



Neutral Citation Number: [2026] EWCA Civ 249

Case No: CA-2025-002226

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT LINCOLN
Her Honour Judge Gillespie
LN22C50022

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 March 2026

Before :

SIR ANDREW McFARLANE, PRESIDENT OF THE FAMILY DIVISION
LORD JUSTICE LEWISON
and
LORD JUSTICE PETER JACKSON

H (Children: Expertise of Witness)

Naomi Madderson KC and Kimberley Gordhandas (instructed by **Rands Solicitors**) for the **Appellant Mother**

Brett Davies (instructed by **Lincolnshire County Council**) for the **Respondent Local Authority**

The Second Respondent Father and the Respondent Children by their Children’s Guardian did not participate

Alex Taylor (instructed by **Ison Harrison Solicitors**) for the **Third Respondent Father (F2)**,
by written submissions only

Hearing date : 19 February 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 12 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Andrew McFarlane P, Lord Justice Lewison and Lord Justice Peter Jackson:

Overview

1. On 19 February 2026 we heard an appeal from care orders that were made in relation to three children by Her Honour Judge Gillespie in March 2023. The appellant, the children’s mother, asserts that a jointly instructed expert psychologist, upon whose evidence the judge relied, had been acting outside the limits of his expertise, and that the orders therefore cannot stand. No other complaint is, or could be, made about the judge’s decision.
2. In November 2025, permission to appeal out of time was granted on the basis that there was a compelling reason for the appeal to be heard, so that guidance could be given on the procedure to be adopted in similar circumstances. To prevent the children being unnecessarily disturbed, a condition was imposed under CPR 52.18 that they were not to be told of the appeal.
3. The Family Court proceedings began in February 2022. At the outset the court approved the instruction of Mr Graham Flatman to provide a psychological assessment of the family. He carried out interviews in May 2022, reported in June 2022, and gave evidence at the final hearing in March 2023.
4. When accepting instructions, Mr Flatman disclosed that he was facing a tribunal hearing following a complaint to Health and Care Professions Council (‘HCPC’) that had been initiated by a parent in another family matter, but regrettably this disclosure was not brought to the attention of the parents or the court.
5. That complaint arose from unrelated proceedings in 2018. It alleged that Mr Flatman had accepted instructions under an order that had referred to him as a clinical psychologist and that he had conducted a clinical psychological assessment and psychometric testing of the parent when he was not registered and/or qualified to do so. In October 2023, the complaint was upheld by the Conduct and Competence Committee of the HCPC, after which Mr Flatman decided that he would not undertake further work as an expert witness. In April 2024, the panel found that the proven allegations amounted to misconduct and imposed a suspension of six months upon him. We have seen the panel’s reasons for its decision.
6. In May 2024, the mother in the present case complained to the HCPC that Mr Flatman had not been qualified to assess her, and that his opinions had resulted in the care orders being made. It was not until September 2025 that she applied to this court for permission to appeal, and for an extension of time for appealing.
7. The appeal will be dismissed for the reasons given below. In what follows:
 - 1) We refer to the principles underlying the instruction of experts in children proceedings.
 - 2) We address the appeal in the present case.

- 3) We conclude that a party who seeks to bring a challenge of this kind in children proceedings should normally do so by application to the Family Court rather than by seeking to appeal.

Experts in children proceedings

Definition

8. An expert witness is a person whose opinion on any relevant matter on which he is qualified to give expert evidence is admissible in civil proceedings: s.3 Civil Evidence Act 1972. The Family Procedure Rules 2010 are no more helpful, providing at 25.2(1) that ‘expert’ means a person who provides expert evidence for use in proceedings.
9. In *Hodgkinson and James, Expert Evidence: Law and Practice* (5th ed) at 1-025 it is said that the two most important qualities of an expert are the possession of knowledge of the specialism in question, and an ability to use that knowledge by virtue of training and/or experience in that field.
10. The most that has been said judicially by way of definition of expertise is that a witness will be qualified to give expert evidence if they have acquired by study or experience sufficient knowledge of the subject to render their opinion of value in resolving the issues before the court: *R. v Bonython* (1984) 38 S.A.S.R. 45 (South Australia Supreme Court), which has been followed a number of times in this jurisdiction. By contrast, as was said by Bingham LJ in *R v Robb* (1991) 93 Cr App R 161; [1991] Crim. L.R. 539 a party “cannot fairly be asked to meet evidence of opinion given by a quack, a charlatan or an enthusiastic amateur.”
11. Moving closer to the subject of this appeal, the Guidance from the Family Justice Council and the British Psychological Society (September 2023), entitled ‘*Psychologists as Expert Witnesses in the Family Courts in England and Wales: Standards, Competencies and Expectations*’ (‘the 2023 FJC/BPS Guidance’) proposes at [2.1] that:

“An expert is a person who, through specialist training, study, or experience, is able to provide a court, tribunal, or hearing with relevant scientific, technical, or professional information or opinion, based on skills, expertise, or knowledge, that is likely to be beyond the experience and knowledge of the representing lawyers, judge, jury or panel.”

That seems to us to be a satisfactory definition of an expert witness.

Admission of expert evidence

12. In *Re M & R (Minors)* [1996] EWCA Civ 1317; [1996] 2 FLR 195; [1996] 4 All E.R. 239 at 254a, this court stated that “The modern view is to regulate matters [of expert evidence] by way of weight rather than admissibility.” In *Hodgkinson and James* at 1-027, a number of reasons are given for this approach:

“First, it is obvious from the cases that the test of expertise is not one of great precision, especially because it can depend upon the nature of the matters which require proof and assumes a wide discretion in the

court which considers it. Secondly, it appears to be recognised that the most effective way of assessing expertise is, rather than conducting a difficult exercise based almost entirely upon the limited evidence available as to qualification, experience and skill at the admissibility stage, to hear the witness's substantive evidence and use this as the basis upon which to judge not only the quality of their evidence, but also their competence to give it. Thirdly, and following directly from this second point, the degree of expertise revealed by the witness in their evidence is inevitably an important part of the process of attributing weight to the evidence in order to decide the issues. It would indeed be an exercise of some artificiality to attempt to effect complete separation between the question of expertise and that of the persuasiveness of the evidence given by the witness."

