

# EXPERTS AND ASSESSORS IN FAMILY PROCEEDINGS

**This Practice Direction supplements FPR Part 25**

## INTRODUCTION

- 1.1** Sections 1 to 9 of this Practice Direction deal with the use of expert evidence and the instruction of experts, and section 10 deals with the appointment of assessors, in all types of family proceedings. The guidance incorporates and supersedes the Practice Direction on Experts in Family Proceedings relating to Children (1 April 2008) and other relevant guidance with effect on and from 6 April 2011.
- Where the guidance refers to ‘an expert’ or ‘the expert’, this includes a reference to an expert team.
- 1.2** For the purposes of this guidance, the phrase ‘proceedings relating to children’ is a convenient description. It is not a legal term of art and has no statutory force. In this guidance it means –
- (a) placement and adoption proceedings; or
  - (b) family proceedings which –
    - (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to children;
    - (ii) are brought under the Children Act 1989 in any family court; or
    - (iii) are brought in the High Court and county courts and ‘otherwise relate wholly or mainly to the maintenance or upbringing of a minor’.

### **Aims of the guidance on experts and expert evidence**

- 1.3** The aim of the guidance in sections 1 to 9 is to –
- (a) provide the court with early information to determine whether expert evidence or assistance will help the court;
  - (b) help the court and the parties to identify and narrow the issues in the case and encourage agreement where possible;
  - (c) enable the court and the parties to obtain an expert opinion about a question that is not within the skill and experience of the court;
  - (d) encourage the early identification of questions that need to be answered by an expert; and
  - (e) encourage disclosure of full and frank information between the parties, the court and any expert instructed.
- 1.4** The guidance does not aim to cover all possible eventualities. Thus it should be complied with so far as consistent in all the circumstances with the just disposal of the matter in accordance with the rules and guidance applying to the procedure in question.

## Permission to instruct an expert or to use expert evidence

- 1.5** The general rule in family proceedings is that the court's permission is required to call an expert or to put in evidence an expert's report: see rule 25.4(1). In addition, in proceedings relating to children, the court's permission is required to instruct an expert: see rule 12.74(1).
- 1.6** The court and the parties must have regard in particular to the following considerations –
- (a)** proceedings relating to children are confidential and, in the absence of the court's permission, disclosure of information and documents relating to such proceedings may amount to a contempt of court or contravene statutory provisions protecting this confidentiality.
  - (b)** for the purposes of the law of contempt of court, information relating to such proceedings (whether or not contained in a document filed with the court or recorded in any form) may be communicated only to an expert whose instruction by a party has been permitted by the court (see rules 12.73 and 14.14).
  - (c)** in proceedings to which Part 12 of the FPR applies, the court's permission is required to cause the child to be medically or psychiatrically examined or otherwise assessed for the purpose of the preparation of expert evidence for use in the proceedings; where the court's permission has not been given, no evidence arising out of such an examination or assessment may be adduced without the court's permission (see rule 12.20).
- 1.7** In practice, the need to have the court's permission to disclose information or documents to an expert, or to have the child examined or assessed, means that in proceedings relating to children the court strictly controls the number, fields of expertise and identity of the experts who may be first instructed and then called.
- 1.8** Before permission is obtained from the court to instruct an expert in proceedings relating to children, it will be necessary for the party seeking permission to make enquiries of the expert in order to provide the court with information to enable it to decide whether to give permission. In practice, enquiries may need to be made of more than one expert for this purpose. This will in turn require each expert to be given sufficient information about the case to decide whether or not he or she is in a position to accept instructions. Such preliminary enquiries, and the disclosure of information about the case which is a necessary part of such enquiries, will not require the court's permission and will not amount to a contempt of court: see sections 4.1 and 4.2 (*Preliminary Enquiries of the Expert and Expert's Response to Preliminary Enquiries*).
- 1.9** Section 4 (*Proceedings relating to children*) gives guidance on applying for the court's permission to instruct an expert, and on instructing the expert, in proceedings relating to children. The court, when granting permission to instruct an expert, will also give directions about the preparation and filing of the expert's report and the attendance of the expert to give evidence: see section 4.4 (*Draft Order for the relevant hearing*).
- 1.10** In proceedings other than those relating to children, the court's permission is not required to instruct an expert. Section 5 (Proceedings other than those relating to children) gives guidance on instructing an expert, and on seeking the court's permission to use expert evidence, prior to and in such proceedings. Section 5 emphasises that the use of a single joint expert should be considered in all cases where expert evidence is required.

