



Experts in the Family Justice System

Symposium 12th October 2022

Williams J

Progress on implementation of the Working Group recommendations.

Introduction

1. The final report of the working group on Experts in the Family Justice System was published on 5 November 2020. The report can be found at : <https://www.judiciary.uk/publications/the-president-of-the-family-division-working-group-on-medical-experts-in-the-family-courts-final-report/>. The report made 22 Recommendations to address the causes of the shortage including proposing a mechanism to oversee the implementation of the Recommendations.
2. This Note addresses the extent to which those Recommendations have been implemented and invites discussion on
 - a. How effective has implementation been to date.
 - b. How to make further progress on implementation of the remaining Recommendations,
 - c. Suggestions for any further ‘Recommendations’
3. Since November 2020 the Working Group and (since January 2021) the Family Justice Council Committee on Experts in the Family Justice System (‘EFJS’) has been seeking to progress the implementation of the Recommendations. The Recommendations themselves were broken down into a number of Clusters and ‘Cluster’ sub-groups have been established to lead on implementation of that Cluster. A summary of the clusters and progress on implementation is set out below.
4. One part of the Symposium Programme is ‘break-out’ groups the purpose of which is to focus on a particular Cluster or Clusters. In person participants have selected one of the break-out groups to attend. Remote attendees will (for technical reasons) only be able to join the break-out group held in the main hall. Within each ‘Cluster’ we have identified particular issues which might form the basis for discussion within the Break-out groups. At the conclusion of the discussions the leaders will feed back to the plenary session.

5. The break-out groups [and discussion leaders] are
 - a. NHS, Commissioners and Royal Colleges and professional bodies [Dr Fiona Straw, Dr Adam Oates and Dr Neil Stoodley]
 - b. Payment recommendations [Lead by Maud Davis]
 - c. Training and the role of Royal Colleges [Lead by Prof Keith Rix and Sharon Segal]
 - d. Court processes and treatment of experts [HHJ Sharpe and Williams J]

6. There are other issues which we have been consulted on and had input into which are linked but don't directly arise out of the Report.
 - a. Harassment of experts
 - b. Potential misuse of expert reports.
 - c. Experts in psychology and alienation and domestic abuse cases
 - i. Concern over expertise : Presidents Memorandum (<https://www.judiciary.uk/wp-content/uploads/2021/10/PFD-Memo-Experts.pdf>)
 - ii. Regulated and unregulated experts

Implementation

Supporting and Sustaining Change Recommendations

Recommendation 21

The FJC establishes a Sub-Committee with representation from the health and legal sides to oversee the implementation, monitoring, administration of the recommendations over the short, medium and longer term. The Committee would report to the Family Justice Council and to the Family Justice Board. The FJC should organize an annual symposium to promote wider involvement in the implementation of the Group's recommendations.

Recommendation 22

The working group recommends the establishment of regional 'experts in the family justice system' committees under the Patronage of the Family Division Liaison Judge with co-chairs

from a judge and health/ medical expert in the region. The committee would be comprised of legal and medical/healthcare professionals in order to address the shortage of medical experts and to implement at a regional level the recommendations for training and interdisciplinary collaboration including mentoring and feedback forums.

7. In early 2021 the FJC established a sub-committee called Experts in the Family Justice System (EFJS) to oversee implementation which I now chair.
 - a. It is comprised of members of the original working group and members of the FJC.
 - b. It has met 4 x yearly and is now moving to 3 x yearly
 - c. It has administrative support from the FJC. We are exploring whether a part of job can specifically be allocated to the EFJS
 - d. We have reported to the FJC and have been involved in joint presentations with the FJC to leadership judges. Liaison with the Family Justice Board has been less frequent.
 - e. Action Plans are being developed to implement the clusters of Recommendations.
 - f. The FJC website now contains much more detail about the Experts issues and will be further developed. <https://www.judiciary.uk/family-justice-council/experts-in-the-family-justice-system-efjs/>
 - g. A Quarterly Newsletter was planned but it seems a twice yearly is more realistic: Autumn 2021 and Spring 2022 have been published. <https://www.judiciary.uk/wp-content/uploads/2022/03/Newsletter-Spring-2022.pdf>
<https://www.judiciary.uk/wp-content/uploads/2021/12/EFJS-Newsletter-Autumn-2021.pdf> .

How best can we ensure regular publication of a Newsletter?

- h. The court experience scheme run by the FJC to facilitate would-be experts attending court hearings to observe an expert giving evidence has been re-invigorated and is operating to some degree through the FJC itself and through Regional/National Groups. It needs more cases notified to the FJC/ Regional Groups are aiming to identify lead cluster judge to notify suitable cases.

