

## Guidance notes for medico-legal review of cytology material: points for consideration

### **Background**

Pathologists and Biomedical Scientists who report cytology samples will be well used to reviewing cytology slides for second opinions, Multi-Disciplinary Team Meetings (MDTs), audit and on clinical request. These are everyday events and are invariably done shortly after, and on occasions before, a cytology report is issued and acted upon. But a review for a medico-legal report is something that very few individuals who report cytology material have experience of, have ever done or been asked to do.

This document is therefore intended to give some guidance as to how to approach a medico-legal review of a cytology slide, and some issues which need to be considered in doing so. Whilst it must be recognised that most cytology medico-legal requests are for the review of cervical cytology samples, the same basic principles would also apply to diagnostic cytology samples.

The purpose of any medico-legal review is to produce a report for a legal team, and hence the court, which may be able to assist in arriving at a court decision. As such, the person offering a medico-legal opinion must be competent in the area being discussed and be able to demonstrate competency and expertise in this area. This would usually require evidence of cytology reporting over many years. The concept of an “expert” is someone who is able to provide an objective opinion based on their extensive experience, knowledge and competence of that area<sup>1,2</sup>. A medico-legal opinion should never be offered if the material or subject is outside of the person’s competency or area of work.

In English law, the relevant standard for medical practitioners is the Bolam test<sup>3</sup>, which is - ‘how would an appropriate group of peers approach and report such a case?’ Many cytology reviews will agree with the originally issued report, but this is not always the case. However, the Bolam test has not been applied to non-medical practitioners (eg cytology screeners) where, in England and other jurisdictions, the test of “absolute certainty” has been used. Recent judgments in England have also considered the Bolam test not to apply to interpretation of pathology slides, regardless of the status of those performing the interpretation<sup>4</sup>.

### **Medico-legal request**

A request for a medico-legal review of cytology material is usually made by direct approach from a solicitor acting on behalf of their client. The client may be the patient who had the sample taken or may be the laboratory or hospital where the cytology was originally reported.

The initial letter of approach from a solicitor should give a brief outline of the case and the material that is required to be reviewed. It should ask if the person being approached is able

and willing to offer an opinion and will usually request a CV indicating the person's experience and credentials. They will usually also request an estimated time scale for the review and what fee the person would be charging. If the person being approached feels competent to offer an opinion and has the capacity to do so, then they should reply to the solicitor to confirm their acceptance of the instruction.

### **Fees**

The fee charged is at the discretion of the reviewer to suggest. The British Medical Association (BMA) does offer a suggested scale of fees which can be used as a guide<sup>5</sup> Any fee received may need to be declared as income on a Tax return depending on the arrangements being entered into by the reviewing expert. If the review is undertaken at the cytologist's usual place of work, using equipment such as a microscope or computer not owned by the reviewer, it should be agreed with the Head of Department/employer.

### **Review**

Once agreed to, the solicitor will arrange for the material and a detailed letter of instruction to be sent to the reviewer, along with any supporting material(s) as may be available or required. This should state the specific question(s) being asked of the reviewer.

The review may involve reading any relevant notes, reports, or notes provided that are pertinent to the material and question in hand. The cytology material may be one or more slides, and from one or more events over several years.

On some occasions, and often the case for cervical cytology reviews, a "blind review" may be asked for, where only a copy of the original request form as submitted at the time of sample taking is supplied, and no other information about the case or the original cytology report is given. The solicitor should indicate what is required in their initial letter of approach. The reviewer needs to catalogue all the material received - slides, notes, reports, etc., which will be used as part of the final report. This should include confirmation of slide labelling details and any screener/markings dots which are present on the slide(s) as received; if the latter applies, they should include a description of the different colours or types of markings present on the slide(s), such a dots, circles, double dots, etc.

The review must be undertaken as objectively as possible and not be biased with any knowledge of the outcome (if this is known). It is very easy to use hindsight in a review if the cytology reviewer knows the outcome. The cytology review **MUST** be done as it would have been done at the time it was originally reported. This involves being aware of the state of knowledge at that time, and not that which may be known now. This is even more important if a cervical cytology slide is several years ago when different guidelines may have applied.

The review must detail the cytological material present, the cellular adequacy relevant to the specific body site, and also the technical/staining quality, bearing in mind that the sample may have deteriorated/faded with time since originally reported. The review must detail the cytological findings, and what the reviewer would report the sample as showing, using clear and unambiguous terminology. Reviewers must beware not to over interpret minor or reactive changes as being of greater significance than they are.

If the reviewer feels that the review indicates a report different to that originally issued (where that is known) then the reasons for this must be given, as well as an indication of why the review report is different. If it is a difficult to interpret/ diagnose slide, for reasons such as low numbers of abnormal cells, rare or unusual presentations/diagnoses, then an explanation must be given for this.

If the reviewer feels that the case is an "obvious" error, then clear and specific reasons must be given for this.

## Report

The report produced must include all of the information obtained from the review, as outlined above. It must also include a conclusion as to what the final opinion of the reviewer is, to be given in clear language with the reasoning behind this. It is often of benefit to provide some background as to the sample type, body site and natural history of the material and condition diagnosed. The report may run to several pages. If any relevant literature or guidance is pertinent, then these references should be listed within the report.

The report must be signed off by the cytology reviewer and submitted to the solicitor. This will often lead to a dialogue with the solicitor and the legal team if there are any queries or points of clarification. If so, and if they materially affect the report, then a supplementary note to the original report may be requested.

It must be borne in mind that any report, once submitted, can, and usually will, be made available as part of court disclosure to the other legal team. This release of material can also cover any emails or other correspondence if relevant to the case. For this reason, some solicitors may request a telephone call *prior* to submission of any written report from the reviewer.

## Conclusion

The undertaking of a cytology review for medico-legal purposes should not be done lightly, or without proper information. They must only be done by someone who is competent and able to offer such an expert opinion. It must be done objectively, using an approach as appropriate to the time and state of knowledge when the cytology sample was originally reported.

There is a real need for such medico-legal reviews and some legal cases are unable to proceed due to a lack of individuals able or willing to offer such a review.

The points above are not meant to be exhaustive, and each case must be approached on its own merits, but the guidance offered above should assist anyone undertaking, or considering undertaking a medico-legal review.

The BAC have produced this guidance to help and in all good faith; it is not exhaustive, and any perceived or real omissions or errors are not intentional.

## References

1. [Types of medico legal witness and work \(bma.org.uk\)](https://www.bma.org.uk)
2. [Practicing as an expert witness. https://academyofexperts.org/practising-as-expert/](https://academyofexperts.org/practising-as-expert/)
3. [Bolam test https://www.bmj.com/content/suppl/2004/10/28/329.7473.1024.DC1](https://www.bmj.com/content/suppl/2004/10/28/329.7473.1024.DC1)
4. [When the Bolam test does not apply. https://www.ropewalk.co.uk/knowledge-sharing/blog/clinical-negligence/1805/clinical-negligence-cases-when-the-bolam-test-does-not-apply](https://www.ropewalk.co.uk/knowledge-sharing/blog/clinical-negligence/1805/clinical-negligence-cases-when-the-bolam-test-does-not-apply)
5. [Types of medico legal witness and work \(bma.org.uk\)](https://www.bma.org.uk)