



# *How to write a Clinical Negligence Report.*

**Expert witnesses should use the 'medical procedure' template to produce high-quality reports, says Dr Mark Burgin**

## Introduction

Medical Expert work is evolving rapidly with new qualifications and legal directions. There is increasing evidence that the courts are no longer happy to receive 'old style' reports written in technical language.

The courts want simple 'to the point' reports which deal with the material facts and range of opinion written by professionals highly trained in report writing.

Expert Witnesses have had their previous immunity removed following *Phillips v Symes* [2004] EWHC 2330.

The courts have experimented with techniques such as 'Hot Tubbing' and Joint Reports to try to solve the problem of quality but with the result that costs increase further.

Experts are being told to obtain specific qualifications in expert witness work, such as the Cardiff University law school expert witness certificate programme, in order to qualify for entry to independent expert panels.

Looking to the future, the family courts are both reducing the use of expert witnesses and criticising excessive length and the lack of CPR compliance of expert reports in that area. Expert witnesses can create dramatic improvements by using template reports to increase quality and improve efficiency.

Using a template depends on finding basic building blocks and this article explains how using the 'medical procedure' as the basic unit of a clinical negligence template can facilitate expert and lawyer teamwork.

## The Clinical Negligence Screening Report

A screening report is recommended as the first step before a clinical negligence report is written to guide the lawyer's letter of claim.

The clinical negligence screening report should identify and divide medical procedures into three levels based on complexity to determine the number of reports necessary.

1. The ordinary man level does not require an expert report to determine that not visiting or not examining is a breach of duty.
2. The generalist level can deal with straightforward and common medical procedures and help the solicitor ask relevant questions for specialist experts.
3. The specialist level is needed to consider specific questions on medical procedures that cannot be determined by a generalist.





## The layout of a medical report.

A clinical negligence report layout (see box one) is designed to tell the story and should be written in accessible language, explaining any ambiguities and identifying omissions.

The introduction (see box two) is an opportunity for the expert to demonstrate his/ her writing ability whilst complying with practice direction 35.

The timeline with opinions of when key events occurred may require the lawyer, generalist and specialist to work together as no one person can read and understand the whole file.

Experts can take practical steps by making their report more readable, for example, by using a standard format and including pictures, graphs or tables.

The technical details section (see box three) pulls together the medical evidence and explanations of medical terminology in a structured form and is designed to be referred to rather than read but can include helpful diagrams and pictures.

The medical records review should contain all the relevant healthcare provider's (HCP) consultations transcribed exactly and medical procedures broken down in parts (box four).

The medical records review can be supplemented by a timeline and statements of fact leading the reader through the sequence of events.

Transcription (rather than summary) of the relevant entries is recommended so that the reader does not have to check back to the original. Separate facts and opinions and do not deal with opinions in the medical records review section.

The examination section should contain a full assessment of a claimant's disability including typical day and functional assessment of the claimant's disabilities (see 'Disability analysis in clinical negligence 2013', [www.waterlowlegal.com/pdfs/Burgin.pdf](http://www.waterlowlegal.com/pdfs/Burgin.pdf)).

The review of statements section should indicate what statements are missing as limitations of the evidence.

The four opinion sections should be used to indicate material questions that require an opinion.

### Box 1. Clinical Negligence Report Layout

- A. Front sheet
- B. Contents
- C. Introduction
- D. Technical Details
- E. Medical records review
- F. Examination
- G. Review of statements
- H. Liability
- I. Causation
- J. Condition
- K. Prognosis
- L. Recommendations
- M. Declaration of truth

### Box 2. Introduction Section

- Summary of the instructions (3.2.3)
- Summary of the case
- Graph or image, e.g. time line
- Material facts in dispute (2.3)
- Limitations of evidence (2.4)
- Summary of conclusions (3.2.7)
- Expertise – qualifications and experience (3.2.1)  
From practice direction 35 (PD35)

### Box 3. Technical Details Section.

- Glossary and abbreviations
- Relevant pathological processes
- Differential diagnoses
- Quotes from key published sources
- Procedures and guidelines
- Medical uncertainty and controversies

## The Generalist Expert Witness Report.

The generalist expert witness report should tell the whole story, bringing together evidence from all the different practitioners involved in the case.