How can we better improve the notification of cases and develop awareness of the scheme?

- i. We have not managed an annual symposium but one is good given the Pandemic

What is realistic or desirable in terms of a symposium at which progress of implementation is considered?

8. Seven Regional and 1 National Welsh Group have been established

(<https://www.judiciary.uk/wp-content/uploads/2022/04/Regional-committee-contacts-for-website.pdf>).

- a. They are co-chaired by an expert and a circuit judge. Patronage by Family Division Liaison Judges has not developed given the challenges FDLJ's have faced in the last 2 years.
- b. Terms of Reference were drafted by the EFJS and are to develop training and mentoring either themselves or in conjunction with local training initiatives with the expert or family law communities.
- c. They have developed organically and most have organised at least 1 training event, some considerably more.
- d. Some are organising court experience schemes and the Welsh Group are currently working on a Protocol for the Court Experience scheme.
- e. They are exploring how they could develop more informal mechanisms to provide mentoring and support

How can more formal links with Local Family Justice Boards be fostered in relation to training.?

How can greater publicity for these groups be achieved?

Are more informal networks such as WhatsApp groups worthwhile

Do such groups experience any conflicts of interest or concerns about such as a result of multi-disciplinary working between judges and experts?

9. These two recommendations have been near fully implemented. It seems to us that both the national EFJS and the regional/National groups have a medium to long term role to play as it seems unlikely that all of the obstacles which contribute to the shortage of experts can be resolved and thus a role will continue for them.

How can we ensure that the national EFJS committee and regional/National groups survive infancy, grow into adolescence and if still needed remain healthy in middle and old age?

Royal Medical Colleges

Recommendation 1

28. *RCPCH and other Royal Colleges/Professional Bodies to create an online resource checklist for healthcare professionals, which details what is expected from expert witnesses. The content of the resource will be agreed by the judiciary, to confirm that the knowledge, skills and expertise required of medical expert witnesses is standardised. Development of this resource would clearly outline the detail of the role, including (but not limited to): content of a court report, explanation of the Family Court, how to respond to a letter of instruction, how to track time spent on court cases. The content should be guided by existing education programmes and guidance. It is expected that this resource could be promoted among healthcare professionals to encourage more to become expert witnesses. RCPCH to share this resource with members, for example, through Paediatric Care Online (PCO). RCPCH to promote expert witness work through production of a webinar, which will be free to download for all health professionals.*

Recommendation 2

29. *Royal Colleges to increase awareness of existing training for healthcare professionals (e.g. RCPCH expert witness training and also the training offered by organisations such as the Expert Witness Institute and the Academy of Experts) and further develop combined training courses between different specialties (e.g. paediatricians, neurosurgeons and radiologists). RCPCH should consider expanding their expert witness training to run more frequently throughout the year and explore the possibility of inviting other healthcare professionals. A specialist interest group of the British Society of Paediatric Radiology (BSPR) is running a workshop at its annual meeting (Leeds 2019) with a faculty composed of both the legal and medical professions, and input from a family court judge. The purpose of this workshop is to highlight the paucity of medical experts and attempt to demystify the process as a way to encourage more colleagues to become involved. The same specialist interest group of BSPR has published a consensus paper outlining its views as to how the situation may be improved. Although this focuses on the perspective of the radiologist, we believe there are many parallels with other disciplines and complementary solutions. (Oates A, et al. 2019)*

Recommendation 3

30. *There should be improved collaborative working between Royal Colleges to ensure that issues pertaining to expert witnesses can be discussed collaboratively. Royal Colleges could consider appointing a lead clinician / Officer for expert witnesses, to appropriately support members or an officer for safeguarding children issues which would include relating to court processes.*

10. Liaison with the Royal Medical Colleges and other professional bodies has been primarily led by those members of the EFJS and regional/National groups who are members of them. Thus within the RCPCH, RCR, RCPsych, BPS, ACP-UK discussions have taken place on a formal and informal level.

11. On 27th April 2022 the EFJS and the Academy of Royal Medical Colleges convened a meeting with representatives (including Presidents) of the RCPCH, FFLM, BPS, ACP-UK, RCPsych, RCPsych, RCGP, RCS, RCR, RCOphth. The meeting provided a forum to discuss the three Recommendations and the extent to which those attending considered their body might be interested in taking them forward. At the conclusion the attendees agreed to go back to their bodies to discuss

- a. Whether they considered the forum to be useful for discussing such ideas and how often it should meet,
- b. Explore how their body might implement the recommendations (in particular an expert lead) and to look at timeframes for doing so.