13. As we shall shortly see, it has become necessary to bring some rigour to bear on the instruction of expert witnesses in children cases by means of a statutory code and judicial guidance. That means that the court should know about an expert's qualifications and experience before they get anywhere near the witness box. At the same time, it should not be forgotten that the boundaries of expertise and of subject matter are not always clear cut and that there will always remain a role for judgement in relation to the instruction of experts and the assessment of their evidence.
14. The detailed statutory code controlling the appointment of experts in children proceedings is to be found in s.13 of the Children and Families Act 2014 ('the 2014 Act') and Part 25 of the Family Procedure Rules. Its purpose is to ensure that expert evidence is only admitted where the court has decided that it is necessary, and that it is obtained from suitable experts in a focused and efficient way. Where permission is granted, rule 25.8 provides that it will only be in relation to the named expert. Section 13(2) reinforces this objective by providing that expert evidence obtained without the permission of the court will be inadmissible, unless the court rules it admissible.
15. FPR 25 and Practice Directions 25B and 25C need to be read as a whole, but for our purposes, the following FPR provisions are relevant to the procedure for selecting and appointing an expert witness:
 - 1) The court's duty to actively manage cases includes "controlling the use of expert evidence": rule 1.4(2)(e).
 - 2) Permission must be applied for as soon as possible: rule 25.6.
 - 3) An application notice must be filed unless the court dispenses with the requirement: rule 18.4.
 - 4) Amongst other things, the application notice must state: the field in which the expert evidence is required; where practicable, the name of the proposed expert; the issues to which the expert evidence is to relate; and the questions that the expert is to be required to answer; and it must be accompanied by a draft order setting out a number of specified matters: rule 25.7 and PD25C 3.10-11

- 5) The matters specified by PD25C 3.10 for inclusion in the application include “the discipline, qualifications and expertise of the expert (by way of C.V. where possible)”
- 6) The matters specified by PD25C 3.11 for inclusion in the draft order include:
- “(a) the issues in the proceedings to which the expert evidence is to relate and which the court is to identify;
- (b) the questions relating to the issues in the case which the expert is to answer and which the court is to approve 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;”
- 7) For their part, the expert witness in children proceedings is subject to the duties set out in PD25B, which include: the duty to comply with the Standards for Expert Witnesses in Children Proceedings in the Family Court, which appear at the Annex; the duty “to confine the opinion to matters material to the issues in the case and in relation only to the questions that are within the expert’s expertise (skill and experience)”; and “where a question has been put which falls outside the expert’s expertise, to state this at the earliest opportunity...”: PD25B 4.1(aa), (e) and (f).
- 8) The annexed Standards require expert witnesses in children proceedings to comply with eleven standards. These include:
- “1. The expert’s area of competence is appropriate to the issue(s) upon which the court has identified that an opinion is required, and relevant experience is evidenced in their CV.
2. The expert has been active in the area of work or practice, (as a practitioner or an academic who is subject to peer appraisal), has sufficient experience of the issues relevant to the instant case, and is familiar with the breadth of current practice or opinion.
- ...
5. If the expert’s current professional practice is regulated by a UK statutory body (See Appendix 1) they are in possession of a current licence to practise or equivalent.
- ...”
- 9) Appendix 1 identifies ten regulatory bodies, including the HCPC. Its entry includes a table of the sixteen professions that it regulates, and the protected titles for each profession. One of these is “Practitioner psychologist”, for which the table entry reads:

“Practitioner psychologist

Psychology is the scientific study of people, the mind and behaviour. Psychologists attempt to understand the role of mental functions in individual and social behaviour.

Protected titles

- Practitioner psychologist
- Registered psychologist
- Clinical psychologist
- Counselling psychologist
- Educational psychologist
- Forensic psychologist
- Health psychologist
- Occupational psychologist
- Sport and exercise psychologist”

10) Appendix 2 concerns professions that are not regulated by statute.

Professional regulation

16. There is no legal requirement for a person describing themselves as a psychologist to be registered or to be a member of a particular organisation. However, statutory regulation for psychology in the UK was introduced in 2009 and the HCPC is the regulator of practitioner, or registered, psychologists. Practitioner psychologists who have the qualifications necessary are registered with one or more of the seven protected titles listed above. In addition, two generic titles – Practitioner Psychologist and Registered Psychologist – are available to registrants who already hold one of the seven ‘specialist’ titles. Use of any of these nine titles is legally protected.
17. The term ‘Chartered Psychologist’ refers to a grade of membership of the British Psychological Society (‘BPS’), which is authorised to confer that title by its Royal Charter. Use of the title is legally restricted and it is granted only to psychologists who are regarded by the Society as having appropriate professional qualifications and experience.
18. A number of titles that are in use have no specific meaning in applied psychology or psychological practice: Assessment Psychologist; Child Psychologist; Criminal Psychologist; Expert Psychologist; Developmental Psychologist; Consultant Psychologist; Graduate Psychologist.
19. Amongst the professional guidance that was available at the time of Mr Flatman’s instruction in the present case was the predecessor to the 2023 FLC/BPS Guidance: *Guidance from the Family Justice Council and the British Psychological Society: Psychologists as expert witnesses in the Family Courts in England and Wales: Standards, competencies and expectations* (January 2016). This provided at 3.2 that “All psychologists that are eligible to do so should use their protected titles.”
20. In *Re C (‘Parental Alienation’: Instruction of Expert)* [2023] EWHC 345 (Fam) (‘*Re C*’), Sir Andrew McFarlane P reviewed these matters when hearing an appeal from a refusal to reopen findings of fact in a case of alleged alienating behaviour on the basis of assertions about the expertise of an unregulated psychologist. He described HCPC

registration and BPS chartered membership as “very solid ground” [68], and noted the need for clarity over the expertise of those who present as a psychologist, but who are neither registered nor chartered [96]. He continued:

“97. ... A lesson plainly to be drawn from the present case is the need for clarity as to an expert’s qualification and/or experience. The more diffuse and unstructured a CV, the less effective it is likely to be in transmitting information crisply and clearly. In this regard, lawyers, magistrates and judges are lay readers. They need to be able to see with clarity, and in short form, the underlying basis for an individual’s expertise. HCPC registration, or chartered status in the BPS, provide a reliable, one-stop, method of authentication. Where a potential expert is registered with the HCPC as entitled to hold themselves out as an expert under one of the protected titles, this can be taken as sufficient qualification to offer an opinion within that field of practice. Further detail in the CV may assist with the choice of one particular expert over another, but it is the kitemark of HCPC registration which should resolve the question of qualification without more. A psychologist’s CV should, therefore, prominently highlight whether they are HCPC registered or not. It is incumbent on an unregistered psychologist to assist the court by providing a short and clear statement of their expertise.”

He accordingly invited the Family Justice Council to consider revising the existing guidance so as to establish a template for readers to see at a glance whether an individual is currently registered with the HCPC (and if so in what category), or as a chartered psychologist, or not [102].

21. That invitation led to the publication of the 2023 FJC/BPS Guidance. It recommends that to assist the Family Court all statutorily registered practitioner psychologists should use their protected specialist title as it appears on the HCPC register [3.3] and that it is the responsibility of the psychologist expert to be transparent in relation to their qualifications and registration to assist the court in determining their suitability to offer the necessary expert opinion in the case being considered [3.6]. At Appendix 2, it describes the typical training and expertise of each of the seven protected specialisms. This includes detailed descriptions of the respective proficiencies of Clinical Psychologists and Educational Psychologists, of which these are the opening paragraphs in each case:

“Clinical psychologists are qualified to work with individuals across the lifespan with behavioural, emotional and/or psychological distress causing disruption to their everyday functioning and wellbeing. Their task is to facilitate adaptability and change in individuals, groups, families, organisations and communities in an effort to alleviate distress and enhance future resilience.”

“Educational psychologists are qualified to address concerns affecting psychological and emotional development and learning expressed by and on behalf of infants, children and young people (0–25 years). They draw on a range of psychological theories and apply these to carry out a wide range of tasks with the aim of enhancing children’s

development, learning and emotional wellbeing. Educational psychologists enable parents, teachers and other individuals working with children to become more aware of and address the social factors affecting development and learning.

... Educational psychologists have skills and knowledge that enable them to: understand and apply psychological models related to the influence on development of children and adolescents from family structures and processes, cultural and community contexts, and organisations and systems;”

22. The 2023 FJC/BPS Guidance also contains, at Appendix 5, a useful checklist for instructing solicitors instructing a psychologist, to ensure that the witness’s regulated status and protected title and up-to-date competence is understood. It also contains, at Appendix 6, a checklist of the minimum information needed for a CV, including identifying the protected title and the level of psychometric testing that can be used.
23. On 20 February 2026, in *Re Y (Experts and Alienating Behaviour: The Modern Approach)* [2026] EWFC 38, the President returned to the issue of unregulated experts and alienating behaviour. Pending the outcome of a consultation being undertaken by the Family Procedure Rule Committee, he gave “firm guidance”:

“73. In future, permission should not be given under CFA 2014, s 13 for the instruction of an expert ‘psychologist’ who is neither registered by a relevant statutory body, nor chartered by the BPS. It would be good practice, before a potential expert is appointed, for them to be asked to state whether they hold an HCPC protected title, and if so what that is, before any order is made appointing them as an expert. The ‘registered or chartered’ requirement should only be departed from where there are clear reasons for doing so (for example no registered or chartered expert is reasonably available); where that is so, those reasons should be set out in a short judgment.

24. Insofar as it relates to good practice in relation to the instruction of psychologists in family proceedings, we take this opportunity to endorse the guidance given in *Re C* and *Re Y*.

This appeal

The care proceedings

25. We describe the overall family situation so that the status of Mr Flatman’s evidence can be understood.
26. The eldest of the three children, A, was born in 2011. The mother separated from A’s father (F1) and began a relationship with F2, the father of twins B and C, born in 2017. F2 has a very bad criminal record. The family was known to social services for a long time because of poor home conditions, domestic abuse, and concerns about A’s behaviour and the adults’ responses to it. The local authority took care proceedings in February 2022 and at that point the court approved the placement of the children in foster care with arrangements for regular contact with their mother.

27. At a further hearing on 3 March 2022, another judge made case management decisions. These included an order for the joint instruction of a psychologist “to undertake a psychological assessment of the first respondent mother and the children”. There was no application notice and no expert had been identified.
28. The next day, counsel for the Children’s Guardian made inquiries by email of Mr Flatman’s practice administrator, and by 8 March it was established that he would be able to accept instructions, carrying out inquiries in May and reporting at the beginning of June. Counsel conveyed this to the local authority representatives, who were content. It appears that the mother and F1 (who were each legally represented) and F2 (who was not) were not part of this correspondence, but a draft order, prepared by counsel for the local authority, was in due course agreed by the parties and approved by the court. It named “Graham Flatman, psychologist” as the jointly instructed expert.
29. The fact that there was no Part 25 application and that the parents were not consulted about the identity of the expert was a departure from good practice. That was particularly unfortunate because the initial email response from Mr Flatman’s practice to counsel on 7 March contained this notice at its foot:

“For your information

For the sake of clarity and openness I am informing you that following a complaint to Health and Care Professions Council (HCPC), initiated by a parent in a family matter, there is to be a tribunal hearing with regard to my fitness to practise. The central issue concerns areas of expertise and as to whether or not I have the expertise to undertake the assessments of adults. I strongly contest this, of course, since I have training and a vast amount of experience in child, adult and family work, over a number of years. This is an issue in progress. The HCPC have not imposed any sanctions on my work, nor have they indicated that I should inform those instructing me. There is no need to change my CV or Qualifications and Experience which are correct and accurate. I will inform you about any developments.

