



## Expert witness

*Under the umbrella of his Company DentoLegal Ltd, Gary M. Simon (BDA U Manc, MA Health Care Ethics, MA Legal Studies) has achieved an impressive reputation for providing a range of Expert Witness Services involving Breach of Duty & Liability Reports, as well as Condition & Prognosis Reports, for cases involving all aspects of general dental practice.*



Complying fully with current Civil Procedure Rules, Mr. Simon's Reports are prepared with digital radiographs and intra-oral photographs included in Condition & Prognosis Reports, together with a digital Orthopantomogram where necessary.

Mr. Simon's areas of particular interest are:

Dental Negligence involving -

- All aspects of General Dental Practice
- Supervised Neglect & Gum Disease
- Root Canal Treatment
- Informed Consent
- Personal Injury -
- Road traffic accidents.
- All accidents requiring crowns, bridges and osseointegrated implants
- Injuries to Permanent Teeth.
- Injuries to Deciduous Teeth.

Experienced in Claimant, Defendant, SJE and Agreed Expert Instructions, Mr. Simon is able to draw on his strong academic background, combined with the wealth of practical experience he has gained throughout his career. In a recent interview Mr. Simon outlined the importance of an expert having sufficient academic and practical experience in order to provide a professional service as an Expert Witness:

"Having prepared over 4000 reports in the last 20 years, all of which take into account the dento-legal implications of clinical findings and are fully referenced, in my opinion experience is equally as important as qualifications. In 1969 I became qualified as a Bachelor of Dental Surgery at Manchester University. Following which I then gained my Master of Arts Degree (Health Care Ethics) and Master of Arts Degree (Legal Studies) at the same University.

I have over 20 years experience of medico-legal work and I was fortunate to have useful knowledge of relevant Case Law and what was required by the Lawyers and the Court in establishing Breach of Duty and Causation; my previous 20 years in general practice providing me with a good grounding to prepare reports on Condition & Prognosis.

My continued interest in Case Law related to clinical negligence has been particularly relevant to whether valid consent has or has not been obtained for the treatment provided, with the very recent Supreme Court judgment in *Montgomery v Lanarkshire Health Board* [2015] UKSC 11, which considered how the courts should determine whether a medical professional had fulfilled their duty to provide disclosure of the risks of a medical procedure to a patient (i.e. informed consent)."

The Montgomery test requires the doctor to take reasonable



care to ensure the patient is aware of 'material risks' including:

Not by reference to whether a group of doctors believe a risk should or should not be discussed; By whether a reasonable person in the patient's position would consider the risk significant; or If the doctor knows (or should know) that the patient would consider the risk significant.

The relevance of informed consent being that without this the clinician becomes culpable for all adverse sequelae flowing from the treatment whether unfortunate or negligent.

Acting as an Expert Witness Mr. Simon finds that he is infrequently required to attend Court to give evidence; once Expert reports have been disclosed a meeting of Experts is arranged to identify areas of agreement and disagreement prior to Trial, this usually results in the parties reaching agreement without the expense of going to Court.

Explaining the importance of an Expert Witness being instructed at the beginning of an investigation/legal case, as opposed to at a later stage of the proceedings, Mr. Simon told us:

"I regularly receive emails from my instructing Solicitors briefly outlining the details of a potential case and requesting an initial opinion on whether

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both breach of duty and causation can be established.

This, in my opinion, is where an experienced Expert can save the cost of a futile case being taken on. A claimant may for example complain that that an endodontic file has separated in a root or during root canal treatment or that a tooth has broken leaving a root in situ when being extracted or occasionally when the maxillary tuberosity (part of the upper jaw) has fractured when a tooth is being extracted. A Solicitor would be informed that as long as valid consent has been obtained, these adverse sequelae, which to the layman appear to be caused by negligence, would invariably be considered unfortunate."

Mr. Simon is a member of the British Dental Association, British Endodontic Society, European Society of Endodontology, a Full Member of the Academy of Experts and a checked expert listed by the U.K. Register of Expert Witnesses and Expert [1st tier] Association of Personal Injury Lawyers.

When asked to provide brief examples of cases on which he had been instructed Mr. Simon went on to say:

"Cases I undertake involving personal injury instructions range from simple tripping accident to catastrophic road traffic accidents. Clinical negligence cases frequently involve items of treatment such as unsatisfactory root canal treatments, supervised neglect of caries and/or periodontal disease with the occasional failing to identify and refer patients with suspicious lesions which are eventually diagnosed as cancer. The latter can result in tragic outcomes for the patients and ongoing worry and distress for the dentist involved."

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