EFJS/AoRMC are aiming to convene the 2nd meeting in December. A topic of particular interest was the development of a website or the extension of an existing website as a 'hub' for experts.

12. The meeting suggested that the approach to expert work was very varied across the bodies. RCPCH, ACP-UK, BPS and PCPsych and FFLM already have initiatives in relation to experts. Some such as the ACP-UK and BPS already do most of what the Recommendations seek. The difficulties some face is now significant shortages of clinicians in the NHS putting even more pressure on their availability/willingness to take up expert work.

13. Progress on these recommendations is underway. Given the commitment we are asking the Royal Medical Colleges and other professional bodies to make we expected progress to take time. The EFJS/AoRMC meeting is seen by the participants as a very significant step. Implementation of the substance of the Recommendations is (in the main) very much a work in progress.

14. A meeting with the Professional Standards Authority has been scheduled with the EFJS in November to explore issues of common interest.
15. Meetings have been held with the RCPATH Special Advisory Committee and with the Home Office in relation to pathologist shortages and discussions are underway on a number of specific issues which relate to that discipline. The criminal justice system also experiences difficulties and the HO are implementing particular steps to widen the pool of certain pathology specialities.

What other Colleges/bodies should we include in the meeting?

What issue should be the primary focus for these meetings?

Should regulatory bodies be included or should they have a separate forum? Complaints to the HCPC, GMC or others do arise from expert work.

How can an experts website be established which would be of relevance to all disciplines or must each College or Body have their own resource?

Commissioning Groups and Department of Health

Recommendation 4

31. *RCPC, RCR and other Medical Royal Colleges to engage with commissioners and / or Trusts/Health Boards to enable their members to have conversations with their employers and encourage them to support expert witnesses to participate in this work. RCPC to outline the value of expert witness work, in particular quality improvement and training aspects. RCPC and RCR to write and share a letter with Medical Directors / Chief Executive of Trusts with a summary of report findings and recommendations to encourage staff members to provide expert witness work. Evolution within the NHS environment is often gradual and ensuring greater involvement of NHS/Hospital Trusts is likely to be a medium to longer term goal and requiring engagement at multiple levels including at individual Hospital Trusts and down to the design of individual consultant job plans. Raising the profile of the work, as this document seeks to do, along with discussions with organization such as the Children's Hospitals Association will provide impetus.*

Recommendation 5

32. *RCPCH and others to engage with NHS England and Clinical Commissioning Groups (CCGs) to promote expert witness work and consider the review of commissioning arrangements in England. NHS England should consider providing centralised payments for work through Trusts, who could be commissioned to undertake expert witness work. As the expert witness typically receives remuneration independently from the NHS Trusts by which they are employed, we feel that this area of work is often “forgotten” by commissioners and employers where in reality it is of such fundamental importance it should be at the centre of the way paediatric services are provided. While it should be considered as a long-term objective, Greater Manchester Local Family Justice Board Experts Subgroup Committee advocated that engagement with NHS commissioners is required to explore whether child abuse should be considered a “rare disease”. The Rare Diseases Advisory Group (RDAG) makes recommendations to NHS England and the devolved administrations of NHS Scotland, NHS Wales and NHS Northern Ireland on developing and implementing the strategy for rare diseases and highly specialised services. Highly specialised services are provided to a small number of patients; usually no more than 500 patients per year. For this reason, they are typically best delivered nationally through a very small number of centres of excellence. Examples of highly specialised services include liver transplant services, enzyme replacement therapy and proton beam therapy for specific cancer treatments. RDAG makes recommendations to the Clinical Priorities Advisory Group (CPAG) about how highly specialised services should be commissioned.*

16. Contact was established with the English Department of Health through the Family Justice Board and with the Welsh DHSS through the Co-Chairs of the Welsh National Group. Subsequently Preliminary meetings have been held with both. Due to changes in personnel or illness or other commitments those preliminary meeting have not led to further progress. Latterly the Welsh Group has re-established links and a further meeting is planned for December. Via the Family Justice Board and the Presidents Office contact has been established with the DfE who have offered to assist in making further contact with the DoH and commissioning bodies to discuss the Recommendations.

17. The Commissioners sub-group have met on a number of occasions and are in the process of drafting a Briefing Note for government and commissioning agencies which identifies the current ways in which expert work is commissioned and proposes that only a nationally commissioned child protection service (along the lines of unexplained deaths) would address

the difficulties in this area. Individualised solutions achieved by single experts are unlikely to provide a model that can be adopted nationally.