Yours sincerely,

Graham Flatman”

Neither the Children’s Guardian nor the local authority made any further inquiries as a result of this notice, and the other parties and the court were not informed about it before the draft order was approved.

30. A letter of instruction, drafted by the Guardian’s solicitor, was then sent to Mr Flatman on behalf of all parties. He was provided with the court papers and requested “to undertake a psychological assessment in respect of the family and to prepare a report thereafter” that addressed these questions:

“You are asked to consider the following in relation to the children:

1. Please provide a full psychological assessment of the children individually.
2. Please assess the children's current psychological and emotional health, examining their current social, emotional and psychological needs individually. Please comment on whether any of the children appear to suffer from any psychological, behavioural or emotional difficulties.
3. If any of the children are identified as suffering from any difficulties, please comment (if you are able) on whether those difficulties are the result of organic or environmental causes: commenting specifically whether the children's life histories and circumstances could have impacted on his current emotional and psychological functioning.
4. Please assess whether or not the children are functioning emotionally and socially appropriately for their age.
5. Please assess the current and long term impact on the children of their experience of parental care to date and comment on their presentation as a result of their parenting experiences.
6. Please comment on any particular problems that the children may experience in future as a result of their individual experience.
7. Please comment on the children's individual therapeutic needs and indicate how those needs might be met and the timescales for such.
8. Please comment on whether any of the children would benefit from any treatment or therapeutic input, and comment on the nature and likely duration of such. Please also comment on the children's capacity and motivation to engage in such therapy.
9. Please comment on whether any specific assistance and / or training should be given to the children's care givers to ensure they are able to meet their needs.
10. Please comment on the children's contact and attachment with their parents.

In relation to the parents please consider the following:

1. Please provide a full psychological assessment of the mother.
2. Please comment on whether the mother has in history or present a psychological disorder/difficulty and if so what is the diagnosis?

3. If the answer to question 2 above is yes, are there any features of either psychological difficulties, emotional difficulties or personality disorder which could be associated with risk to the children based on available evidence base (whether published studies or evidence from clinical experience).
4. Please assess the mother's ability to identify risks that may be posed by her or others to the children and her ability to protect from those risks.
5. Please assess the mother's ability to meet the individual and respective needs of the children, as identified in your assessment of them, above.
6. Please assess the mother's emotional functioning and her ability to put the needs of the children above her own.
7. Please assess the mother's ability to prevent the children from being exposed to adult matters or sensitive information.
8. Please assess the relationship history of the mother and to what extent she is able to put her children's needs above her own relationships.
9. Please assess the mother's ability to abstain from engaging in future domestically abusive relationships.
10. Please assess the mother's ability to safeguard the children from being exposed to inappropriate persons, relationships or behaviours.
11. Please comment on the mother's ability to manage her behaviour, presentation, mental health difficulties, and regulate her emotions so as to safeguard her children from the effects of any negative behaviours.
12. Please comment on the mother's motivation, and ability to change if change is required together with timescales for such change to be brought about.
13. Please assess the mother's ability to work openly and honestly with professionals and abide by any agreements or restrictions put in place to safeguard the children.
14. Please assess the mother's ability to engage with professionals to effect positive change or to obtain support and assistance to the benefit of herself and the children.
15. Please assess the mother's attachment with her children.

16. Please assess whether the mother’s understanding of concerns of the local authority and whether she has the ability to recognise the local authority’s concerns and act upon those concerns.”
31. Mr Flatman carried out his inquiries over the course of five days. He interviewed the mother via video link. He visited the twins and interviewed their carers. He observed the mother’s contact with A and her contact with all three children. He assessed the three children and spoke to their two sets of foster carers. The fathers did not participate.
32. Mr Flatman provided his report on 22 July 2022. It ran to 88 pages with a further 10 pages of supporting appendices, including his CV.
33. It is unnecessary to quote extensively from the report. Most of it consists of an uncontentious account of what Mr Flatman read, heard and saw. For our purposes, what matters is his expertise and the extent to which he could properly answer the questions that he had been asked.
34. In the report, Mr Flatman described himself as “Graham Flatman – Chartered Psychologist”. He set out his qualifications and experience in a two-page appendix that includes these passages:

“I am a Chartered Psychologist having a Bachelor of Science in Psychology, a Master of Science in Educational Psychology, a Post Graduate Certificate of Education, a Diploma in Ericksonian Hypnosis, Psychotherapy and Neurolinguistic Programming (British Hypnosis Research). I am an Associate Fellow of the British Psychological Society.

I have worked in Local Authorities for seventeen years and in private practice for seventeen years.

I am registered with Health & Care Professions Council (HCPC).

...

I am on The British Psychological Society register of Expert Witnesses.

I am an expert in the assessment of learning difficulties and offered high level diagnosis at the Ebury Centre, London for children with learning difficulties.

I have extensive experience and act as an Expert in child, adult and family related issues in clinical and legal contexts.

I continue in private practice assessing and treating a wide range of psychological issues in children, adults and families.

...

I am currently completing about six reports per month on Child Care Litigation issues, usually for Court purposes and in the last year have completed over sixty reports in this context, referrals coming from a

wide range of sources, the majority of which have been from firms of Solicitors and from Local Authorities.

I have held contracts with Health Authorities such as Bexley, Greenwich and Maidstone Priority Care Trust as well as individual medical practices to act as a Consultant Psychologist over a wide range of clinical issues. I am therefore experienced in diagnosing and treating a wide range of psychological conditions.

In my private practice I treat numerous children, adults and families with a wide range of clinical issues including educational, learning difficulties and personality difficulties as well as a significant number of cases concerning a full range of Care issues including abuse, neglect and harm as well as general parenting issues.