Using the medical procedures concept helps structure the report and identify the material facts and questions that will need answering.

Generalists use the bio-psycho-social model which allows them to write the report in a simple and accessible language. Using this approach can bridge the gap between readers with medical training and the other readers of the report.

The generalist can ask questions for the specialist to answer in the 'opinions' sections (liability/ causation/ condition/ prognosis).







## The Specialist Expert Witness Report

The specialist expert deals with a wealth of complex medical evidence which may arrive in a number of lever arch files and take many hours to read. He/ she may be faced with notes and letters from specialists in areas that they are unfamiliar and of unknown relevance.

It takes further effort to craft the report and particularly the technical section and timeline in a concise and readable way. It is disproportionate to the value of the claim and probably poor practice for the specialist expert to be responsible solely for all these different tasks.

The specialist expert is most helped by the generalist writing a broad ranging and detailed report identifying medical procedures and asking focused questions on the key and material issues.

The specialist expert should focus on medical procedures within their area of their expertise.

### Box 4. Components of Medical Procedure

- Record of procedure
- Clinical indications
- Evidence of consent
- Key outcome measures
- Explain variance
- Review plan

### Box 5. Advantages of medical procedures

- The report can be organised as a template
- The material facts can be identified
- The experts can focus on their expertise
- Ranges of opinion can be logically addressed

## What is a Medical Procedure?

Medical procedures (see box four) are any complex interaction between practitioner and patient. They usually follow a written guideline but some are still based on usual practice.

The details of the medical procedure followed in the particular case will usually be partly in the medical records and partly in the defendant's statements.

The generalist has expertise for the most common medical procedures such as 'the consultation'. Range of opinion can most easily be expressed with respect to medical procedures.

Expert reports can be improved in three simple ways (from the work of Kate Hill, solicitor, RadcliffesLeBrasseur):

1. Fact and opinion. Consider whether each of the statements give new information (fact) or are assertions (opinions).
2. Complete tasks. Has the evidence for the statement been presented and does the conclusion follow from the evidence?
3. Education. Have any technical terms been dealt with in a glossary, education or technical details section?

Using the template as described in this article for the reports will increase their quality, by simplifying compliance with CPR, and also improve efficiency, by focusing on the material facts.

However, the expert witness will need more than a well laid-out report with high-quality opinions to keep the courts happy. The courts will also be critical if different expert reports, when taken together, appear contradictory, leave material facts unanswered and are difficult to follow.

The clinical negligence lawyer can help by using the medical procedure concept as a building block for instruction of generalist and specialist experts.

*It is poor practice for the specialist expert to be responsible solely for all these different tasks*



## Improving Experts Reports

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Consider whether each of the statements give new information (fact) or are assertions (opinions).

### Complete tasks

Has the evidence for the statement been presented and does the conclusion follow from the evidence?

### Education

Have any technical terms been dealt with in a glossary, education or technical details section?

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## Conclusions.

This article described a template that will both increase quality, by simplifying compliance with CPR, and also improve efficiency, by focusing on the material facts.

However the Expert Witness will need more than a well laid out report with high quality opinions to keep the courts happy.

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The Clinical Negligence Lawyer can help by using the Medical Procedure concept as a building block for instruction of Generalist and Specialist experts.



### Box 6. Basic Expert Report checklist



- 'To the court'
- Professionally typed
- Summary of instructions
- Relevant expertise
- Material facts
- Limitations of evidence
- Summary of case
- Organised evidence
- Glossary of technical terms
- Inconsistencies explained
- Logical conclusions
- Range of opinion
- Duty to the court
- Comply with part 35 CPR

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