18. As was recognised in the Working Group Report changes to commissioning arrangements was very much a long term aim and one which was outwith the power of the Family Justice System to deliver. Tentative progress is being made but we continue to recognise that this is very much a long term piece of work.

Who else has an interest in a nationally commissioned model? Would the Childrens Commissioner or Victims Commissioner have an interest in this area?

Does the criminal justice system experience similar shortages and if so is there work that can be done with the CJS on common areas of interest?

Who are the key people to contact?

How best can we approach the issue of a nationally commissioned model in a time of financial pressures?

Payment

Recommendation 6

The LAA's guidance for expert witnesses should make it easier to obtain prior authority to instruct an expert. The process for prior authority should be reviewed as to whether it is needed in some circumstances and the process should be simplified. One prior authority approval made by one nominated party's solicitor should apply where an expert is jointly instructed, and the expert instructed should only have to issue one invoice to the lead solicitor or, better still, directly to the Legal Aid Agency to obtain payment and avoid the requirement for submitting multiple invoices to all the respective parties (sometime 6 or more). It should be possible for one prior authority application to be made on one occasion in relation to the instruction of multiple experts.

This may assist in expediting the process and also assist the LAA in ensuring value for money and that certain experts are not charging for excessive number of hours.

Recommendation 7

Issues around the numbers of hours allowed by the LAA for experts should be addressed, including for some larger assessments and so to appropriately reflect the amount of time

producing the report and for dealing with any questions, experts' meetings or other work further to the filing of experts' reports.

Recommendation 8

Some of the lower legal aid payments for experts, particularly the removal of the London/non-London differentiation, should be reviewed.

19. The Legal Aid Agency have amended their Guidance in relation to prior authority and hours allowed (<https://www.gov.uk/guidance/expert-witnesses-in-legal-aid-cases>) and the cost of compiling/indexing medical notes. The intention of the amendment was to enable the expert to submit one invoice to the Lead Solicitor applying for prior authority.
20. The Payment Action Plan group is meeting with a representative of the LAA who has agreed to join the group to continue to work on payment issues. Recoupment of payments has recently been raised as another issue. An amendment to a Statutory Instrument would be required to increase hourly rates.

Has the amendment to the LAA Guidance resulted in easier administration of the claims/payment system?

What other improvements should we seek?

How should we approach the issue of hourly rates and securing a change to the SI which sets them?

Court Process and Treatment of Experts.

Recommendation 9

Judges should be prepared to remove cases which require a number of expert witnesses from the 26-week track at an early stage, and to allow legal representatives to have time to master the paperwork in advance of the expert instruction. The Court order removing from the 26-week track should clearly record the reason(s) for this being done so as to enable HMCTS to track this issue.

Recommendation 10

All legal professionals including Judiciary to adhere to the contents of Part 25 and PD 25 with particular reference to the following:

- (i) *Instruction of experts matter for CMH (ie. early within the proceedings).*

- (ii) *Questions are part and parcel of the application and must be approved by the court. They are not to be agreed out of court after the hearing without judicial approval.*
- (iii) *The order should identify the issues to which the evidence relates as well as set out the questions to be asked which should be:*
 - a. *clear, focused and direct,*
 - b. *kept to a manageable number*
 - c. *avoid irrelevant detail;*
- (iv) *The letter of instruction (as well as the instructions) requires judicial approval and should be submitted with the Part 25 application.*
- (v) *For there to be proper co-ordination between the court and the expert when drawing up the case management timetable – the needs of the court being balanced with the expert who has a primary obligation / professional duty elsewhere.*
- (vi) *To provide a bespoke (preferably electronic) expert's bundle and if that does not include the full case papers then a full index shall be provided to the expert for their consideration as to whether further papers are required. Active consideration must be given to what papers should be disclosed to the expert at the point of instruction and approved by the court. Unless otherwise agreed with the expert an e-bundle in an accessible format which can then stand as the witness bundle for the expert at trial. All papers shall be paginated.*
- (vii) *Experts reports should be focussed on the questions and should not include detailed background material or verbatim notes of interviews save as appendices. The importance of compliance with timeframes should be emphasised.*
- (viii) *Strict adherence to the 10-day rule for the purpose of unilateral questions seeking clarification of any aspect raised in the report; such questions to be channelled on one occasion through the single point of communication.*
- (ix) *Experts' meetings:*
 - a. *5 business days for the preparation and circulation of an agenda which includes questions to be raised which should avoid repetition of previously asked questions and which seek to pre-attempt likely cross-examination*
 - b. *2 days for the distribution of that agenda to the non-legal participants*
 - c. *Exceptional circumstances for under two days and no allowance made for on the day or in the meeting questions*
- (x) *Where it is proposed that an expert give oral evidence the court should establish the issue which requires the witness to be called. Enabling a mutually convenient*

date and time to be arranged for the expert to give evidence well in advance of the final hearing, such dates to be guaranteed to avoid disrupting clinical commitments and usually to be by a video conferencing facility.