## **When should the court be asked for permission?**

**1.11** Any application (or proposed application) for permission to instruct an expert or to use expert evidence should be raised with the court – and, where appropriate, with the other parties – as soon as possible. This will normally mean –

- (a) in public law proceedings under the Children Act 1989, by or at the Case Management Conference: see rule 12.25;
- (b) in private law proceedings under the Children Act 1989, by or at the First Hearing Dispute Resolution Appointment: see rule 12.31;
- (c) in placement and adoption proceedings, by or at the First Directions Hearing: see rule 14.8;
- (d) in financial proceedings, by or at the First Appointment: see rule 9.15;
- (e) in defended matrimonial and civil partnership proceedings, by or at the Case Management Hearing: see rules 7.20 and 7.22.

In this practice direction the ‘relevant hearing’ means any hearing at which the court’s permission is sought to instruct an expert or to use expert evidence.

## **GENERAL MATTERS**

### **Scope of the Guidance**

- 2.1** Sections 1 to 9 of this guidance apply to all experts who are or may be instructed to give or prepare evidence for the purpose of family proceedings in a court in England and Wales. The guidance also applies to those who instruct, or propose to instruct, an expert for such a purpose. Section 10 applies to the appointment of assessors in family proceedings in England and Wales.
- 2.2** This guidance does not apply to proceedings issued before 6 April 2011 but in any such proceedings the court may direct that this guidance will apply either wholly or partly. This is subject to the overriding objective for the type of proceedings, and to the proviso that such a direction will neither cause further delay nor involve repetition of steps already taken or of decisions already made in the case.

### **Pre-application instruction of experts**

- 2.3** When experts’ reports are commissioned before the commencement of proceedings, it should be made clear to the expert that he or she may in due course be reporting to the court and should therefore consider himself or herself bound by this guidance. A prospective party to family proceedings relating to children (for example, a local authority) should always write a letter of instruction when asking a potential witness for a report or an opinion, whether that request is within proceedings or pre-proceedings (for example, when commissioning specialist assessment materials, reports from a treating expert or other evidential materials); and the letter of instruction should conform to the principles set out in this guidance.

### **Emergency and urgent cases**

- 2.4** In emergency or urgent cases – for example, where, before formal issue of proceedings, a without-notice application is made to the court during or out of business hours; or where,

after proceedings have been issued, a previously unforeseen need for (further) expert evidence arises at short notice – a party may wish to call expert evidence without having complied with all or any part of this guidance. In such circumstances, the party wishing to call the expert evidence must apply forthwith to the court – where possible or appropriate, on notice to the other parties – for directions as to the future steps to be taken in respect of the expert evidence in question.

## **Orders**

- 2.5** Where an order or direction requires an act to be done by an expert, or otherwise affects an expert, the party instructing that expert – or, in the case of a jointly instructed expert, the lead solicitor – must serve a copy of the order or direction on the expert forthwith upon receiving it.

## **Adults who may be protected parties**

- 2.6** The court will investigate as soon as possible any issue as to whether an adult party or intended party to family proceedings lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct the proceedings. An adult who lacks capacity to act as a party to the proceedings is a protected party and must have a litigation friend to conduct the proceedings on their behalf. The expectation of the Official Solicitor is that the Official Solicitor will only be invited to act for the protected party as litigation friend if there is no other person suitable or willing to act.
- 2.7** Any issue as to the capacity of an adult to conduct the proceedings must be determined before the court gives any directions relevant to that adult's role in the proceedings.
- 2.8** Where the adult is a protected party, that party's representative should be involved in any instruction of an expert, including the instruction of an expert to assess whether the adult, although a protected party, is competent to give evidence. The instruction of an expert is a significant step in the proceedings. The representative will wish to consider (and ask the expert to consider), if the protected party is competent to give evidence, their best interests in this regard. The representative may wish to seek advice about 'special measures'. The representative may put forward an argument on behalf of the protected party that the protected party should not give evidence.
- 2.9** If at any time during the proceedings there is reason to believe that a party may lack capacity to conduct the proceedings, then the court must be notified and directions sought to ensure that this issue is investigated without delay.

