



editorial

Psychiatric Bulletin (2007), 31, 201–202. doi: 10.1192/pb.bp.106.014217

GARY WANNAN AND M. E. JAN WISE

Bearing Good Witness: does it withstand cross-examination?

The Chief Medical Officer Sir Liam Donaldson's report *Bearing Good Witness* (Department of Health, 2006) recommends that the use of lone medical experts in the family courts should largely (if not completely) cease, and be replaced by new National Health Service (NHS) teams. Not only does this have implications for child and adolescent and adult psychiatrists (adult psychiatrists outnumbering their child and adolescent colleagues by a factor of three) practising in the family courts, but also for the medical profession as a whole and the courts' freedom to instruct an autonomous practitioner.

The report originates from government ministerial reaction in 2004 to public mood over a small number of high-profile cases in which paediatric evidence was refuted, and convictions for child maltreatment were overturned. Professor Sir Roy Meadow became a household name because of his actions in court, which led to his temporary erasure from the General Medical Council (GMC) register (*R v. Sally Clark* [2003]), rather than his many years of eminent and practical research undertaken in the field of child protection (Gornall, 2006). Media reporting has been accused of vilification and oversimplification. For example, although Sally Clark's conviction was found unsafe, this was largely on pathological evidence rather than Meadow's misleading statistics on the chance of two cot deaths occurring. Journalists counter that they '... must be able to point the finger without being accused of running a witchhunt' (Marks, 2003). In consequence there are considerable concerns that the inadequate number of medical experts willing to undertake vital work in court is further decreasing (Royal College of Paediatrics and Child Health, 2003).

The implication of the report that using NHS teams, rather than the current system, will secure guaranteed availability and high quality lacks evidence. Justification for this 'magic fix' is not found in the report. One of us (G.W.) works in a multidisciplinary team within the NHS, in partnership with the National Society for the Prevention of Cruelty to Children (NSPCC), as the sole doctor preparing reports for family courts. His experience is that the small number of similar teams often turn work down (owing to demand), and there is a concern that the better known and respected groups have the least availability.

Anecdotally, courts often appear to prefer independent experts rather than teams. There is a perception that availability and speed of report production is better, and that the most experienced (and well-known) experts are doctors who practise alone. Donaldson appears to assume that the use of teams will prevent rogue opinion, but the reality for clinicians is that teams, like individuals, may also become deviant.

In principle, however, the use of teams should deliver a more reliable product. The combination of multidisciplinary work, supervision structures, clearer training processes and mutual professional support is likely to ensure greater consistency. Working collaboratively is particularly useful for maintaining perspective; psychiatrists should be aware through their training of the emotional limitations of an individual working with families where there is abuse and neglect. Teams require hard work and maintenance, but have the face validity of providing superior governance, and when working with families who have complex and chronic needs in NHS practice it would be very unusual to work alone. Psychiatrists already have training in team-working, but will usually lack experience in producing multi-author expert reports that draw upon differing views and professional backgrounds.

Doctors attracted into expert work often value the independence and flexibility it gives as a change from NHS work. The work also appears to be attractive to retirees, but Donaldson without apparent reason limits their role in NHS teams to up to 2 years since they left NHS service. Despite the level of change he proposes, Donaldson rejects the notion of a pilot scheme, saying that similar schemes to those he proposes already exist, but does not give evidence of their efficacy, or acknowledge their relatively small number and that few family court assessment services have medical input.

There is likely to be little incentive for NHS trusts to initiate new non-core services where there are considerable risks in recruitment, lack of consistency in workload (local variability in report request rates is anecdotally high), little financial incentive if any, working across different specialties (and potentially trusts) and exposure to bad publicity (especially with the proposals that family



editorial

courts should be opened up to the media (Department of Constitutional Affairs & Her Majesty's Courts Service, 2006). In addition, in view of the variability and unpredictability of when an expert is called to court, disruption to core work is very likely, as NHS experts are likely to work across teams, few volunteering NHS trusts are likely to step forward. The proposals, with their considerable change, complexity and lack of viable evidence are 'pie in the sky'. Indeed, the suggestion that in due course there would be less expenditure on court reports, despite the likely high costs of expert teams, appears naïve.