...”

35. Mr Flatman’s registration with the Health & Care Professions Council HCPC was as a “Practitioner Psychologist (Educational)”. Another CV document within the records of the local authority (undated and not seen by the court when he was appointed in the present case) showed that his seventeen years working for local authorities had been as an educational psychologist. It further related that he had been providing expert witness reports since 1998. In the HCPC panel proceedings, Mr Flatman stated that he set up in private practice in 1990 and had provided expert witness evidence in approximately 1680 family law matters.
36. Mr Flatman’s report in the present case included a review of the mother’s medical records, which he reviewed “from the perspective of my expertise as a psychologist”. Having given a detailed account of the mother’s perspective in interview, he carried out a “cognitive assessment”. As part of this, to the extent possible on a video link, he administered the Wechsler Adult Intelligence Scale IV Edition UK and interpreted the incomplete results. He then administered the Millon Clinical Multiaxial Inventory III (MCMI-III), which he described as a self-report inventory measuring underlying personality features and current emotional and interpersonal difficulties; it can be used to determine whether an individual meets diagnostic criteria for personality disorders as defined by the DSM – IV. He noted that the diagnosis of personality disorder is a matter for psychiatric expertise. He set out the test results in an appendix, and reported that:

“3.6.2 [The mother] produced an invalid score on the Millon Clinical Multiaxial Inventory – III (MCMI-III) due to invalid disclosure. However, there were indications, backed up by clinical assessment, of Compulsive, Anxiety and Post Traumatic Stress Disorder personality traits. There were no indications of personality disorder.”
37. Mr Flatman noted that there was a considerable amount of disputed evidence in this matter which it was not for him to resolve. His opinion was offered on the basis of the psychological presentation of the mother and the children without assumptions being made as to the veracity of disputed evidence.

The judge’s decision

38. The hearing before the judge lasted for five days. The local authority, supported by both fathers and the Guardian, sought final care orders with care plans for long-term foster care. The mother sought the return of the twins to her care and the placement of A with her maternal grandmother. Oral evidence was given by Mr Flatman; by an independent social worker ('ISW') who carried out two parenting assessments of the mother; by the children's social worker; and by the mother, the grandmother, F2, and the Guardian. At the end of the hearing the judge stated that she would make care orders for reasons to be given in writing.
39. On 17 April 2023, the judge handed down her reserved 20-page judgment. She found that the threshold had been crossed in the following respects (here anonymised):
- “1. The children have for many years been subject to varying levels of social care intervention under the category of neglect and emotional harm.
 2. The mother and F2's relationship has been volatile and the children have been exposed to this.
 3. F2 has a history of violence. He has sacrificed the children's emotional needs causing them to be exposed to arguments between the adults in the home. His mental health has at times been poor. He does not accept that he is the cause of concerns and has at failed to engage fully with professionals.
 4. F1 has a history of mental health difficulties and has struggled to prioritise A's needs over his own. He failed to protect A despite knowing of the environment she was living in when with her mother.
 5. A safety plan has been in place since October 2021. Part of this safety plan was for F2 to move out of the family home and to not attend the property. However, this plan has been significantly breached in that the parents have resumed their relationship and F2 has returned to reside at the property. Furthermore, F2 attended the family home on Christmas day [2021] despite strong advice from the social workers that he should not do so.
 6. The mother has insufficient insight into the risks posed to herself and the children by F2, she is often protective of him and minimises the breaches to the safety plan and it is clear that she does not see the risk factors associated with F2 and the significant risk of emotional and physical harm he poses to the children.
 7. The current home conditions are not acceptable; the poor home conditions have been noted by the police as well as social care. There is a smell of urine throughout the property, the property is littered by food debris, there is an overwhelming smell and reported fly infestation.

8. A's behaviour is challenging. She has been violent to her mother, siblings and grandmother. Her emotional needs have not been met by the adults caring for her and she has been blamed for family disharmony causing her significant emotional harm. Her needs have not been prioritised. She has been physically restrained by her mother despite this being strongly discouraged by the local authority and other professionals involved with the family. As a result the children are at risk of physical and emotional harm.

9. The children have been exposed to and are aware of adult issues.”

40. The judge gave her assessment of each of the witnesses who gave oral evidence. In Mr Flatman's case, she quoted from his report over the course of some three pages and continued:

“25. I set out Mr Flatman's opinions in that much detail as it was an extremely thorough and extensive assessment. His oral evidence was measured, helpful and I fully accepted his professional views in respect of the mother and children. In evidence, Mr Flatman did not deviate from his written opinion. He accepted entirely that the mother loves her children and has not set out to deliberately cause them harm, however, he stated that it was very sad that the mother makes completely heartfelt and reasonable statements regarding her love and care for the children but that is not what the children are experiencing. That is fundamental and crucial and the children's day to day experiences are not those of unquestioning love and care. Mr Flatman did not feel that there had been any insight from the mother and that she was, essentially, in denial and presents her version of the truth. The difficulty for the mother is that, on an unconscious level, she cannot bear to accept the implication that her conduct and behaviour have been a major contribution to the children's difficulties. All of the children now needed better than good enough care and that required a better than good enough carer. Stability is now crucial for these children.”

41. The judge reviewed the evidence of the ISW, who noted that the mother had steadfastly remained in a relationship with F2, despite knowing what was expected of her, and that this was a very poor basis for them remaining apart in the future. He deferred to Mr Flatman for an assessment of how this had affected the children. He described the mother as very intelligent, yet the penny had not dropped. The social worker, who had been in post for a considerable time, gave evidence that there had been no change in the pattern of the mother's thoughts. The judge described her evidence as knowledgeable and fair.
42. The judge described the evidence of the mother as being very troubling: minimising, evasive and deflecting in her answers. She showed an utter lack of insight and acceptance of the risks posed by her ongoing relationship with F2. Overall:

“41. ... She did not, in any real way, accept responsibility for the situation that the children found themselves in and the fact that threshold, at a fundamental level, remained in dispute was testament

to the mother’s inability to recognise the risks and concerns in the case.”

