

As we move into 2026, the role of the expert witness in clinical negligence litigation is under closer scrutiny than ever before. Courts are relying heavily on expert evidence as healthcare cases grow more complex, yet they are also increasingly unwilling to accept expert opinion at face value. What is now expected is not simply professional expertise, but a clear, transparent explanation of how that expertise has been applied.

Modern clinical negligence cases rarely involve a single clinician making an isolated decision. Instead, they reflect multidisciplinary teams, layered decision-making, digital systems, and extensive medical records. As William Green, Director of Apex Experts, explains, “Judges are legal experts, not medical ones. Expert evidence bridges the gap by explaining what was reasonable, normal, and expected in clinical practice at the time. Without that insight, the court cannot reach a fair conclusion.”

The traditional legal framework remains grounded in the Bolam and Bolitho tests. Bolam recognises that acceptable clinical practice can fall within a range of reasonable professional opinions, while Bolitho requires that those opinions are supported by sound and logical reasoning. These principles remain foundational, but they were developed in a very different healthcare environment.

Today’s clinical practice is shaped by evidence-based guidelines, national pathways, digital decision-support tools, and an emphasis on shared decision-making and patient autonomy. Against this backdrop, courts now expect experts to go further than identifying a responsible body of professional opinion. They must demonstrate whether that opinion remains defensible within the realities of modern healthcare.

Recent case law illustrates why. Montgomery shifted consent away from professional custom toward what risks and alternatives are material to the individual patient. McCulloch clarified that clinicians must consider reasonable alternatives, even where Bolam applies. Meanwhile, the increasing use of artificial intelligence in healthcare has sharpened judicial focus on whether expert reasoning can withstand structured challenge.

As a result, expert reports are expected to explain how decisions were reached, what information was available at the time, how alternatives were considered, and how patient involvement influenced outcomes. Courts want a clear reasoning trail, not hindsight or assertion.

Green notes, “Judges are very alert to bias. Experts are not hired guns. Independence, disciplined reasoning, and clarity are essential if an opinion is to carry weight.”

Modern expert evidence must therefore address six key areas: clear reasoning, appropriate use of evidence and guidelines, communication and consent, digital inputs such as AI, independence, and a careful separation of breach from causation. Experts must also acknowledge uncertainty and alternative views where they exist.

Bolam and Bolitho have not been replaced, but they no longer define the limits of expert evidence. The expert witness of 2026 is expected to be, above all else, a reasoning expert someone who can explain not just what they think, but how and why they reached that opinion within the context of modern healthcare.