Another concern is the increased state control Donaldson suggests. Not only will families in proceedings be subject to the judicial system, but the 'independent' expert will normally be in the employment of the local NHS trust, as such moving towards both a local and national monopoly. He gives little justification for changing the expert witness system in family courts but not in other courts where medical expert evidence is heard, or for doctors alone, who are one of only several professional groups to act as experts. At stake is the privilege of courts to appoint an independent practitioner; although Donaldson asserts that his recommendations do not preclude the parties asking for an expert working as a private individual, it is difficult to understand the consistency of this with his plan that there are service-level agreements between the courts and the NHS.

However, Donaldson's recommendation that court skills be taught in under- and postgraduate education is very welcome. He acknowledges recent initiatives, such as mini-pupillages for doctors and the use of video-conferencing skills to cut down on expert travelling time. His suggestion that the quality of instruction from the lead solicitor to the expert be improved is also welcome. Experts will be glad of his support that complaints to the GMC, which essentially relate to the expert's opinion rather than skills, should not be exhaustively dealt with. The proposal that there is specific accreditation for medical expert witnesses acknowledges the supra-specialist skills required by practitioners, but suggesting the use of British standards for this is a novel approach when Donaldson is already proposing a fundamental change to the working of medical experts.

Instead of a revolutionary approach, an incremental and reviewable one, in our opinion, should be used that retains and enhances the strengths of independent work while encouraging the growth of teamwork. Teamwork may be provided within or outside the NHS (where doctors could for example form medical chambers), or in multidisciplinary partnership with other agencies, as already exists in the voluntary sector. Teams require growing skills and experience; there must also be clear incentives for their formation, which inevitably will

include financial rewards to NHS trusts who develop this work.

In the author's (G.W.'s) experience of doing both team and individual expert work, working with colleagues was found to be more satisfying and consistent but uses considerably more resources. This is due not only to working as part of a team, which necessitates greater communication and discussion, but the higher levels of service often given to patients. This might include, for example, that rather than parents discovering the expert's opinion for the first time through a written report, there are specific review and feedback meetings for the family and the court parties. In addition multi-authored reports are vulnerable to cross-examination of all authors (British Medical Association, 2006) and the associated travel and court time may lead to a significant disruption of clinical work.

Our concerns are that Donaldson's proposals have not only considerable consequences for medical autonomy and the courts' independence, but their extent makes their implementation, without considerable incentives for the NHS, difficult to imagine. Considering the uncertainties surrounding training, trust configuration and new models of service delivery, we suggest incremental, realistic and reviewable change. We also consider it likely that the courts will guard their freedom to choose between competent doctors who bear good witness as either individuals or within teams.

Declaration of interest

M.E.J.W. is Chair of the British Medical Association's Medico-Legal Committee.

References

- BRITISH MEDICAL ASSOCIATION (2006) *Expert Evidence in Family Law Cases*. Medico-Legal Committee minutes. TSO (The Stationery Office). MLC8, 17/11/06, BMA.
- DEPARTMENT OF CONSTITUTIONAL AFFAIRS & HER MAJESTY'S COURTS SERVICE (2006) *Confidence and Confidentiality: Improving Transparency and Privacy in Family Courts*. TSO (The Stationery Office).
- DEPARTMENT OF HEALTH (2006) *Bearing Good Witness: Proposal for Reforming the Delivery of Medical*
- GORNALL, J. (2006) Royal College rewrites child protection history. *BMJ*, **333**, 194–196.
- MARKS, N. (2003) An expert witness falls from grace. *BMJ*, **327**, 110.
- ROYAL COLLEGE OF PAEDIATRICS AND CHILD HEALTH (2003) *Child Protection Survey 2003*. Royal College of Paediatrics and Child Health.

R v. Sally Clark [2003] EWCA Crim 1020.

Gary Wannan Consultant Child and Adolescent Psychiatrist, Parkside Clinic, London, ***M. E. Jan Wise** Consultant in General Adult Psychiatry, 13–15 Brondesbury Road, London NW6 6BX, email: jan@wiseminds.co.uk