The judge then described the grandmother’s evidence as in some ways even more troubling than the mother’s, for reasons given in some detail. She noted that F2 had been disruptive during the hearing, but that his evidence was compelling. He was the most candid of the family members about events within the home, even when his evidence did no favours to himself or the mother.

43. The only paragraphs in the threshold that were seriously contested were 6 (mother’s insight) and 7 (home conditions). The judge had no difficulty making the finding about the latter on the basis of photographs and other evidence. As to finding 6, she said this:

“56. I have already set out the evidence of the mother was extremely concerning and it was in line with the views of the professionals that she lacked insight into the risk posed by F2. She was undoubtedly protective of him both in evidence, but also in her behaviours throughout these proceedings by allowing F2 to continue to live in her property notwithstanding the very clear concerns set out time and again by the professionals. Based on the written and oral evidence that I have heard I am satisfied that paragraph 6 of the threshold document is proved as drafted.”

44. This finding about insight and protectiveness was based on the evidence of all four professional witnesses: the social worker, the independent social worker, Mr Flatman and the Guardian. It was illustrated by the fact that F2 had been invited by the mother to spend Christmas Day in 2021 with the family despite a safety plan that had recently been put in place to exclude him from the property. Furthermore, weeks after the children were removed in February 2022, F2 moved back into the mother’s home and remained there until the week of the final hearing, when he moved out of his own accord after filing a statement supporting the local authority’s application.

45. The judge had the opportunity to make her own judgement about this issue when hearing evidence from the mother and F2. Her welfare assessment included these passages:

“59. I fully accept the evidence of Dr Flatman that all three children, individually, need better than good enough care as a result of their childhood experiences to date. Childhood experiences caused by direct harm and the risk of harm as a result of the behaviour of their mother, F2 and the collusion of the maternal grandmother...

60. ... It is quite clear to me that the mother, F2 and the grandmother have all prioritised the mother’s relationship with F2 over the needs and safety of each of these three children. In so doing, they have exposed each of them to emotional and psychological harm by virtue of living in a household where there was verbal and physical domestic abuse between the adults, and the risk of physical harm as a result of being caught up in those incidents of physical abuse. Each child has received inconsistent and neglectful care from their mother as set out in the threshold findings, and the assessment of Dr Flatman, which I

have already stated I accept in full. Neither the mother, nor the grandmother acknowledge that harm. They do not recognise the issue of domestic abuse or the impact on the children of allowing F2 to come to the property on multiple occasions against the advice and agreement of social care. Neither the mother nor the grandmother accept any criticism of the other; or recognise the impact on the children of the persistent harmful care the children were exposed to. There is an utter lack of insight or acceptance by either of them of the mother and F2's roles in the experiences of the children and the behaviours and difficulties they now exhibit. F2 does have some insight and acknowledges the harmful behaviours within the household but he still allowed the children to be exposed to that by virtue of his presence. There is, in my view, an unhealthy and enmeshed relationship between the three adults; the mother, F2 and the grandmother which would cause any one of these three children to be at risk of significant emotional and physical harm should they be placed back into the care of either the mother or the grandmother.

61. All three children now have very complex and individual needs which require a high level of reparative care and attuned parenting. ...”

She then considered the children's wishes and the realistic placement options before finding that care orders with a plan for long term foster care were in the children's interests, and necessary.

The HCPC complaint arising from other proceedings

46. The essence of this complaint against Mr Flatman was that he had accepted instructions in a case where the court order had directed that a clinical psychologist be instructed, that he had conducted a clinical psychological assessment of the mother in that case, and that he had conducted the MCMI-III test as part of that psychological assessment. In doing so, he was said to have worked beyond the scope of his practice. Mr Flatman denied these allegations. He stated (correctly) that he had referred to himself as a 'Chartered Psychologist' and further stated that he had not been aware of the reference to the term 'Clinical Psychologist' in the court order. He had conducted a psychological assessment, and not a clinical psychology assessment, and considered himself suitably qualified and experienced in using the MCMI-III test, which he had used from around 2015. He had not been trained in relation to the test at the time he conducted it in that case, but had undertaken training since.
47. The panel found that Dr Flatman was registered as an Educational Psychologist and had not attributed the protected title of Clinical Psychologist to himself. It found that he had accepted instruction as a clinical psychologist when he was not registered or qualified to do so, and that he had conducted a clinical psychological assessment of the mother in that case. It further found that he had conducted the MCMI-III test as part of that psychological assessment. It accepted that he was technically qualified to access the test, but found that its use in the context of a psychological assessment was beyond the scope of his practice. The panel found that this amounted to misconduct, but made clear that its finding was confined to the facts proved, and that it did not seek to broaden it to other instructions that Mr Flatman had received.