- (xi) Specific consideration of the use of appropriate technology (telephone, video link, Skype) to enable evidence to be given without the requirement to travel to court.*
- (xii) Requirement to file documents affecting the expert to be served on the expert within 2 days of receipt of that document.*

Recommendation 11

Legal Aid public funding should be available without prior authority being required to fund a service provider to rationalise and order medical records chronologically prior to the medical records being dispatched to an expert witness.

Treatment of Experts

Recommendation 12

Part of the training of experts should include understanding the purpose of cross examination. Where at an IRH particular issues in relation to an expert's evidence are identified they should be made aware of those prior to the hearing. It is accepted that however many training courses or well-prepared a "novice" expert witness is, the first few occasions in court will be daunting.

Recommendation 13

Whilst judges can and must disagree with expert evidence where justified this need not necessarily involve criticism. A judge should criticize experts where necessary, but where they intend to go beyond giving reasons as to why any of their evidence is not accepted, they must always question the purpose of doing so and the effect that such will have upon the expert in question and experts more generally. Criticism will be legitimate and appropriate where the expert has not complied with their duties to the court, has not complied with their professional obligations or has gone beyond their expertise.

Recommendation 14

When criticism of an expert become apparent which might lead to a judge giving a judgment which calls into question the professionalism or expertise of an expert, notice of the criticisms of the expert should be given. If a party wishes to criticise the conduct or probity of an expert (in circumstances where this could amount to a disciplinary complaint or breach of the expert's duties under Part 25) then, unless this was not apparent from reading the papers, the expert should be put on notice of such as soon as possible before giving evidence and

permitted to respond. This could be either by (a) the asking of supplementary questions or (b) by the expert being provided with the Position Statement or Skeleton Argument prior to giving evidence. Such criticisms should be raised in oral evidence to enable the expert to clarify or explain their position and to enable the court to reliably evaluate the evidence. Where, unusually that has not been possible, that expert should be sent a copy of the draft judgment and given the opportunity to respond, whether in writing or by appearing before the court before publication.

Recommendation 15

A direction should be made, at the conclusion of any hearing where an expert has been instructed and has provided evidence to the court whether by way of written report or oral evidence, directing the lead solicitor for the instruction to send a copy of the judgment (or a summary if no written judgment or transcript is obtained) to the expert.

21. Recommendation 9: The impact of judicial shortages and the Pandemic has impacted on the 26 week statutory timetable such that extending the 26 week timetable has become relatively routine and judges will routinely extend the timetable. As we emerge from Covid the need to comply with the timeframe is undoubtedly re-emerging (See Presidents Case Management Guidance : <https://www.judiciary.uk/wp-content/uploads/2022/03/Case-management-guidance-March-22.pdf>) and there has been emphasis on the test of “necessity” for the appointment of experts and some bearing down on the appointment of Psychologists and ISW within care proceedings. The DfE are interested in analysing the impact on timescales of delays in securing expert reports. There is (rightly) a greater focus on completing cases within 26 weeks but where the court is satisfied that an expert is necessary this re-focus on the statutory time-limit is not likely in our opinion to prevent judges extending the timetable
22. Recommendation 10: Better adherence to Part 25 requires all the lawyers and judiciary to work together. The training being delivered to all salaried and fee paid judiciary over the course of 2022/23 emphasises the benefits of adherence to part 25 processes. In particular the training emphasises
 - a. the need for the court to approve the questions and for compositing of questions,
 - b. the importance of ensuring that instructions to the expert are consistent with the remit that they agreed to undertake,
 - c. that only the documents necessary for the expert should be sent to them,
 - d. the other commitments of experts and the need to set a timetable (and to stick to it) which takes account of the expert availability.

23. Training to the legal professions (FLBA 11.11.22, 10.6.2021, Resolution 19.3.2021, Inner Temple Bar Students 6.5.22 and to some Local Family Justice Boards), has also incorporated training on Part 25 relevant to them. #

How can we deliver more training to Local Family Justice Boards, those undertaking vocational training, and to new practitioners and more generally to lawyers?

