

FACULTY OF FORENSIC & LEGAL MEDICINE

of the Royal College of Physicians, London

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13 August 2010

Dear Maggie,

Expert witness fees project Working Group and Reference Group

Thank you for asking for comments on Expert Witness Fees.

The Faculty was established in 2006 by the Royal College of Physicians of London and has been founded to achieve the following objectives:

- To promote for the public benefit the advancement of education and knowledge in the field of forensic and legal medicine.
- To develop and maintain for the public benefit the good practice of forensic and legal medicine by ensuring the highest professional standards of competence and ethical integrity.

The Faculty includes three different professional groups:

- Forensic physicians
- Medically qualified coroners
- Medico-legal advisers to the medical defence organisations.

The Faculty restricts its comments in the consultation to areas that are relevant to it as follows:

REPRESENTATIVE BODIES AND OTHER GROUPS

We welcome views on any of the questions below but are particularly interested in your answers to those marked *

About your members

- *What is your members' professional field of experience and relevant qualifications?

[Our member's fields are mainly in relation to clinical forensic medicine, medical negligence and regulatory work.](#)

- *Have any of your members had specific training in being an expert witness?

We are unable to give precise figures but would expect that most of our members who undertake expert work will have had training. This would vary from “in-house” training to specific courses.

- *What kind of work/type of case are the experts you mainly represent asked to contribute to?

Clinical forensic medicine which might include injury interpretation, adult sexual assault, child sexual abuse, physical abuse, domestic violence, death in custody, fitness for detention and interview in police custody, road traffic offences.

Also clinical negligence, regulatory work, Coroner’s Inquest and Fatal Accident Inquiries.

- *Do your members undertake work on criminal or civil cases – or both?

Both.

- *What proportion of your members’ work is in particular categories of law/i.e. do they specialise in particular case types?

We do not have the necessary information to answer this question.

- *How many legal aid cases on average do your members undertake in any one year?

We do not have the necessary information to answer this question.

- *Do your members charge by hourly rate or per report? Why?

We do not have precise information to answer this question but would expect that most of our members will charge by an hourly rate because there is marked variation in the complexity of cases and amount of documentation.

- *How much of their work involves appearing in court to give evidence?

This is very variable and is more likely in criminal cases than in civil cases.

About the work

- Are your members generally asked to provide an opinion on another professional’s work (i.e. to back up or refute previous findings) or are they asked to make independent assessments?

Both. Some will also be the only doctor to have examined the patient, for example in a sexual assault allegation. They then may be asked to give expert evidence on their findings. In these cases the doctor may be only paid a standard fee for the report as a “professional witness” despite giving expert evidence.

- If both, what types of cases are these?

All of the above categories.

- Do they refuse work if they consider that others less qualified could undertake the work instead?

Most of the work is specialised and complex and others less qualified will be unable to undertake the work.

- *How long would an average/medium or complex report be and could you also give an associated estimate of time required and cost in each?

This is very varied and depends on the size and complexity of the case and may take 4-8 hours with up to 24 or more hours for a complex case.

- *What is the threshold for medium/complex cases? Could it be for example; lack of or incomplete information/number of parties involved/represented/ whether there are criminal convictions etc?

No specific thresholds – each case needs consideration on its merits and this often can't be predicted at the outset.

- *In some cases it is reported that it is difficult to establish the level of complexity at the beginning of a case. What do you think could be done to mitigate this?

Recognition that it may be necessary to submit a revised estimate.

- *What are the individual elements of a case that indicate that the expert input will be complex?

No specific individual elements – each case needs to be considered individually and in totality.

About engagement

- *How are your members instructed usually?

Directly by instructing solicitor, CPS, Medical Defence Organisation or Coroner.

- Do they always get instructed by the same solicitors/end up working out of the same courts? Do they receive some work through referrals from this?

This is often the case because an instructing solicitor will not generally re-instruct a doctor who provides a poor service or unbalanced opinion.

- *How do your members go about giving a solicitor an estimate of their costs when they are first approached to assist in a case? Would you be willing to share any fixed formulas with us?

Assessing type of case, volume of material, number of photographs and by experience of previous cases. There are no fixed formulas.

- Would you say that poor instruction by solicitors can contribute to the length/complexity of a report?

Clearly defined instructions can lead to clarity of report and opinion.

- What would your members usually do if they receive poor instructions from a solicitor?

They would usually request clarification of instructions.

- How do your members decide what it is necessary to produce if they receive unclear instructions?

They would usually request clarification of instructions.

- How could solicitors improve/simplify instructions – would a template form help?
No.

About improvements

- What do you think could be done to improve/ensure accurate analysis & effective material being available at the beginning of a case?

Clear instructions with all the necessary documentation in an organised fashion.

- Have your members experienced significant delay in receiving payment from solicitors at the end of a case?

Yes – regularly.

- How often have your members' court dates changed due to clients not being able to attend/assessment location moved or postponed?

It is not possible to provide a precise figure but this occasionally happens.

- How do you think advice could be limited in particular categories of law?

Advice should be pertinent to each case and not limited.

- Do you have any suggestions for reducing bureaucracy/procedures/administration overall or in particular categories of law?

No.

- Do you think there is any sensible way of limiting the number of experts involved in any case?

This should be by pre-trial review.

- Would you consider that there is a 'paucity' of experts in any of your members' field/geographical areas?

There is a paucity of experts in relation to child abuse both physical and sexual.

- If yes, how are you aware of that?

We are aware of this from discussions with paediatricians and those doctors e.g. in SARCs doing this work.

- Some respondents to our original consultation suggested that there are often time delays in the submission of reports. When and why does this happen?

Volume of other work, unexpected complexity of the case, failure to provide the relevant information in a timely manner.

About alternatives

- Do you think a system of set rates for types of work would contribute to a more transparent, cost effective system?

No – each case needs the cost to be determined on an individual basis related to the volume of material and the complexity of the case.

- Are there any elements of the work done by your members, e.g. types of report, which are relatively standard/routine? How long do these usually take to do?

All cases need to be assessed on an individual basis and it is not possible to re-define those that are “routine” or how long these will take.

I hope this information is of use. Please let me know if you require anything else,

Yours sincerely

Dr Cath White MB ChB FFLM MRCGP DMJ DRCOG DCH DFFP
Vice President