## **Child likely to lack capacity to conduct the proceedings on when he or she reaches 18**

- 2.10** Where it appears that a child is –
- (a) a party to the proceedings and not the subject of them;
  - (b) nearing age 18; and
  - (c) considered likely to lack capacity to conduct the proceedings when 18, the court will consider giving directions for the child's capacity in this respect to be investigated.

## THE DUTIES OF EXPERTS

### Overriding Duty

- 3.1** An expert in family proceedings has an overriding duty to the court that takes precedence over any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

### Particular Duties

- 3.2** An expert shall have regard to the following, among other, duties –
- (a) to assist the court in accordance with the overriding duty;
  - (b) to provide advice to the court that conforms to the best practice of the expert's profession;
  - (c) to provide an opinion that is independent of the party or parties instructing the expert;
  - (d) to confine the opinion to matters material to the issues between the parties and in relation only to questions that are within the expert's expertise (skill and experience);
  - (e) where a question has been put which falls outside the expert's expertise, to state this at the earliest opportunity and to volunteer an opinion as to whether another expert is required to bring expertise not possessed by those already involved or, in the rare case, as to whether a second opinion is required on a key issue and, if possible, what questions should be asked of the second expert;
  - (f) in expressing an opinion, to take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed;
  - (g) to inform those instructing the expert without delay of any change in the opinion and of the reason for the change.

### Content of the Expert's Report

- 3.3** The expert's report shall be addressed to the court and prepared and filed **in accordance with the court's timetable** and shall –
- (a) give details of the expert's qualifications and experience;
  - (b) include a statement identifying the document(s) containing the material instructions and the substance of any oral instructions and, as far as necessary to explain any opinions or conclusions expressed in the report, summarising the facts and instructions which are material to the conclusions and opinions expressed;
  - (c) state who carried out any test, examination or interview which the expert has used for the report and whether or not the test, examination or interview has been carried out under the expert's supervision;
  - (d) give details of the qualifications of any person who carried out the test, examination or interview;
  - (e) in expressing an opinion to the court –

- (i) take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed, identifying the facts, literature and any other material including research material that the expert has relied upon in forming an opinion;
  - (ii) describe their own professional risk assessment process and process of differential diagnosis, highlighting factual assumptions, deductions from the factual assumptions, and any unusual, contradictory or inconsistent features of the case;
  - (iii) indicate whether any proposition in the report is an hypothesis (in particular a controversial hypothesis), or an opinion deduced in accordance with peer-reviewed and tested technique, research and experience accepted as a consensus in the scientific community;
  - (iv) indicate whether the opinion is provisional (or qualified, as the case may be), stating the qualification and the reason for it, and identifying what further information is required to give an opinion without qualification;
- (f)** where there is a range of opinion on any question to be answered by the expert –
- (i) summarise the range of opinion;
  - (ii) identify and explain, within the range of opinions, any ‘unknown cause’, whether arising from the facts of the case (for example, because there is too little information to form a scientific opinion) or from limited experience or lack of research, peer review or support in the relevant field of expertise;
  - (iii) give reasons for any opinion expressed: the use of a balance sheet approach to the factors that support or undermine an opinion can be of great assistance to the court;
- (g)** contain a summary of the expert’s conclusions and opinions;
- (h)** contain a statement that the expert –
- (i) has no conflict of interest of any kind, other than any conflict disclosed in his or her report;
  - (ii) does not consider that any interest disclosed affects his or her suitability as an expert witness on any issue on which he or she has given evidence;
  - (iii) will advise the instructing party if, between the date of the expert’s report and the final hearing, there is any change in circumstances which affects the expert’s answers to (i) or (ii) above;
  - (iv) understands their duty to the court and has complied with that duty; and
  - (v) is aware of the requirements of Part 25 and this practice direction;
- (i)** be verified by a statement of truth in the following form –
- ‘I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.’