Will there be a need for on-going training for the judiciary and if so how frequently

Can training be incorporated into training for new judges given the already intense volume of work in induction training.

24. The FD judges both as leadership judges and as judging judges have a very important role in showcasing how experts and expert issues can and should be treated. Our reported cases send very important messages to the legal and expert communities. The raising of awareness with the leadership judges should support wider awareness of how to use FPR 25 most effectively. There seems to still be some way to go in getting the message to all concerned.
25. Recommendation 11: The Legal Aid Agency will now fund the rationalisation of medical notes through a 3rd party provider. Whether this is routinely done and whether it is in fact widely known is a different question.

How frequently are notes sent for compilation and funded by the LAA?

26. Recommendation 12: As referred to above the issue of training delivered by Royal Medical Colleges and professional bodies on expert issues varies widely. Those with more advanced courses include mock trials and the opportunity for experts to be examined and cross-examined and this includes training on ‘why’ they are being asked some questions. Training for instance by the South East Regional Experts Group included this and some of the Royal Medical Colleges include this as a component.
27. Prior notification to experts of the issues on which they will be cross examined is not universally welcomed by the legal professions. The asking of supplementary questions may identify particular issues which experts can focus on but advocates may prefer to keep their powder dry. There are some situations where it is expected that an expert will be put on notice; for instance where new evidence is to be put to them for consideration or where academic papers be put to them but even this is not universally adhered to and further training and awareness raising is probably required.
28. Recommendations 13 and 14. The distinction between a disagreement with an expert and criticism of an expert is also central to the training being delivered to all the judiciary. The training given is in effect ‘*do unto others as you would be done by*’ and we encourage judges

to look on what they say about experts from the perspective of how they would wish to be considered within the context of a judgment one of their decisions. The training also addresses how potential criticism should be dealt with procedurally emphasising the need for advance notice (where appropriate), for the expert to have the opportunity to deal with criticism in the course of giving their evidence and if not addressed in evidence to be given the opportunity of commenting before a judgment is delivered. Although this is very much a matter within the discretion of judges insofar as it is possible to tell from reported decisions it appears that this message may be taking root. Recent examples of reported cases in which experts have been criticised have been moderate in their tone (from our perspective) and been given the opportunity to comment. Although experts are usually named the cases show the courts exercising their discretion to anonymise experts in circumstances where identification might lead to inappropriate or abusive behaviour.

- a. Hertfordshire CC-v-M and Others [2022] EWFC 106
- b. B-v-C and A [6.9.2021]

Is unjustified or ‘inappropriate’ judicial criticism of experts a diminishing issue?

Is more moderated language in critical judgments more common?

Are there any other steps which can be taken?

29. In parallel with training of judges the training of experts as to the expectations of them is an essential component both to maintain and improve the quality of expert evidence but also to minimise the risk of criticism for failure to adhere to a ‘Standard’. Criticism in terms of the substantive content of an experts report is largely outside the remit of the EFJS and maintaining the quality of the content is more apt to Continuing Professional Development rules of the relevant bodies than EFJS. However in so far as criticism might be made for failure to comply with Court imposed standards (FPR PD25 Annex A, FJS/RCPCCH Expert Witness Guidance etc) the EFJS has a role to play in supplementing training provided by the professional bodies and experts organisations. Training has been delivered to

- a. Bond Solon Experts Conference Nov 2020 and 2021
- b. The Academy Of Experts June 2021
- c. Medical Protection Society March 2021
- d. Grange Conference Sept 2021
- e. BPS/ACP Sep 2022

- f. Family Justice Council March 2021 and October 2021
- g. Regional/national Group training

How can greater inroads into Expert professional bodies be achieved to deliver more training on the court experience and standards?

30. Recommendation 15. All training to judges and professionals has emphasised the need for experts to be sent copies of judgments or advocates notes of judgment at the conclusion of a hearing at which expert evidence has been received. In The Presidents View of March 2022 a standard form of wording derived from FPR 25 was suggested (drafted by the Welsh and Northern groups) and published nationally. Since then it has been taken up by the judicial group creating an updated set of Standard Orders and should appear in all relevant orders. We accept that this will also take time to bed in and that the mere fact that it appears in the Standard Orders does not necessarily result in such orders being adhered to. One of the particular issues which inhibits compliance is that in many cases an extempore judgment is given and no transcript is obtained (due to cost) and the advocates notes are not reduced to an agreed form. Although the FPR rule(25.19) only refers to the obligation on the instructing party providing a ‘written record’ in practice the legal profession will tend to rely on either a written judgment provided by the judge, or a transcript or an agreed note. Informal feedback from regional groups and national meetings suggests that in some areas experts are receiving more copies of judgments.

