

Medical experts report launch – March and October 2021

Dr Fiona Straw

Thank you for the introduction and for asking me to be part of this second virtual session launching the 2020 Presidents report on Medical Experts in the Family Justice System. I am hoping that this evening's talks will inspire more professionals to consider working as an expert for the Family Justice System.

I am here in my role as paediatrician to the Family Justice Council and I am pleased to be part of the working group tasked with the taking forward the recommendations in the report.

I would like to start by thanking Professor Alison Kemp, my predecessor on the Family Justice Council and Dr Alison Steele, Royal College of Paediatrics and Child Health Officer for Child Protection for their significant contributions to the report.

I am a consultant community paediatrician in Nottingham and the clinical lead for the east midlands child and young people's sexual assault service. In these roles I regularly examine children who are subjected to both physical and sexual abuse and am frequently called to give professional witness evidence. On a number of occasions, I have also been instructed as an expert witness for both family and criminal legal proceedings and so have some experience of what it feels like to be a witness.

When I was a paediatric trainee and a junior consultant, I used to absolutely dread the arrival of a letter asking for a report or statement for legal proceedings as this meant I was likely to be called

to give evidence. At that point in my career I was really anxious about appearing in court and the thought that I may have to, often led to sleepless nights and an upset stomach.

I really worried about

- not being able to answer the questions
- not being 100% certain about my answers as medicine is an inexact science
- being tricked into saying something I didn't really mean and saying something that was actually wrong
- and this would lead to me being discredited, referred to the GMC and stopped from practicing medicine
- I also worried that not only my colleagues would realise I was an imposter but also my husband's colleagues, as he's a Criminal Barrister

Just walking into a court made me feel guilty and I would have been prepared to agree to anything.

These worries at that time in my career meant that I wanted to avoid giving evidence at all costs!

However, as most doctors at some point in their career will be a professional witness of fact, I knew I had to develop skills to cope with my fears and concerns.

One of the difficulties is that as a professional witness your involvement in the case is limited to and focusses on the issues raised. You don't always get to see or comment on the bigger picture, as court and professional time is precious. Not hearing all of the evidence can feel like the bigger picture is lost, and so can be a frustrating experience for the professional witness. This negative

experience can put many of us off wanting to undertake extra court work and accepting instructions as an expert witness.

As I became more experienced with giving evidence and began to understand how the family justice system worked, I went from dreading it to feeling frustrated when I wasn't asked for my opinion. And this led me to consider taking on expert witness work. Although I am still often anxious before giving evidence, I have found expert witness work extremely interesting and rewarding. It also helps me to keep up to date with current practice, benefitting my day to day work. I would therefore encourage consultants to consider being an expert at some point in their working career.

To help support good practice, in August 2018, the Family Justice Council together with the Royal College of Paediatrics and Child Health produced guidance on Paediatricians as expert witnesses in the Family Courts in England and Wales, this guidance is really helpful for all expert witnesses, not just Paediatricians. It can be found on the Royal College of Paediatrics and Child Health or the Family Justice Council websites.

In my experience the ability to give good expert evidence relies on a high quality letter of instruction, in which there are clear questions to be answered. The letter of instruction is usually jointly prepared by all of the parties in the case. This ensures that from the beginning of a case, as an expert you are aware of what is being asked of you. You can therefore decide before accepting the work whether you...

- are actually the right person to be instructed
- whether you can confidently answer all the questions
- whether you can comply with the timescales for producing a report
- and are you available to give evidence when the case is listed. .

I recently received a request to do a paediatric overview in a family case and had to go back to the lead solicitor a number of times to try and work out what questions needed answering and whether I was the right person to be instructed.

So clarity at the outset is key.

It's really important that if you can't comply with the instructions, you let the instructing solicitor know as soon as possible, so that they can instruct someone else.

It is usually extremely helpful to have access to all the paperwork – bundle- It makes for very interesting reading and provides the full picture of what has happened to the child/children.

You should always list what documents you have had access to, so that the court is fully aware with what information you have formed your opinion.

As an expert witness your duty is to the court, and you need to remain impartial. This is a slightly different way of thinking for Doctors.

I find it helpful to remember that my role as an expert is to explain medical opinions to the court and therefore non-medical language should be used as much as possible, although there are times when I struggle to find a word for some of the medical terminology that we use.

Opinions must be objective, unbiased and the facts or assumptions on which they are based should be stated and referenced.

I try and remember that Advocates act on behalf of their client and at times may ask questions to demonstrate that they are doing their

job of challenging the opinion rather than really needing to know the answer to the question. In my experience the Judge will intervene if they think that the questions are inappropriate or that you are being unfairly treated.