(Part 17 deals with statements of truth. Rule 17.6 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

## PROCEEDINGS RELATING TO CHILDREN

### Preparation for the relevant hearing

#### Preliminary Enquiries of the Expert

- 4.1 In good time for the information requested to be available for the relevant hearing or for the advocates’ meeting or discussion where one takes place before the relevant hearing, the solicitor for the party proposing to instruct the expert (or lead solicitor or solicitor for the**

child if the instruction proposed is joint) shall approach the expert with the following information –

- (a) the nature of the proceedings and the issues likely to require determination by the court;
- (b) the questions about which the expert is to be asked to give an opinion (including any ethnic, cultural, religious or linguistic contexts);
- (c) the date when the court is to be asked to give permission for the instruction (or if – unusually – permission has already been given, the date and details of that permission);
- (d) whether permission is to be asked of the court for the instruction of another expert in the same or any related field (that is, to give an opinion on the same or related questions);
- (e) the volume of reading which the expert will need to undertake;
- (f) whether or not permission has been applied for or given for the expert to examine the child;
- (g) whether or not it will be necessary for the expert to conduct interviews – and, if so, with whom;
- (h) the likely timetable of legal and social work steps;
- (i) in care and supervision proceedings, any dates in the Timetable for the Child which would be relevant to the proposed timetable for the assessment;
- (j) when the expert’s report is likely to be required;
- (k) whether and, if so, what date has been fixed by the court for any hearing at which the expert may be required to give evidence (in particular the Final Hearing); and whether it may be possible for the expert to give evidence by telephone conference or video link: see section 8 (*Arrangements for experts to give evidence*) below;
- (l) the possibility of making, through their instructing solicitors, representations to the court about being named or otherwise identified in any public judgment given by the court.  
It is essential that there should be proper co-ordination between the court and the expert when drawing up the case management timetable: the needs of the court should be balanced with the needs of the expert whose forensic work is undertaken as an adjunct to his or her main professional duties.

### **Expert’s Response to Preliminary Enquiries**

**4.2 In good time for the relevant hearing or for the advocates’ meeting or discussion where one takes place before the relevant hearing**, the solicitors intending to instruct the expert shall obtain confirmation from the expert –

- (a) that acceptance of the proposed instructions will not involve the expert in any conflict of interest;
- (b) that the work required is within the expert’s expertise;
- (c) that the expert is available to do the relevant work within the suggested time scale
- (d) when the expert is available to give evidence, of the dates and times to avoid and, where a hearing date has not been fixed, of the amount of notice the expert will require to make arrangements to come to court (or to give evidence by telephone conference or video link) without undue disruption to his or her normal professional routines;

- (e) of the cost, including hourly or other charging rates, and likely hours to be spent, attending experts' meetings, attending court and writing the report (to include any examinations and interviews);
- (f) of any representations which the expert wishes to make to the court about being named or otherwise identified in any public judgment given by the court.  
Where parties have not agreed on the appointment of a single joint expert before the relevant hearing, they should obtain the above confirmations in respect of all experts whom they intend to put to the court for the purposes of rule 25.7(2)(a) as candidates for the appointment.

### **The proposal to instruct an expert**

**4.3** Any party who proposes to ask the court for permission to instruct an expert shall, **by 11 a.m. on the business day before the relevant hearing**, file and serve a written proposal to instruct the expert, in the following detail –

- (a) the name, discipline, qualifications and expertise of the expert (by way of C.V. where possible);
- (b) the expert's availability to undertake the work;
- (c) the relevance of the expert evidence sought to be adduced to the issues in the proceedings and the specific questions upon which it is proposed that the expert should give an opinion (including the relevance of any ethnic, cultural, religious or linguistic contexts);
- (d) the timetable for the report;
- (e) the responsibility for instruction;
- (f) whether or not the expert evidence can properly be obtained by the joint instruction of the expert by two or more of the parties;
- (g) whether the expert evidence can properly be obtained by only one party (for example, on behalf of the child);
- (h) why the expert evidence proposed cannot be given by social services undertaking a core assessment or by the Children's Guardian in accordance with their respective statutory duties;
- (i) the likely cost of the report on an hourly or other charging basis: where possible, the expert's terms of instruction should be made available to the court;
- (j) the proposed apportionment (at least in the first instance) of any jointly instructed expert's fee; when it is to be paid; and, if applicable, whether public funding has been approved.

