Expert witnesses are issued with new advice after high profile failings

Clare Dyer *legal correspondent, BMJ*

Expert witnesses for the prosecution in legal cases are for the first time to be issued with a guide to their duties, after a high profile case in which experts' failings led the Court of Appeal to quash a mother's convictions for murdering her babies.

The booklet was launched this week as the attorney general, Peter Goldsmith, said that three "shaken baby" cases raised concerns about the safety of the convictions.

The three emerged from a review of 88 convictions in cases involving shaken baby syndrome in the past 10 years. The review was undertaken after an appeal court judgment in four test cases last July. The court ruled that the "triad" of injuries found in cases of non-accidental head injury—retinal haemorrhages, subdural haemorrhages, and encephalopathy—are not conclusive on their own but point strongly to shaken baby

syndrome as the cause of death.

Two of the three convictions were for manslaughter, in 1994 and 2001. The third defendant was convicted of murder in 2001. Letters have gone to the defendants' lawyers suggesting a possible appeal or referral to the Criminal Cases Review Commission.

The guide for expert witnesses, produced by the Crown Prosecution Service, is aimed at preventing the recurrence of mistakes such as those made by prosecution witnesses in the Sally Clark case, which led to the quashing of her convictions for murdering her two baby sons.

The guide emphasises the "3 Rs" of good practice: record, retain, and reveal. Experts are warned that a failure to comply could have serious repercussions, including "adverse judicial comment," which "could seriously undermine your credibility as an expert and consequently your fitness to be instructed in future cases," and "professional embarrassment, including possible action by a professional body, loss of accreditation and the potential for civil action by an accused." (In fact, witness immunity makes a successful civil action highly unlikely.)

Experts are told that they must record everything they do from the moment they are instructed—and even before, if a

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The attorney general, Lord Goldsmith, found that only three out of 88 cases of shaken baby syndrome raised concern about the safety of the convictions

"routine" post mortem examination points to suspicious circumstances or if a practitioner finds injuries that are inconsistent with the alleged cause.

Everything must be retained until the prosecution says it can be destroyed, and everything must be revealed to the prosecution team. The guide says it is not for the expert to decide what is irrelevant. Witnesses must also not give opinion beyond their area of expertise.

In Sally Clark's case Alan Williams, the pathologist who carried out autopsies on both babies, failed to disclose results of microbiological tests on Mrs Clark's second baby, Harry, that

raised the possibility of a death from natural causes.

Roy Meadow, the retired paediatrician who testified that he believed Mrs Clark had murdered both sons, put the chances of a cot death in a family like the Clarks at one in 73 million, a statistic later described as "erroneous and misleading" by the General Medical Council.

The GMC found both men guilty of serious misconduct, although it acknowledged that both had acted in good faith.

As the *BMJ* went to press the result of Professor Meadow's appeal against the misconduct finding was expected within days. □

Industry association suspends drug company for entertaining doctors

Michael Day *London*

One of the world's biggest drug companies has been suspended from its UK trade organisation after two of its employees went with a doctor to a lap dancing club and for providing other extensive hospitality.

Abbott Laboratories has admitted providing senior hospital consultants with tickets to the Wimbledon tennis tournament and trips to greyhound racing. As a result the Association of the British Pharmaceutical Industry has decided to suspend the company's membership for a minimum of six months—the severest penalty handed out by the organisation in 10 years.

In its ruling on 10 February the association said that the

behaviour of Abbott's employees in attending a lap dancing club with a health professional would "bring discredit upon, and reduce confidence in, the pharmaceutical industry."

An anonymous "concerned member of the industry" blew the whistle on the hospitality, all of which took place in 2004. In January and September of that year Abbott managers held two "meetings" for 27 and 36 doctors respectively at a greyhound stadium in Manchester. Abbott was unable to provide details of what had been discussed at either meeting, and the association's disciplinary panel concluded they had been social trips—and in clear breach of the industry code.

In the summer of 2004 two senior hospital consultants were treated to centre court seats and full hospitality at Wimbledon, and in December of that year two Abbott managers paid for a hospital department's Christmas dinner.

But the decision of a senior Abbott manager to take a hospital doctor to a lap dancing club in February 2004 will probably do the most damage to the industry's image.

The association launched a tougher code of conduct at the start of this year, after a series of public relations disasters. In 2005 it received stinging criticism in a report from the parliamentary select committee on health (*BMJ* 2005;330:805). Earlier, in a series of high profile cases drug companies were accused of downplaying serious side effects of drugs.

A spokeswoman for Abbott said: "The company has a zero

tolerance policy for behaviours that breach the company's code of conduct. Sanctions are taken, including termination, if violations are found.

"The allegations made during this case relate to the individual actions of a small number of employees in 2004."

Abbott conducted a thorough investigation, and as a result these employees either resigned or had their employment terminated, she said.

The doctors who accepted Abbott's hospitality have also come under fire. Richard Nicholson, the editor of the *Bulletin of Medical Ethics*, challenged the hospital consultants involved to come clean. "These people always claim that their prescribing is not influenced by these junkets. But nobody believes that—and not least the drugs industry. Why else would it spend \$20bn a year in the US promoting their products to the medical profession?" □