I am certainly not an expert in being an expert medical witness and each time I attend court I learn something which usually helps me the next time I appear. I thought I would share some of the lessons I have learnt, although most of it is common sense...

- as with most things in life, preparation is the key to doing a good job – check where and what time you are needed to appear – in Nottingham there are a number of courts which hear family cases and turning up at the wrong court can make me feel even more anxious.
 - I try and attend in good time, as I don't like being late.
 - I always have the contact details of someone involved in the case so that I can warn them if I am running late or lost. I also give them my number so that they can update me if the case is running over, or I'm no longer required.
- To make me feel more professional and in control, I wear clothes that are not only smart and comfortable but that I also feel good in. I always wear my glasses and straighten my hair as this makes me feel more intelligent and in control. If I am wearing a skirt/dress I take a spare pair of tights just in case I ladder them. I have a close friend who is a Barrister and was surprised to hear that she gets anxious about cross-examining experts in case she asks objectively ludicrous questions. I was amused to hear that to make her feel more confident she wears her pearls and styles her hair in a certain way.

- As an expert witness you should always stay within your professional experience/expertise and it's fine to suggest that someone else may be better placed to answer the question e.g. the ageing of fractures – I would suggest that a paediatric radiologist should be asked or say that you don't know the answer – within reason! I was once asked about completing a psychiatric assessment on a child that I had examined and when I said that was outside of my expertise the Barrister said "well Paediatrician starts with a P, as does Psychiatrist and you are both doctors so I thought I would ask" The Judge who knows my husband quite well said "I think you are clutching at straws, Counsel", he dissolved into laughter, whereas everyone else in the court looked bemused as I'm not sure they had realised my surname was Straw!!
- use clear, concise, unambiguous language, which can be tricky, I sometimes think that I have been very clear about what I was trying to communicate but subsequently realised that I hadn't. ... As a newly qualified doctor, I cared for an elderly man whose diabetes control had deteriorated due to an infection. When he was better, the patient and his wife asked me why he had become so unwell...I explained that he had developed a water infection which had affected his diabetes. I was really pleased with my explanation until the following day... his wife found me on the ward to tell me that she had contacted the local water board and they told her that their water wasn't infected and so she didn't understand why he had become so unwell. Initially I didn't know what she was talking about and then it dawned on me that I had told them that he had an infection in his water – rather than a urine infection. So having been pleased with myself about the way I communicated his health difficulties, it

was clear that I had confused them even more and probably upset the water board as well.

- When giving evidence, I try to speak slowly and raise my voice so that everyone can hear me. .my natural speaking voice is quite quiet...probably due to years of trying not to frighten the children in my care and so I have had to actively think about doing this. It also unsettles me if I am asked to repeat my answer because people haven't heard me and so I try really hard to speak loudly, slowly and clearly.
- It's helpful to remember that if there is a microphone in court, it is usually there to record your evidence rather than to amplify your voice.
- Speaking more slowly also gives me more a bit more time to think about my answer. Sometimes I repeat the question as part of my answer as it can help me to understand the question, it reassures the person asking it that I've understood the question and, and importantly, it gives me a bit more time to think.
- When in court I tend to stand or sit with my hips facing the Judge to remind me to speak to the Judge rather than the advocate who are asking the questions.
- I can then keep an eye on the Judge as they make their notes, to ensure that I am not speaking too quickly.
- You can take time to think about your answer if you need to. In cases where I have given evidence the Advocate themselves often take time to think through what their next question will be.
- If I don't understand a question then I ask for further clarification and explanation, and it's important to do this before you answer. I was once asked how far an abrasion was

in, on the inner aspect of the genital lips of a child examined after alleged sexual abuse. I found it really difficult to answer this question without further clarification.

- In my view it's really helpful explain your thoughts and why you believe the answer to be correct. This helps to avoid you appearing to be dogmatic
- If you are given new evidence to review as part of giving evidence then it's absolutely right that you should ask for time to read and assimilate it properly.

Finally, I try to think about the child or children and their parents and if I feel anxious and apprehensive, how must they feel? I also try and remind myself that all parties in the proceedings share a common goal... trying to work out what is best for the child, and this helps to bring things into perspective.

I am very much looking forward to meeting many of you at the Regional Family Justice Councils, which hopefully will soon be face to face meetings. Through these meetings we can continue to develop a shared understanding of our roles for the benefit of the children, young people and their family's in the Family Justice System.

Thank you for listening – I think it is now time for questions.....