### **Draft Order for the relevant hearing**

**4.4** Any party proposing to instruct an expert shall, **by 11 a.m. on the business day before the relevant hearing**, submit to the court a draft order for directions dealing in particular with –

- (a) the party who is to be responsible for drafting the letter of instruction and providing the documents to the expert;
- (b) the issues identified by the court and the questions about which the expert is to give an opinion;
- (c) the timetable within which the report is to be prepared, filed and served;

- (d) the disclosure of the report to the parties and to any other expert;
- (e) the organisation of, preparation for and conduct of an experts' discussion;
- (f) the preparation of a statement of agreement and disagreement by the experts following an experts' discussion;
- (g) making available to the court at an early opportunity the expert reports in electronic form;
- (h) the attendance of the expert at court to give oral evidence (alternatively, the expert giving his or her evidence in writing or remotely by video link), whether at or for the Final Hearing or another hearing; unless agreement about the opinions given by the expert is reached at or before the Issues Resolution Hearing ('IRH') or, if no IRH is to be held, by a specified date prior to the hearing at which the expert is to give oral evidence ('the specified date').

### Letter of Instruction

**4.5** The solicitor or party instructing the expert shall, **within 5 business days after the relevant hearing**, prepare (in agreement with the other parties where appropriate), file and serve a letter of instruction to the expert which shall –

- (a) set out the context in which the expert's opinion is sought (including any ethnic, cultural, religious or linguistic contexts);
- (b) set out the specific questions which the expert is required to answer, ensuring that they –
  - (i) are within the ambit of the expert's area of expertise;
  - (ii) do not contain unnecessary or irrelevant detail;
  - (iii) are kept to a manageable number and are clear, focused and direct; and
  - (iv) reflect what the expert has been requested to do by the court.

(The Annex to this guidance sets out suggested questions in letters of instruction to (1) child mental health professionals or paediatricians, and (2) adult psychiatrists and applied psychologists, in Children Act 1989 proceedings.)

- (c) list the documentation provided, or provide for the expert an indexed and paginated bundle which shall include –
  - (i) a copy of the order (or those parts of the order) which gives permission for the instruction of the expert, immediately the order becomes available;
  - (ii) an agreed list of essential reading; and
  - (iii) a copy of this guidance;
- (d) identify any materials provided to the expert which have not been produced either as original medical (or other professional) records or in response to an instruction from a party, and state the source of that material (such materials may contain an assumption as to the standard of proof, the admissibility or otherwise of hearsay evidence, and other important procedural and substantive questions relating to the different purposes of other enquiries, for example, criminal or disciplinary proceedings);
- (e) identify all requests to third parties for disclosure and their responses, to avoid partial disclosure, which tends only to prove a case rather than give full and frank information;
- (f) identify the relevant people concerned with the proceedings (for example, the treating clinicians) and inform the expert of his or her right to talk to them provided that an accurate record is made of the discussions;

- (g) identify any other expert instructed in the proceedings and advise the expert of their right to talk to the other experts provided that an accurate record is made of the discussions;
- (h) subject to any public funding requirement for prior authority, define the contractual basis upon which the expert is retained and in particular the funding mechanism including how much the expert will be paid (an hourly rate and overall estimate should already have been obtained), when the expert will be paid, and what limitation there might be on the amount the expert can charge for the work which they will have to do. In cases where the parties are publicly funded, there should also be a brief explanation of the costs and expenses excluded from public funding by Funding Code criterion 1.3 and the detailed assessment process.

### **Asking the court to settle the letter of instruction to a single joint expert**

- 4.6** Where possible, the written request for the court to consider the letter of instruction referred to in rule 25.8(2) should be set out in an e-mail to the court and copied by e-mail to the other instructing parties. The request should be sent to the relevant court or (by prior arrangement only) directly to the judge dealing with the proceedings; in the magistrates' court, the request should be sent to the legal adviser who will refer it to the appropriate judge or justices, if necessary. The court will settle the letter of instruction, usually without a hearing to avoid delay; and will send (where practicable, by e-mail) the settled letter to the lead solicitor for transmission forthwith to the expert, and copy it to the other instructing parties for information.

### **Keeping the expert up to date with new documents**

- 4.7** As often as may be necessary, the expert should be provided promptly with a copy of any new document filed at court, together with an updated document list or bundle index.