How can better compliance with provision of a written record be fostered. Targeted training to Law Society Children Panel Solicitors and ALC members might be considered.

Who should provide a transcript of a judgment?

31. Overall we consider that significant progress is being made in the implementation of these Recommendations as a result of the training that is being delivered to the judiciary and the professions. Maintaining continuing training on these issues is the next challenged as is ensuring that experts training on ‘Standards’ is more consistently given across the whole of the field of experts. Experience suggests that where experts have been criticised for a failure to adhere to standards it may be due to lack of recent training or complacency. Ensuring that all experts undertake appropriate induction training and refresher training is a continuing challenge. Membership of expert witness bodies can provide this facility but self-evidently comes at a cost. Membership of local EFJS groups and attendance at national events can also

address this to some degree but embedding expert witness training within professional bodies ongoing education programmes would be a significant step forward.

Training

Recommendation 16

A vehicle for Inter-disciplinary training, mentoring and feedback should be developed to deliver

Training programmes for legal and medical professionals on issues relating to expert witnesses.

To develop and implement mentoring schemes for medical experts whether they are within the medical profession or ideally with an element of inter-disciplinary mentoring.

A vehicle for feedback from the legal profession, in particular the judiciary to experts ranging from simple notification of the outcome of a case through to constructive criticism to aid professional development as well as informal 'complaints' as an intermediate level response to any identified failings in the provision of expert evidence which do not warrant referral to the GMC.

There should be a proper budget for such training.

Recommendation 17

Barristers, solicitors and judges should be approached to assist with witness training and consideration should be given as to whether this could be done in conjunction with organisations that provide accreditation and training in report writing and giving evidence for expert witnesses. Judges should be permitted to assist with training in working time and barristers and solicitors should be paid. The aim of this should not only be to assist the experts to give their best evidence, but also to dispel some of the anxieties many have about cross examination and the attitudes of the courts.

Recommendation 18

The Family Justice Council should be invited to extend the mini-pupillage scheme for expert witnesses to a national level and to include senior registrars and consultants to familiarize themselves with courts in order to fully understand their role as treating clinicians and as future experts, and for experienced consultants who are contemplating commencing expert witness work. To consider whether to recommend that such should be required training for all paediatricians with key safeguarding roles (Level 4 and 5) as per Safeguarding children and young people: Roles and competencies for paediatricians and those experts who work with children.

Recommendation 19

Specialist organisations such as the Family Law Bar Association, The Association of Lawyers for Children and Resolution should review their advocacy training and how it covers the issue of effective cross examination of experts. Training should be done by practitioners, judges and experts themselves.

Recommendation 20

An expert witness handbook or information pack for experts and lawyers should be commissioned. This may be in conjunction with the Royal Colleges/Professional Bodies and other stakeholders such as Expert Witness Institute/Academy of Experts to ensure a standardization and clear understanding of the requirements of experts across disciplines. Clearly there will be a financial cost to bringing the parties together and this should be considered as medium-term goal.

32. Recommendation 16: The establishment of the Regional/National EFJS Groups was the fulfilment (at least in part) of this Recommendation. So far the Groups have focused on training. The establishment of mentoring schemes and feedback forums is something we want to focus on more. We are exploring the possibility of establishing WhatsApp or other informal forums to foster more mentoring and feedback. The significant obstacle that confronts us in expanding the capabilities of the Groups is one of resources. All function as a result of the voluntary contribution of time and effort of the judiciary, experts and legal professionals. As matters stand there is no prospect of securing funding to expand these aspects and we seem likely to be reliant on the good will of participants. Tools such as the Multi-Source Expert Evaluation of Psychiatric Experts (developed by Prof K Rix) could be a model for other areas of expertise but they will require significant work by individuals or bodies to roll them out more broadly and they rely on the profession then to complete them.

How can the Regional National Groups be supported to expand their capability into mentoring and feedback roles?

Is it realistic to consider the development of any other vehicle and if so what form might it take?

How else can mentoring and feedback be encouraged?

