

EXPERTS AND ASSESSORS

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25.1 Duty to restrict expert evidence

Expert evidence will be restricted to that which is reasonably required to resolve the proceedings.

25.2 Interpretation

- (1) A reference to an ‘expert’ in this Part –
 - (a) is a reference to a person who has been instructed to give or prepare expert evidence for the purpose of family proceedings; and
 - (b) does not include –
 - (i) a person who is within a prescribed description for the purposes of section 94(1) of the 2002 Act (persons who may prepare a report for any person about the suitability of a child for adoption or of a person to adopt a child or about the adoption, or placement for adoption, of a child); or
 - (ii) an officer of the Service or a Welsh family proceedings officer when acting in that capacity.

(Regulation 3 of the Restriction on the Preparation of Adoption Reports Regulations 2005 (S.I. 2005/1711) sets out which persons are within a prescribed description for the purposes of section 94(1) of the 2002 Act.)

- (2) ‘Single joint expert’ means an expert instructed to prepare a report for the court on behalf of two or more of the parties (including the applicant) to the proceedings.

25.3 Experts – overriding duty to the court

- (1) It is the duty of experts to help the court on matters within their expertise.
- (2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.

25.4 Court's power to restrict expert evidence

- (1) No party may call an expert or put in evidence an expert's report without the court's permission.
- (2) When parties apply for permission they must identify –
 - (a) the field in which the expert evidence is required; and
 - (b) where practicable, the name of the proposed expert.
- (3) If permission is granted it will be in relation only to the expert named or the field identified under paragraph (2).
- (4) The court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

25.5 General requirement for expert evidence to be given in a written report

- (1) Expert evidence is to be given in a written report unless the court directs otherwise.
- (2) The court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

25.6 Written questions to experts

- (1) A party may put written questions about an expert's report (which must be proportionate) to –
 - (a) an expert instructed by another party; or
 - (b) a single joint expert appointed under rule 25.7.
- (2) Written questions under paragraph (1) –
 - (a) may be put once only;
 - (b) must be put within 10 days beginning with the date on which the expert's report was served; and
 - (c) must be for the purpose only of clarification of the report, unless in any case –
 - (i) the court directs otherwise; or
 - (ii) a practice direction provides otherwise.
- (3) An expert's answers to questions put in accordance with paragraph (1) are treated as part of the expert's report.
- (4) Where –
 - (a) a party has put a written question to an expert instructed by another party; and
 - (b) the expert does not answer that question,the court may make use of one or both of the following orders in relation to the party who instructed the expert –
 - (i) that the party may not rely on the evidence of that expert; or
 - (ii) that the party may not recover the fees and expenses of that expert from any other party.

25.7 Court's power to direct that evidence is to be given by a single joint expert

- (1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert.
- (2) Where the parties who wish to submit the evidence ('the relevant parties') cannot agree who should be the single joint expert, the court may –
 - (a) select the expert from a list prepared or identified by the instructing parties; or
 - (b) direct that the expert be selected in such other manner as the court may direct.

25.8 Instructions to a single joint expert

- (1) Where the court gives a direction under rule 25.7(1) for a single joint expert to be used, the instructions are to be contained in a jointly agreed letter unless the court directs otherwise.
- (2) Where the instructions are to be contained in a jointly agreed letter, in default of agreement the instructions may be determined by the court on the written request of any relevant party copied to the other relevant parties.
- (3) Where the court permits the relevant parties to give separate instructions to a single joint expert, each instructing party must, when giving instructions to the expert, at the same time send a copy of the instructions to the other relevant parties.
- (4) The court may give directions about –
 - (a) the payment of the expert's fees and expenses; and
 - (b) any inspection, examination or assessments which the expert wishes to carry out.
- (5) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.
- (6) Unless the court directs otherwise, the relevant parties are jointly and severally liable for the payment of the expert's fees and expenses.

25.9 Power of court to direct a party to provide information

- (1) Subject to paragraph (2), where a party has access to information which is not reasonably available to another party, the court may direct the party who has access to the information to prepare, file and serve a document recording the information.
- (2) In proceedings under Part 14 (procedure for applications in adoption, placement and related proceedings), –
 - (a) the court may direct the party with access to the information to prepare and file a document recording the information; and
 - (b) a court officer will send a copy of that document to the other party.

25.10 Contents of report

- (1) An expert's report must comply with the requirements set out in Practice Direction 25A.
- (2) At the end of an expert's report there must be a statement that the expert understands and has complied with their duty to the court.
- (3) The instructions to the expert are not privileged against disclosure.
(Rule 21.1 explains what is meant by disclosure.)

25.11 Use by one party of expert's report disclosed by another

Where a party has disclosed an expert's report, any party may use that expert's report as evidence at any relevant hearing.

25.12 Discussions between experts

- (1)** The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to –
 - (a) identify and discuss the expert issues in the proceedings; and
 - (b) where possible, reach an agreed opinion on those issues.
- (2)** The court may specify the issues which the experts must discuss.
- (3)** The court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which –
 - (a) they agree; and
 - (b) they disagree,with a summary of their reasons for disagreeing.

25.13 Expert's right to ask court for directions

- (1)** Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.
- (2)** Experts must, unless the court directs otherwise, provide copies of the proposed request for directions under paragraph (1) –
 - (a) to the party instructing them, at least 7 days before they file the requests; and
 - (b) to all other parties, at least 4 days before they file them.
- (3)** The court, when it gives directions, may also direct that a party be served with a copy of the directions.

25.14 Assessors

- (1)** This rule applies where the court appoints one or more persons under section 70 of the Senior Courts Act 1981 or section 63 of the County Courts Act 1984¹ as an assessor
- (2)** An assessor will assist the court in dealing with a matter in which the assessor has skill and experience.
- (3)** The assessor will take such part in the proceedings as the court may direct and in particular the court may direct an assessor to –
 - (a) prepare a report for the court on any matter at issue in the proceedings; and
 - (b) attend the whole or any part of the hearing to advise the court on any such matter.
- (4)** If the assessor prepares a report for the court before the hearing has begun –
 - (a) the court will send a copy to each of the parties; and
 - (b) the parties may use it at the hearing.

¹ Section 63 was amended by sections 14(2) and (3) and 125(7) of and Schedule 20 to the Courts and Legal Services Act 1990 and by articles 6(d)(i) to (iv) of the Civil Procedure (Modification of Enactments) Order 1998 (S.I. 1998/2940).

- (5) Unless the court directs otherwise, an assessor will be paid at the daily rate payable for the time being to a fee-paid deputy district judge of the principal registry and an assessor's fees will form part of the costs of the proceedings.
- (6) The court may order any party to deposit in the court office a specified sum in respect of an assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.
- (7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.

