges. *The Ikarian Reefer* remains a landmark case. Guidance therein has become increasingly embodied in rules made, and guidance issued, or endorsed, by the courts and tribunals: in England and Wales, the Civil Procedure Rules (CPR), the CrPR and the Family Procedure Rules (FPR) (collectively, 'the Rules'). Similar rules exist in specialist tribunals. There are also specific rules for other jurisdictions, so it is important to ascertain what rules apply in a particular case. Practice in one jurisdiction can influence practice in another jurisdiction.

The Rules may be supplemented by further guidance such as the *Guidance for the instruction of experts in civil claims* (Civil Justice Council 2014) ('the Guidance'), although much of its core guidance is generally applicable, and *Standards for Expert Witnesses in Children Proceedings in the Family Court* (Annex to FPR 25BPD). In Scotland, there is similar guidance in the Law Society of Scotland's *Expert witness code of practice*. Medical experts must also adhere to AWLP and to any guidelines specific to their speciality.

The Rules make it clear that:

- the paramount or overriding duty of the expert is to assist the court on matters within their own area or areas of expertise; and
- this overrides any obligation to the person from whom the expert has received instructions or is paid.

The expert also has a duty to those instructing her. In *Stanley v Rawlinson* [2011] EWCA Civ 405, where a trial judge had criticised an expert who appeared 'to go beyond the usual role of an expert witness by advising them on the evidence they needed to meet the opposing case', it was held on appeal that 'it is often likely to be the professional duty of the expert to proffer just such advice'.

Medical experts therefore owe a responsibility to those who instruct them and to the subject of their report to:

- identify weaknesses as well as strengths in their case;
- recommend any further treatment that is advisable;
- suggest any other expertise that may be required; and
- advise on evidence that may be needed to meet the opposing case.

There is no incompatibility between the expert's overriding duty to the court and his duty to those instructing him:

His duty to the client is to perform his function as an expert with the reasonable skill and care of an expert drawn from the relevant discipline [including] a duty to perform the overriding duty of assisting the court ... If the expert gives an independent and unbiased opinion which is within the range of reasonable expert opinions, he will have discharged his duty both to the court and his client. (*Jones v Kaney* [2011] UKSC 13)

This book incorporates as much as possible of this overlapping guidance. Box 1.4 details the seven duties of experts as set out in the Guidance.

Box 1.4 Summary of the 'Duties of Experts' Set Out in *Guidance for the instruction of experts in civil claims*

1. A duty to exercise reasonable skill and care to those instructing them and to comply with any relevant professional code. Overriding duty to help the court on matters within their expertise.
2. Be aware of the overriding objective that courts deal with cases justly. This includes dealing with cases proportionately, expeditiously and fairly. Assist the court so to do.
3. Provide opinions which are independent, regardless of the pressures of the litigation. Useful test: the expert would express the same opinion if given the same instructions by another party. Do not promote the point of view of the instructing party or engage in the role of advocate or mediator.
4. Confine opinions to matters material to the disputes between the parties and only in relation to matters within their expertise. Advise without delay if questions or issues fall outside their expertise.
5. Take into account all material facts, set out those facts and any literature relied upon, indicate if opinion is provisional or qualified or if further information is needed before giving final and unqualified opinion.
6. Inform those instructing them without delay of any change in their opinions on any material matter and the reasons.
7. Be aware that failure to comply with rules or court orders, or any excessive delay for which they are responsible, may result in a financial penalty to those instructing them and may lead to their evidence being debarred.

Civil Justice Council 2014, paras 9–15

It is not enough for the expert to set out a declaration to the effect that they have complied with their duties. It is necessary to comply. The psychologist in *Re F (A Child: Failings of Expert)* [2016] EWHC 2149 (Fam) (see also Chapter 2, 'Compliance and Truth') declared his compliance and made the appropriate statement of truth, but when the judge considered the transcripts of the mother's covert recordings of the psychologist's assessment of her and her child, he concluded that:

The overall impression is of an expert who is overreaching his material . . . it is represented in such a way that it is designed to give it its maximum forensic impact . . . a manipulation of material which is wholly unacceptable and, at very least, falls far below the standard that any Court is entitled to expect of any expert witness . . . his disregard for the conventional principles of professional method and analysis displays a zealotry which he should recognise as a danger to him as a professional.

The case had to be re-heard with a different expert.

The Duties of the Doctor

The GMC does not distinguish between the doctor's duty of care to an 'ordinary patient' and to a person with whom they are not in a traditional therapeutic relationship, although, for people who are the subject of expert reports, some of the medical expert's duties can be deduced from AWLP. However, Ireland's Medical Council (MC) is more specific. The MC