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Expert Witness Update – Report Writing Essentials

Duties • AI • Case law

ABOUT THE SPEAKER

McDermott KC Training

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Gerard McDermott KC: a leading silk with over 35 years' experience in medical negligence and serious injury law.

McDermott KC Training offers expert witness training that is practical, incisive and grounded in real courtroom experience.

Having spent his career analysing expert reports, Gerard equips experts to avoid common pitfalls in report writing and present evidence with clarity and authority.

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The statutory framework: a reminder

- CPR 35.3: the expert's duty is to help the court on matters within their expertise, overriding obligations to the instructing party.
- PD35: expert evidence should be independent, objective and unbiased; experts must consider material that may detract from their opinion and provide reasoning and rationale to support their conclusions.
- Guidance for the Instruction of Experts 2014 – plans to update in near future.
- The issue is not knowing the words, it is demonstrating an understanding of them in your reports.

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CPR 35 & PD35: the practical reminder

INDEPENDENT PRODUCT

Resist litigation pressure.

The report must be your work and reasoning.

Not part of the legal team

OBJECTIVE & UNBIASED

Do not advocate.

Do not decide matters of fact.

Address contrary material analytically.

LIMITS & CHANGE

Say when an issue is outside expertise or uncertain.

Communicate material changes of opinion promptly.

A CPR 35 compliant report is one that shows its methodology, its limits and the evidence pointing the other way.

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AI: the future is transparency, not delegation



- CJC final report (29 October 2026): recommends a specific declaration where AI generates or influences substantive content of an expert report.
- Disclosure should be sufficient to permit effective scrutiny of methodology, appropriateness of the AI use and substantive content.
- The CJC also recommends revised good-practice guidance on AI use for experts in the Guidance for the Instruction of Experts.
- The proposed approach is functional and risk-based: focus on how the tool influenced your evidence, not its label.

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The three “I’s” in an AI assisted opinion evidence

Independence	AI may assist your process; it must not become the author of your opinion.	*Ask: can I explain and defend the reasoning without the tool?*
Integrity	Verify facts, references, calculations and source material.	*Ask: did I interrogate and verify the AI material and sources?*
Impartiality	AI can amplify selection bias if the prompt or source set is one-sided.	*Ask: what contrary material did I test when formulating my opinion.*

Professional responsibility and accountability is the constant. Do not forget your overriding duty to the Court when using AI tools.

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Case update: JBX v Frimley Health NHS Foundation Trust [2026] EWHC 2294 (KB)

- Quantum trial following admitted clinical negligence.
- While some of the experts were praised, some were severely criticised by the judge, particularly for failing to consider the range of opinion.
- The central care dispute: bespoke domiciliary care in an adapted home versus specialist neuro-residential care.



READ THE CASE IN FULL: the judgment is a detailed demonstration of how the court weighs balanced reasoning, expertise boundaries and evidential foundations.

JBX v Frimley Health NHS Foundation Trust - Find Case Law - The National Archives

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JBX: Where expert evidence went wrong

The court's criticism of the claimant's care evidence was that the analysis was not sufficiently full, fair and balanced.

BALANCE

Insufficient consideration of disadvantages of home care and advantages of residential care.

EVIDENTIAL FOUNDATION

No expert medical advice sought before forming an opinion on setting; relevant research was not presented.

ADVOCACY TRAP

The judge found the expert had advocated one side rather than fully evaluating competing options.

REMEMBER: Opinion evidence should set out the merits and disadvantages of competing options as the Court will always expect evidence that properly evaluates the alternatives.

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JBX: The Mandatory Duty on Range of Opinion

- Remember your sole purpose is to assist the Court and you should approach the evidence in a fair and balanced manner without straying beyond your area of expertise.
- You have a duty to comply with CPR Part 35.3 2(6) which states that an expert's report must, where there is a range of opinion on the matters dealt with in the report –

  (a) summarise the range of opinions; and

  (b) give reasons for the expert's own opinion

  "……the weightier factor is…[the expert's] failure to provide the court with the full and fair analysis which CPR 35 requires and the other unsatisfactory features of her evidence"
- You should show your analysis and evaluation of competing options and explain with reasoning and rationale why you have formed the opinion you have.
- Do NOT cherry pick evidence and be aware of confirmation bias.

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JBX: What did good expert evidence look like?

Assessment of Neurology Experts:

"Both Dr Prasad and Dr Agrawal are expert in their field and both approached their evidence conscientiously and with the sole purpose of assisting the court. Both experts gave careful and considered evidence and neither strayed outside the limits of their experience and expertise."

Neuropsychiatry expert

"Dr Soppitt was a careful and considered witness. He was obviously aware of his duties to the court and thoughtfully answered questions"

Physiotherapy:

"Having reflected on their evidence, where they disagree, I prefer that of Mrs Weston. Her evidence was calm, measured and analytical. In particular, I was impressed by her considered assessment of the benefits of hydrotherapy and, importantly, its limits."

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Re X and Y (Care proceedings: Publication of Judgment: Criticism of Expert Witness)

[2026] EWFC 132 (1/2)

- Mrs Justice Knowles named an expert witness who did not want to be named following serious criticism of his conduct.
- Mr Mitchell, Neurosurgeon, gave evidence in 2025 in a hearing to establish the cause of a child's death and whether the child's parents were responsible. Ultimately the parents were found to be responsible.
- Mitchell tried to convince the Court the child had choked on a biscuit.
- Six other medical experts disagreed, but Mitchell showed "an unwillingness to engage with the opinions of the other experts".
- After the hearing, the Local Authority sought "extensive adverse findings about Mitchell's conduct as an expert witness" – named in a judgment and to be referred to the GMC.

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Re X and Y: Criticism of Expert Witness

[2026] EWFC 132 (2/2)

- *"confused", "flawed", "irrelevant", "unwise"*
- He had only skimmed the papers. Had gone beyond his area of expertise
- Conclusions *"based on speculation and not on verifiable medical or academic sources or clinical experience"*
- "The public interest is engaged in various ways, for example in knowing why one set of expert opinion is preferred over another; in correctly identifying child abuse and understanding where that may be put at risk by an expert failing in his duties to the Court; and in ensuring that experts comply with their duties to the court and understanding why and when significant criticism of an expert is legitimate."

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BEFORE YOU SIGN: CHECK FOR CPR 35 COMPLIANCE

01 Have I considered all of the facts and identified material that opposes my opinion?

02 Have I tested the alternatives and set out a range of opinion?

03 Is my opinion properly set out with reasoning and rationale?

04 Have I stayed within my expertise and deferred where appropriate?

05 If AI touched the substance, can its role and methodology withstand scrutiny?

06 Could I explain every aspect of my opinion under cross-examination?

Remember the importance of medico-legal training and CPD updates.

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Thank You

Any questions?

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