## **PROCEEDINGS OTHER THAN THOSE RELATING TO CHILDREN**

- 5.1** Wherever possible, expert evidence should be obtained from a single joint expert instructed by both or all the parties ('SJE'). To that end, a party wishing to instruct an expert should first give the other party or parties a list of the names of one or more experts in the relevant speciality whom they consider suitable to be instructed.
- 5.2** Within 10 days after receipt of the list of proposed experts, the other party or parties should indicate any objection to one or more of the named experts and, if so, supply the name(s) of one or more experts whom they consider suitable.
- 5.3** Each party should disclose whether they have already consulted any of the proposed experts about the issue(s) in question.
- 5.4** Where the parties cannot agree on the identity of the expert, each party should think carefully before instructing their own expert because of the costs implications. Disagreements about the use and identity of an expert may be better managed by the court in the context of an application for directions. (see paragraphs 5.8 and 5.9 below).

### **Agreement to instruct separate experts**

- 5.5** If the parties agree to instruct separate experts –
- (a) they should agree in advance that the reports will be disclosed; and

- (b) the instructions to each expert should comply, so far as appropriate, with paragraphs 4.5 to 4.7 above (*Letter of instruction*).

### **Agreement to instruct an SJE**

- 5.6** If there is agreement to instruct an SJE, **before instructions are given** the parties should –
- (a) so far as appropriate, comply with the guidance in paragraphs 4.1 (Preliminary inquiries of the expert) and 4.2 (Expert’s confirmation in response to preliminary enquiries) above;
  - (b) have agreed in what proportion the SJE’s fee is to be shared between them (at least in the first instance) and when it is to be paid; and
  - (c) if applicable, have obtained agreement for public funding.
- 5.7** The instructions to the SJE should comply, so far as appropriate, with paragraphs 4.5 to 4.7 above (*Letter of instruction*).

### **Seeking the court’s directions for the use of an SJE**

- 5.8** Where the parties seek the court’s directions for the use of an SJE, they should comply, so far as appropriate, with paragraphs 4.1 to 4.4 (*Preparation for the relevant hearing*) above.
- 5.9** 1.1. The instructions to the SJE should comply, so far as appropriate, with paragraphs 4.5 to 4.7 above (*Letter of instruction*).

## **THE COURT’S CONTROL OF EXPERT EVIDENCE: CONSEQUENTIAL ISSUES**

### **Written Questions**

- 6.1** Where –
- (a) written questions are put to an expert in accordance with rule 25.6, the court will specify the timetable according to which the expert is to answer the written questions;
  - (b) a party sends a written question or questions under rule 25.6 direct to an expert, a copy of the questions must, at the same time, be sent to the other party or parties.

### **Experts’ Discussion or Meeting: Purpose**

- 6.2** In accordance with rule 25.12, the court may, at any stage, direct a discussion between experts for the purpose outlined in paragraph (1) of that rule. Rule 25.12(2) provides that the court may specify the issues which the experts must discuss. The expectation is that those issues will include–
- (a) the reasons for disagreement on any expert question and what, if any, action needs to be taken to resolve any outstanding disagreement or question;
  - (b) explanation of existing evidence or additional evidence in order to assist the court to determine the issues.
- One of the aims of specifying the issues for discussion is to limit, wherever possible, the need for the experts to attend court to give oral evidence.