Submissions

48. The single ground of appeal is that the judge's decision was plainly wrong and unjust as it heavily relied upon the assessment of the mother and the children undertaken by Mr Flatman when he was unqualified to undertake such an assessment. In their skeleton argument, Ms Madderson KC and Ms Gordhandas submit that this constituted a serious procedural irregularity. The judge's decision rested heavily on the opinion of a witness who was acting outside his lawful competence. Had Mr Flatman's credentials been clear to the court in March 2022, he would not have been instructed. It is not possible to save the decision by reference to other evidence, or by divorcing the assessment of the children from the assessment of the mother. Decisions that are taken in reliance on expert advice in family proceedings are of extreme importance and there is a real risk of public confidence in the family justice system being undermined if judgments of this nature are allowed to stand. In such circumstances an appeal is the appropriate route for challenge. The mother does not seek to disturb the children's current placements, but she submits that the care orders should be set aside and replaced by interim care orders while a new, lawful, risk assessment is carried out.
49. In oral submissions, Ms Madderson KC argued that the court relies on experts to show necessary expertise to a high standard and to be who they say they are. Mr Flatman was registered as an educational psychologist but referred to himself as a chartered psychologist. It was clear from his letter of instruction that he was essentially required to carry out a clinical psychology assessment. He was qualified to assess the children and to answer the ten questions about them, but (as in the case for which he was suspended by the HCPC) he was unqualified to carry out an assessment in relation to the mother, to administer the MCMI-III test to her, or to answer any of the sixteen questions in respect of her. His length of experience could make no difference.
50. Under questioning from the court, Ms Madderson withdrew the core submission that it would be 'unlawful' for Mr Flatman to act outside his competence, so that he was legally debarred from accepting instructions of this kind. Instead, she relied on his having acted outside the BPS guidelines as a reason for the appeal to be allowed.
51. For the local authority, Mr Brett Davies submits that the appeal should be dismissed on the ground that Mr Flatman did not act outside his professional expertise. The mother's complaint, which is being investigated by the HCPC, is significantly different to the complaint that was upheld. Here, Mr Flatman did not hold himself out or allow himself to be described as a clinical psychologist. He described himself as a chartered psychologist and disclosed that he was being investigated by the HCPC. The issue of experts' qualifications was in the air in March 2023, with the publication of *Re C* in the previous month, and it was open to the mother's counsel to have cross-examined Mr Flatman on the issue.
52. Mr Davies accepted that the BPS guidance, both in the present edition and its predecessor, states that experts should ordinarily use their protected title, but he pointed out that this is guidance only. Only the HCPC has the authority to issue statutory guidance under paragraph 21 of the Health Professionals Order 2001. As to qualification to undertake the MCMI-III test, it is likely to have fallen outside the BPS Guidance but, in order to reach a conclusion about that, the court would have needed evidence from Mr Flatman himself.

53. Alternatively, even if Mr Flatman did exceed his expertise, the judge's factual findings and welfare conclusions were open to her on the basis of other evidence. The proceedings had been going on for a year and the judge was able to reach her own conclusion about parental insight and protectiveness.
54. In the further alternative, the local authority puts forward as fresh evidence a report that it had commissioned from a clinical psychologist in August 2024 after learning of Dr Flatman's suspension. It says that this substantial opinion further underpins the safety of the judge's decision.
55. As to procedure, in a respondent's notice, the local authority had described an appeal in this case as an abuse of process, but Mr Davies rightly did not pursue that submission before us. He submits that the appropriate course will normally be to apply to discharge the care order, with or without an application to reopen earlier findings. The position might be different in a case where an adoption order had been made.
56. Neither F1 nor the Children's Guardian participated in the appeal. F2 has filed a short skeleton argument opposing the appeal. In it he submits that it is not clear that Mr Flatman was not qualified to give the opinions he did, and that even without that opinion, the judge would have made the observations at paragraph 60 of the judgment (see [45] above): "there was plenty of evidence from the parties and social workers to support the judge's findings of fact and her evaluation of what orders were best."
57. We record and are very much aware that this court has neither invited nor received any intervention from either Mr Flatman or any professional body.

Our conclusions

58. In order to succeed, the appellant must show that the decision under appeal was unjust because of a serious procedural or other irregularity in the proceedings in the lower court: CPR 52.21(3). Her case is (a) that Mr Flatman was not qualified to give the evidence he gave, and that this amounted to a serious irregularity, and (b) that the irregularity caused the decision to be unjust. In summary, we do not accept either contention. We do not consider that there was a serious procedural irregularity in the instruction of Mr Flatman, and it has not been demonstrated that that there was any irregularity arising from his work in this case. Even if it were otherwise, we find that the judge's decision was not unjust because it was securely based on the whole of the evidence, of which Mr Flatman's opinion was but a part.
59. In relation to procedural irregularity, we accept that there were a number of shortcomings in the process that led to this expert instruction. From the outset, there was some laxity in the approach to the Part 25 procedure. Once the parties had agreed that a psychological assessment of the family was necessary, they rightly acted promptly. However, there was no formal application, accompanied by a draft order, and the court did not expressly dispense with that requirement. Instead it approved the instruction of a psychologist in principle, without giving thought to the type of expertise that was required, perhaps because the issues in the case were of a familiar kind. As a result, the court did not see a CV before it made its order. Then, the information disclosed by Mr Flatman about the ongoing HCPC complaint was not circulated and the opportunity for the parents or the court to take an interest in that matter never arose.