33. Recommendation 17. The Regional/National Groups and the FJC Committee have drawn upon barristers, solicitors and judges to undertake training on an ad hoc basis. Legal professionals routinely undertake training of experts through the various expert agencies. Professional bodies training (The Royal College Of Psychiatrists for Child and Adolescents

Psychiatrists for instance) also use legal professionals in their training programmes. Judges routinely train other judges but at present other than through the EFJS Committee and Regional Groups judicial input into training is not co-ordinated through any central body. It seems likely that extending the training that the professional bodies deliver would be a significant step forward in getting judiciary and legal professionals involved in training experts. The challenge seems to be that training within professional bodies, in particular the Royal Medical Colleges is already very pressed and expanding it to create expert training involves more time away from clinical practice and more input from the RMC's – both of which are difficult. At present the range of possible training opportunities and the lack of a 'hub' may contribute to less take up. EWI and Bond Solon have agreed to circulate information including our Newsletter and to disseminate information about the work of the FJC. The fact that commercial interests are in play (and in competition) for a range of organisations has to be recognised

Can a national hub be created to publicise training events?

34. Recommendation 18. The Family Justice Council has extended the 'mini-pupillage' scheme (now to be called court experience scheme) and the website enables would be experts to register their interests. The local/National Groups have also been facilitating such arrangements. The Welsh Group developed a court shadowing/mentoring protocol which has been considered by the EFJS Committee and a group drawn from the EFJS and Welsh Group are considering revisions. There are significant issues with confidentiality which have to be accounted for in the nature of insight that a court experience can deliver (i.e. sight of papers etc). The Scheme is reliant on judges or legal professionals or experts notifying either the FJC or a regional/National group of cases which might be suitable for a would be expert to sit in on and it has been difficult to achieve consistent notification. Whilst the FJC would find some difficulty in administering a national scheme it would have the benefit of a single point of entry. If further support can be acquired for the EFJS Committee it may be that a national register is easier to operate – although perhaps not to the exclusion of local initiatives.

How best can we ensure that forthcoming cases are notified and that would be experts can learn of them and gain access?

Can the RCPCH incorporate attendance at court within level 4/5 training for paediatricians.

35. Recommendation 19. Approaches have been made to FLBA, Resolution and ALC in relation to training. As set out above some training has been delivered but we are not close to such training being an integral component of CPD. Further work will be required on this.

Alternatively approaches may be possible to the providers of vocational training and to the Inns of Court – although so far it has proved difficult to penetrate the Inns of Court.

What steps should we take to further develop training with lawyers organisations and with student training bodies?

36. Recommendation 20: ‘A Handbook for Expert Witnesses in Children Act Cases’ 2nd Edition by Wall LJ was last published in 2007. Prof Keith Rix and Michael Powers QC (with input from Williams J and Poole J) have developed a proposal for a new Experts Handbook and a potential publisher has been identified. The publication would comprise chapters on law and procedure in Family Courts and Court of Protection, chapters on substantive areas of medical expertise and practical guides and templates. A number of possible authors have been identified for some of the law, process and medical areas but more authors are needed. Prof Keith Rix is leading the development. We are also exploring the possibility of a web-site which would provide similar resources to a Handbook as well as providing publicity for training and perhaps online forums.
37. Overall a considerable amount of training has been undertaken but it would benefit from a greater degree of strategic direction which has been difficult given the voluntary nature of all the contributors. Further resources within EFJS Committee nationally might be the best route to a more integrated and co-ordinated approach.

How can we attract the authors necessary to get Expert Witness Handbook off the ground?

What routes are open to us to develop a webs-site hub and to maintain its currency?

Conclusions

38. The EFJS Committee and the National/Regional Group consider that significant steps have been taken in the last 2 years towards the implementation of the Recommendations. In some cases implementation is near complete but in others there remains much to do and some of recommendations which involve more remote third party interests are the most challenging now and are likely to remain so.
39. We remain broadly optimistic about the prospects of making further progress in implementing the recommendations and the structures seem to be in place to enable the work to continue on all fronts.
40. As ever the biggest obstacles are resources in time.

Is there any charitable funding which could be sought to assist in this work?

41. We propose that we review the progress in another Symposium in 2 years time.
42. Can I record my profound thanks to all of the members of our committee and the National and regional groups who have given up their time in this cause, to the FJC staff who have given incredible support to the committee in its work and to all those who have assisted in the work of the groups or who have otherwise helped to address the issues experts and the Family Justice System face in getting the best expert evidence before it in a timely way. Ultimately this is all about achieving the best outcomes for children and families.

Williams J

(On behalf of the Family Justice Council Experts in the Family Justice System Committee and the Welsh and Regional Groups)

7 October 2022