## Experts' Discussion or Meeting: Arrangements

- 6.3** Subject to the directions given by the court under rule 25.12, the solicitor or other professional who is given the responsibility by the court ('the nominated professional') shall – **within 15 business days after the experts' reports have been filed and copied to the other parties** – make arrangements for the experts to meet or communicate. Subject to any specification by the court of the issues which experts must discuss under rule 25.12(2), the following matters should be considered as appropriate –
- (a) where permission has been given for the instruction of experts from different disciplines, a global discussion may be held relating to those questions that concern all or most of them;
  - (b) separate discussions may have to be held among experts from the same or related disciplines, but care should be taken to ensure that the discussions complement each other so that related questions are discussed by all relevant experts;
  - (c) **5 business days prior to a discussion or meeting**, the nominated professional should formulate an agenda including a list of questions for consideration. The agenda should, subject always to the provisions of rule 25.12(1), focus on those questions which are intended to clarify areas of agreement or disagreement.
    - Questions which repeat questions asked in the letter of instruction or which seek to rehearse cross-examination in advance of the hearing should be rejected as likely to defeat the purpose of the meeting.
    - The agenda may usefully take the form of a list of questions to be circulated among the other parties in advance and should comprise all questions that each party wishes the experts to consider.
    - The agenda and list of questions should be sent to each of the experts not later than 2 business days before the discussion;
  - (d) the nominated professional may exercise his or her discretion to accept further questions after the agenda with list of questions has been circulated to the parties. **Only in exceptional circumstances should questions be added to the agenda within the 2-day period before the meeting. Under no circumstances should any question received on the day of or during the meeting be accepted.** This does not preclude questions arising during the meeting for the purposes of clarification. Strictness in this regard is vital, for adequate notice of the questions enables the parties to identify and isolate the expert issues in the case before the meeting so that the experts' discussion at the meeting can concentrate on those issues;
  - (e) the discussion should be chaired by the nominated professional. A minute must be taken of the questions answered by the experts. Where the court has given a direction under rule 25.12(3) and subject to that direction, a Statement of Agreement and Disagreement must be prepared which should be agreed and signed by each of the experts who participated in the discussion. In accordance with rule 25.12(3) the statement must contain a summary of the experts' reasons for disagreeing. The statement should be served and filed **not later than 5 business days after the discussion has taken place**;
  - (f) in each case, whether some or all of the experts participate by telephone conference or video link to ensure that minimum disruption is caused to professional schedules and that costs are minimised.

### Meetings or conferences attended by a jointly instructed expert

- 6.4** Jointly instructed experts should not attend any meeting or conference which is not a joint one, unless all the parties have agreed in writing or the court has directed that such a meeting may be held, and it is agreed or directed who is to pay the expert's fees for the meeting or conference. Any meeting or conference attended by a jointly instructed expert should be proportionate to the case.

### Court-directed meetings involving experts in public law Children Act cases

- 6.5** In public law Children Act proceedings, where the court gives a direction that a meeting shall take place between the local authority and any relevant named experts for the purpose of providing assistance to the local authority in the formulation of plans and proposals for the child, the meeting shall be arranged, chaired and minuted in accordance with the directions given by the court.

## POSITIONS OF THE PARTIES

- 7.1** Where a party refuses to be bound by an agreement that has been reached at an experts' discussion or meeting, that party must inform the court and the other parties in writing, **within 10 business days after the discussion or meeting or, where an IRH is to be held, not less than 5 business days before the IRH**, of his or her reasons for refusing to accept the agreement.

## ARRANGEMENTS FOR EXPERTS TO GIVE EVIDENCE

### Preparation

- 8.1** Where the court has directed the attendance of an expert witness, the party who is responsible for the instruction of the expert shall, **by the specified date or, where an IRH is to be held, by the IRH**, ensure that –
- (a) a date and time (if possible, convenient to the expert) are fixed for the court to hear the expert's evidence, substantially in advance of the hearing at which the expert is to give oral evidence and no later than a specified date prior to that hearing or, where an IRH is to be held, than the IRH;
  - (b) if the expert's oral evidence is not required, the expert is notified as soon as possible;
  - (c) the witness template accurately indicates how long the expert is likely to be giving evidence, in order to avoid the inconvenience of the expert being delayed at court;
  - (d) consideration is given in each case to whether some or all of the experts participate by telephone conference or video link, or submit their evidence in writing, to ensure that minimum disruption is caused to professional schedules and that costs are minimised.

### Experts attending Court

- 8.2** Where expert witnesses are to be called, all parties shall, **by the specified date or, where an IRH is to be held, by the IRH**, ensure that –

- (a) the parties' advocates have identified (whether at an advocates' meeting or by other means) the issues which the experts are to address;
- (b) wherever possible, a logical sequence to the evidence is arranged, with experts of the same discipline giving evidence on the same day;
- (c) the court is informed of any circumstance where all experts agree but a party nevertheless does not accept the agreed opinion, so that directions can be given for the proper consideration of the experts' evidence and opinion and of the party's reasons for not accepting the agreed opinion;
- (d) in the exceptional case the court is informed of the need for a witness summons.

