



Interim Guidance in relation to expert witnesses in cases where there are allegations of alienating behaviours – conflicts of interest

This interim guidance is focused on the limited issue of expert assessment in cases involving alienating behaviours. The Council's full guidance note on responding to allegations of alienating behaviours will be issued in 2023.

A key issue in the forthcoming guidance will be the use of expert witnesses; the timing and scope of expert witness evidence; the types of expert required; and how a court can ensure that they have the requisite qualifications and experience to assist when findings of alienating behaviours, or other harmful parenting practices, have been made. This interim guidance note draws together accepted practice within the field of expert witnesses and previous guidance issued by the PFD and the FPR.

Conflict of interest

The Family Justice Council (FJC) /British Psychological Society (BPS) guidance for Psychologist expert witnesses (reviewed 2022) emphasises the importance of the expert being alert to potential conflicts of interest. In particular it notes that:

"The expert witness's overriding duty is to the Court and to be impartial in their evidence; the impartiality of expert witnesses is essential to their evidence; if the psychologist has a view that is controversial as between experts or that might be derived from partiality, she or he must declare the extent of that interest. This is particularly relevant when a psychologist expert recommends an intervention or therapy that they or an associate would benefit financially from delivering. Whilst this may be experienced as helpful and facilitative to the court, this would be a clear conflict of interest and threat to the independence of their expert evidence."¹

The President of the Family Division's Memorandum on the use of experts in the family court (October 2021)² emphasises the rigorous approach to be taken by the family courts in admitting expert evidence and the need for a *reliable body of knowledge or experience to underpin the expert's evidence*.

The importance of robust psychological approaches consistent with this memorandum is highlighted in the FJC/BPS guidance. This includes assessments drawing on a range of different sources and methods (to combat biases inherent in any single approach) in order to inform therapeutic recommendations in the opinion given. Recommendations should be consistent with typical current psychological practice and evidence base and flow from a rationale based on recognised assessment methodology. This is a marker of a good quality psychological report. The court should expect a range of options in psychological opinion and recommendations that are:

¹ [BPS / FJC guidance ref 2022](#)

² <https://www.judiciary.uk/wp-content/uploads/2021/10/PFD-Memo-Experts.pdf>

- Transparent as to the intervention and requisite qualifications needed to effect desired change.
- Interpretable by a wide range of practitioners in the field.
- Deliverable by any suitably qualified practitioners.

Recommendations for interventions deliverable only by the instructed expert or their associates are inconsistent with this. It increases the risk of bias, can limit appropriate oversight of interventions and risks delays as it may create barriers to families accessing appropriate, timely support local to them.

The court should be extremely cautious when asked to consider assessment and treatment packages offered by the same or linked providers. It should be noted that differentiation of roles between assessor and intervention is consistent with therapeutic practice outside of the family court arena. It is common practice within services that support children and families, e.g., CAMHS, that the initial assessment is completed by a different practitioner to the one who ultimately delivers an intervention, e.g. the Choice and Partnership Approach.³ This is for reasons of demand and capacity, but also recognizes the different competencies required at different stages. Often the assessment requires practitioners with a broader range of cross-model assessment skills to determine the type of intervention needed, the timing of different interventions and likely effectiveness; the interventions themselves may require practitioners with more focused therapy or model-specific skills or training. For example, a Clinical Psychologist in CAMHS may assess and recommend an intervention plan including Family Therapy delivered by a Family Therapist; within education an Educational Psychologist may assess and recommend interventions delivered by Teaching Assistants or Learning Mentors.

How and when can conflicts of interest be avoided

Practice Directions - The Experts Practice Direction, PD25B, para 9.1 requires four declarations. This includes a declaration that the expert has no conflict of interest of any kind,⁴ and the mandatory wording of a Statement of Truth.

Letter of Instruction - The court is required to carefully consider the narrative and questions within the letter of instruction to ensure that it identifies the issues and preserves the independence and integrity of the assessment. The court should be alert to consideration of actual or anticipated conflict of interest for the expert, in carrying out their assessment and making recommendations for further work. This is not limited to the assessing expert but also any associate who would benefit financially from the recommended intervention or service. The letter should make clear that there can be no variation of the terms of the instruction between the assessor and any party without the revisions being considered by the court at a hearing on notice to all. Practices such as asking clients to sign a waiver where a conflict of interest does occur are not consistent with this requirement.

Scrutiny of further recommended work

The court should be mindful that any program of work proposed by an expert that raises a professional conflict is contrary to best practice and challenges the integrity of any updating expert opinion. Before a court orders any further work, which involves the appointed expert who has assessed within proceedings or someone with a related financial interest, the court should warn itself about endorsing this approach and scrutinize all available options.

³ <http://www.camhsnetwork.co.uk/index.htm>

⁴ https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/practice-direction-25b-the-duties-of-an-expert,-the-experts-report-and-arrangements-for-an-expert-to-attend-court

Family Justice Council

May 2022