



The Mid Yorkshire Hospitals
NHS Trust



Preparing for Court – FY2s (Nov. 2016)

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Striving for excellence

An Associated Teaching Trust

Which Courts? Where?



Coroner's Court; Family Court; Crown Court; Magistrates Court; Court of Protection; GMC/NMC

No property in a witness

Beyond Reasonable Doubt or On the Balance of Probability?

Perjury

Duty on Coroner to notify Local Safeguarding Children Board if believes deceased aged under 18

- **Coroner's Inquest – What are the 4 questions they need to answer; With or without a jury? Who's there? Wigs?**
- **Criminal (Crown/Magistrates) Court – who sends the summons? Who's there? Wigs? Statement?**
- **Family (Safeguarding) Court – who sends the summons? Who's there? Wigs? Will you hear evidence of other witnesses?**
- **Civil Court (Negligence/Liability Claims) – how many end up at trial?**

Be satisfied with your statement – the document should not be created in the language of lawyers, or the police, because they will not be going into the witness box to defend it

Less than 1% end up at trial

STATEMENT WRITING

In which circumstances do you need to provide statements?

Know your audience!

Incidents – Complaints – Claims – Inquests – Police – Safeguarding Children/Adults
Don't wait to be asked

Purpose? Is it just an internal inquiry? Might it have to go to the coroner? – if it is, the family of the deceased will probably see it or hear what you say. Consider the content/language. Please check the records thoroughly – lawyers will look at everything not just one episode of care, and they will compare times etc with notes written by other professionals.

What are the essential elements of a GOOD statement?



Legible – Purpose – Dates/Times – Name/Designation – Factual Description

Type the statement – explain why decisions were made

Do not write a joint statement – write your own statement.

Check for errors – Read it through – does it give enough detail? Is it clear exactly what happened? Have you checked the facts?

Other Essential Elements!

- Good documentation – refer to the records (look at both medical and nursing). Your contemporaneous entries are a vital part of your evidence. You may be approached to be a witness many years after the events. The more comprehensive the medical records are, the easier your job will be when giving evidence.
- If you use jargon, include an explanation
- Avoid giving opinions, avoid hearsay and do not stray out of your area of expertise
- Identify others involved
- Protocols/Policies/Diagrams
- Statement of Truth
- Signature & Date (keep a copy)
- Ownership (don't be rushed)

Make sure you refer to the medical records – if there are none make sure you say so in the statement

Look at all the notes – medical and nursing – think outside the box!

Use the 24hr clock – think about clock changes!

Use a diagram if it helps!

Keep it relevant and accurate – what does a stranger to the situation need to know?

Number your paragraphs if possible

Avoid jargon – explain terminology

The Clinical Record

"Legibility is also a frequent problem. There is nothing more embarrassing than being asked to read out your own notes in the witness box and to find that task difficult".

Medical Protection Society

**"The Outcome in Court does not depend on Truth –
it depends on Proof".**

Andrew Andrews, Barrister

Volume?

- Inquests requiring staff to attend to give evidence - 2015 – 61; 2016 - 55
- New Clinical Negligence Claims requiring statements from staff - 2015 – 252; 2016 - 260
- New Liability Claims requiring statements from staff – 2015 – 36; 2016 - 31
- Total Active Claims - 674

Defence Organisations and Vicarious Liability

- Is membership of a Defence Organisation useful?
- What cover do you have if the Coroner refers a case to the Police?
- Can a doctor be tried twice for the same allegation? Once in the criminal courts and then again in the GMC?
- Do you have to help? What if you have retired/moved on?

The answer is a, perhaps surprising, "Yes!". Doctors who are acquitted by a jury or magistrate in the criminal courts have for some time been at risk of a General Medical Council (GMC) 'prosecution' (in a regulatory / disciplinary sense) for the same alleged misdemeanour, by way of fitness to practise proceedings. [The same general approach will apply where the police investigate a case but determine not to prosecute the doctor because of a lack of evidence or where the public interest test is not met.]

An employer (NHS Trust) is vicariously liable for any tort committed by an employee in the course of his or her employment.

(Tort - a civil wrong, not criminal)

Your professional code of conduct is likely to require you to co-operate with formal enquiries, entitlement to indemnity under CNST through your employing body is also based on co-operation.

Without the assistance & evidence of those involved we would be unable to defend the NHS

Giving Evidence

- Whose side are you on?
- What is your role?
- Support
- The Gap between the event and the court hearing
- Effect on family and colleagues
- Delays
- After giving evidence

Your evidence will 'bring to life' the medical records – the Judge needs to understand what happened, why and that it accorded with responsible clinical practice

Feelings (tired, emotionally drained), Going back to work, De-brief, staff support, media

1. Re-read your statement.
2. Arrive at court at least 30 minutes before the start. You can be held in contempt of court if you are late. You should dress in a formal, smart and professional manner (not uniform).
3. In some courts be prepared for a long wait before you are asked to give your evidence.
4. As a factual witness giving sworn evidence, the obligation on you is simply to tell the truth. Resist any temptation to be creative in your answers.
5. All witnesses providing evidence do so under oath.
6. After the oath, you will be asked to confirm your name and details (qualifications, position), then you will be taken through your statement.
7. Listen very carefully to the question. If you do not understand the question you must say so. Don't guess what the questioner might have intended to ask you.
8. What if your answer is a simple 'yes', 'no' or 'I don't remember' ?
9. Always try to face the Judge/Jury/Coroner when giving your answers, regardless of where the particular questioner is sitting or standing. Watch the Judge/Coroner and pause as necessary during your answers to allow his note-taking to keep pace with your evidence.

Consider what decisions were taken, when & why. Think about any factors which may have had a bearing on events.

Don't guess!! If it's not within your expertise/responsibility say so.

If you say something you didn't mean set the record straight immediately

Don't use jargon

Don't feel obliged to change your answer if it's accurate, simply because you are asked the same question in a different form.

Refer to the records if necessary.

The Best Witnesses

- Have no axe to grind, and seek only to assist the Court in coming to the correct conclusion with accurate factual evidence.
- Are calm, clear, courteous and honest (not arrogant, impatient, patronising, rude, argumentative, or indecisive). You are the professional – you know your job! Remain objective.

It's not personal! Stick to the facts. Do not try and fence with the Barrister whose job it is to champion a particular side of the case

Other available guidance

- www.nhs.uk/Claims/Pages/Publications.aspx
- www.gmc-uk.org
- www.rcn.org.uk
- www.medicalprotection.org