## ACTION AFTER THE FINAL HEARING

- 9.1** **Within 10 business days after the Final Hearing**, the solicitor instructing the expert shall inform the expert in writing of the outcome of the case, and of the use made by the court of the expert's opinion.
- 9.2** Where the court directs preparation of a transcript, it may also direct that the solicitor instructing the expert shall send a copy to the **expert within 10 business days after receiving the transcript**.
- 9.3** After a Final Hearing in the Family Proceedings Court, the (lead) solicitor instructing the expert shall send the expert a copy of the court's written reasons for its decision **within 10 business days after receiving the written reasons**.

## APPOINTMENT OF ASSESSORS IN FAMILY PROCEEDINGS

- 10.1** The power to appoint one or more assessors to assist the court is conferred on the High Court by section 70(1) of the Senior Courts Act 1981, and on a county court by section 63(1) of the County Courts Act 1984. In practice, these powers have been used in appeals from a district judge or costs judge in costs assessment proceedings – although, in principle, the statutory powers permit one or more assessors to be appointed in any family proceedings where the High Court or a county court sees fit.
- 10.2** **Not less than 21 days before making any such appointment**, the court will notify each party in writing of the name of the proposed assessor, of the matter in respect of which the assistance of the assessor will be sought and of the qualifications of the assessor to give that assistance.
- 10.3** Any party may object to the proposed appointment, either personally or in respect of the proposed assessor's qualifications.
- 10.4** Any such objection must be made in writing and filed and served **within 7 business days of receipt of the notification from the court of the proposed appointment**, and will be taken into account by the court in deciding whether or not to make the appointment.

# Annex

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(drafted by the Family Justice Council)

**Suggested questions in letters of instruction to child mental health professional or paediatrician in Children Act 1989 proceedings**

## **A. The Child(ren)**

1. Please describe the child(ren)'s current health, development and functioning (according to your area of expertise), and identify the nature of any significant changes which have occurred

- Behavioural
- Emotional
- Attachment organisation
- Social/peer/sibling relationships
- Cognitive/educational
- Physical
- Growth, eating, sleep
- Non-organic physical problems (including wetting and soiling)
- Injuries
- Paediatric conditions

2. Please comment on the likely explanation for/aetiology of the child(ren)'s problems/difficulties/injuries

- History/experiences (including intrauterine influences, and abuse and neglect)
- Genetic/innate/developmental difficulties
- Paediatric/psychiatric disorders

3. Please provide a prognosis and risk if difficulties not addressed above.

4. Please describe the child(ren)'s needs in the light of the above

- Nature of care-giving
- Education
- Treatment

## **B. The parents/primary carers**

5. Please describe the factors and mechanisms which would explain the parents' (or primary carers) harmful or neglectful interactions with the child(ren) (if relevant).

6. What interventions have been tried and what has been the result?

7. Please assess the ability of the parents or primary carers to fulfil the child(ren)'s identified needs now.

8. What other assessments of the parents or primary carers are indicated?

- Adult mental health assessment
- Forensic risk assessment
- Physical assessment
- Cognitive assessment

9. What, if anything, is needed to assist the parents or primary carers now, within the child(ren)'s time scales and what is the prognosis for change?

- Parenting work
- Support
- Treatment/therapy

### **C. Alternatives**

10. Please consider the alternative possibilities for the fulfilment of the child(ren)'s needs

- What sort of placement
- Contact arrangements

Please consider the advantages, disadvantages and implications of each for the child(ren).

#### **Suggested questions in letters of instruction to adult psychiatrists and applied psychologists in Children Act 1989 proceedings**

1. Does the parent/adult have – whether in his/her history or presentation – a mental illness/ disorder (including substance abuse) or other psychological/emotional difficulty and, if so, what is the diagnosis?
2. How do any/all of the above (and their current treatment if applicable) affect his/her functioning, including interpersonal relationships?
3. If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional difficulty or personality disorder which could be associated with risk to others, based on the available evidence base (whether published studies or evidence from clinical experience)?
4. What are the experiences/antecedents/aetiology which would explain his/her difficulties, if any, (taking into account any available evidence base or other clinical experience)?
5. What treatment is indicated, what is its nature and the likely duration?
6. What is his/her capacity to engage in/partake of the treatment/therapy?
7. Are you able to indicate the prognosis for, time scales for achieving, and likely durability of, change?
8. What other factors might indicate positive change?

(It is assumed that this opinion will be based on collateral information as well as interviewing the adult).