60. We do not excuse these instances of procedural slackness, but they do not amount to a serious procedural irregularity. The real question is whether they led to ‘other’ irregularity in the instruction of an unqualified expert.
61. As to that, the starting point is that (in contrast to the witness in *Re C* and *Re Y*) Mr Flatman was a psychologist who was regulated as an educational psychologist by the HCPC, and was chartered by the BPS. In addition he was extremely experienced, both as a practitioner and as an expert witness, so much so that the parties and the court were apparently content for him to be instructed without sight of his current CV. It would clearly have been preferable at any date for him to have presented himself as being an educational psychologist, perhaps in addition to being a chartered psychologist. However, the requirement in the 2023 FJC/BPS Guidance (see [21] above) to use the HCPC protected title, was not, so far as we are aware, a requirement that appeared in the 2016 FJC/BPS Guidance (see [19] above) or the BPS guidance that was current at the time (*Psychologists as expert witnesses: Best practice guidelines for psychologists*, July 2021).
62. Ms Madderson accepted that Mr Flatman was qualified to answer the ten questions regarding the children in his letter of instruction, but she submitted that none of the sixteen questions about her client was within his expertise. She was driven to submit that a clinical assessment of an adult in family proceedings could never be made by an educational psychologist. We do not accept that. The Family Court is regularly assisted by expert opinions from both clinical psychologists and educational psychologists. It is important that opinions are only given by suitably qualified experts and that there is clarity about the kind of expertise possessed by an expert and about the task that they are being asked to perform. However, the psychological assessment of a family will generally require expertise in assessing children, parents as individuals, parents as parents, and child-parent relationships. These elements are not sealed units but part of an organic whole. There will often be a considerable degree of overlap between issues and, as shown by the BPS descriptions of expertise (see [21] above) there is a degree of overlap between the skills possessed by clinical and educational psychologists. In many cases it will be neither possible nor helpful to seek to draw bright lines. The court has to take a broad, practical approach and to look to the substance of the matter, as well as taking account of witness availability within short timescales. There will be cases where one specialism or the other will plainly be more appropriate, for example where a problematic mental disorder in a parent makes it clear that assessment by a clinical psychologist is required. But where the court needs broad expert advice in the form of a whole-family assessment, a case might well be made for the instruction of an experienced educational psychologist. In our view this was the situation here. We therefore disagree with the counterfactual submission that the court would have been bound to reject Mr Flatman as a suitable expert in 2022 if it had known what is now known. It might or might not have selected another expert, if one had been available, but it would not have been obliged to do so.
63. Overnice distinctions between neighbouring psychology disciplines are likely to lead to unintended consequences that conflict with the policy behind the 2014 Act and the Rules. Commenting on CPR 35.4(3), the equivalent provision to FPR 25.8(1)(a) (see [14] above), Zuckerman on Civil Procedure (5th ed.) 21.43 states that the court’s policy is to limit the number of experts to the minimum compatible with the overriding objective. This clearly applies, equally or even more so, to children proceedings, where

delay is presumed to be contrary to the child's welfare. More than that, when it decides whether to give permission for an expert instruction the court must have regard to any impact of giving permission on the welfare of the child, including the impact of any examination or other assessment on the child's welfare, that being the first listed matter under s.13(7) of the 2014 Act. The court will therefore strive to ensure that any necessary psychological assessment is carried out by one expert only, provided the witness's expertise is sufficiently broad to undertake the essential elements of the instruction.

64. By the time of the hearing in 2023, Mr Flatman's report was there to be judged on its merits. He did not make any clinical diagnosis in respect of the mother, but instead he expertly pulled together the available information in order to arrive at a formulation of what had gone wrong in this family. It would have been a matter for the judge to decide if he was qualified to administer the MCMI-III psychometric test, but he was not asked about that and the mother's answers during the test were in any case invalid. It did not require psychological expertise to assess levels of insight, so Mr Flatman did not overreach his qualifications in expressing an opinion about that.
65. It should not be forgotten that the parties had the opportunity to test Mr Flatman's evidence at trial. He could have been cross-examined about his qualifications, experience and opinions. As it was, the judge described his report as an extremely thorough and extensive assessment, and she found his oral evidence to be measured and helpful. She was entitled to reach these conclusions, and to rely on his evidence.
66. We are not therefore satisfied that there has been a serious procedural or other irregularity arising from the instruction or the evidence of Mr Flatman.
67. The second reason for dismissing the appeal is that, seen objectively, there has been no injustice in this case. The judge's decision was based on the evidence as a whole and, while Mr Flatman drew matters together in his evidence, the other evidence so clearly supported the making of care orders that it is realistically impossible to envisage any other outcome. In this context, the evidence of the mother and F2 was of particular importance. Given the extent of the undisputed threshold findings and the chaotic state of their relationship, this was not a marginal decision and the return of the children could not safely have been contemplated.
68. Ms Madderson's ingenious submission, that because the court had found that expert evidence was necessary it is therefore not possible to rescue the judge's decision by excising it, fares no better. Even if we had found Mr Flatman to be unqualified, the appeal would not inevitably have succeeded. That would depend upon an assessment of the overall fairness of the proceedings. If the trial was unfair, the entire outcome would indeed have to be set aside (*Serafin v Malkiewicz* [2020] UKSC 23; [2020] 1 WLR 2455; [2020] 4 All ER 711 at [49]), but that begs the question, and here the trial was not unfair.
69. We add that we have taken no account of the expert opinion that was commissioned by the local authority after the issue with Mr Flatman's credentials arose. That was a responsible course to take, so that the local authority could satisfy itself that its care orders rested on firm welfare foundations. We nevertheless see the force in the mother's argument that an unscrutinised opinion obtained unilaterally outside of proceedings could not contribute to saving a previous unjust decision. From a legal

perspective, the second opinion is either superfluous or unavailing, and we have found it to be the former.

70. For these reasons, we dismiss the appeal.

Guidance

71. The fact that an expert's qualifications are called into question in one case may prompt parties in other cases to consider mounting a challenge to their own decision. However, as the present appeal shows, such challenges will only succeed where the trial court has accepted evidence from an expert who is later shown to have substantially overreached their expertise with clear consequences for the resulting decision. Where a genuine issue of this kind does arise, it is almost always likely to be more appropriate to make an application to the Family Court than to bring an appeal. An appeal court must decide whether or not to allow the appeal, perhaps long after the original order, with limited ability to measure the effect of its decision on the children concerned. By contrast the Family Court has the ability to gather up-to-date information when deciding how to proceed.
72. The most likely procedural vehicles for that are an application to discharge the care order under s.39 Children Act 1989, or an application for contact under s.34. In each case, the application is only likely to be allowed to proceed to a full hearing if an arguable case can be shown.
73. Alongside an application of that kind, a reopening of the previous findings might be sought by means of an application under the Part 18 procedure, as most recently described in *Re J (Children: Reopening Findings of Fact)* [2023] EWCA Civ 465; [2023] 2 FLR 1206 at [5-9] and in *Re Y* at [32-35]. Whether that course is appropriate will be a matter of judgement. Much will depend on the extent to which the previous findings overhang the current situation. To take the present case as an example, it is not obvious that much would be gained after this passage of time by seeking to reopen the 2023 decision rather than by simply applying to discharge the care orders, if that was in any way a realistic prospect, on the basis of the current family situation.