

FAMILY JUSTICE COUNCIL Debate Transcript

- 00:00 Ladies and gentlemen a very warm welcome to the 5th Annual Debate of the FJC. A motion which is of the utmost topicality (even though it has a question mark at the end of it), *'Experts in family justice, are they worth it?'*. We've got an absolutely cracking team of speakers for you. The biographies, I think, are in your folders and there's nothing more boring than the chairman reading out biographies, so I'm not going to do so. I'm Nicholas Wall, President of Family Division and I happen to be sitting here which doesn't mean to say I'm in favour of the motion that's why I've come into the middle to address you briefly. The other good thing about today, I think, is we've boxed the compass, really, of the Family Justice System. Looking at the audience, we've got everybody here.
- 00:44 When the 4 speakers have had their 15 minutes each, matters will be open to the floor. If you've got a question by all means address it to whoever you want to answer it but, if you want to make a point, just make the point. Try and be as brief as you can because there are a lot of people here and everyone will want to say what they want to say. So, if you can be brief so much the better. I propose to be very brief in opening. As I say, we've got 4 cracking speakers. Malek has been, I'm delighted to say, obeying the practice direction today of cross-examining an expert in the Guilford County Court. The expert was there for the afternoon only and didn't go above his, or her, allotted time and everyone was on time so the expert will be able to do all his clinical duties tomorrow morning. So that's very good and I'm very pleased to hear that. Glad to know that something's working.
- 01:37 So, on one side we've got Heather Payne and Malek Wan Daud and on the other side we've got Nick Crichton and Steve Goodman. So it's going to be a cracking debate and the sooner I sit down the better. So, let's start off with Heather.

Thank you very much Heather.

Heather Payne. Speaker.

- 01:51 Well, thank you very much President. It's a great privilege to be able to light the blue touch paper for experts in the Family Justice Council debate today on *'Experts In The Family Courts, are they worth it?'*
- 01:09 Well, in these straitened times, against a background of savage legal aid cuts how can anyone justify a bill of thousands of pounds for experts? Are expert witnesses in the family courts in danger of making things worse, contributing to children's problems by reducing access to justice, introducing delay or offering confusing or unreliable evidence? That was the mindset that led to the 2006 report from the Chief Medical Officer *'Bearing Good Witness'*, in the wake of the media frenzy after the acquittals of Sally Clarke, Angela Cannings and Trupti Patel. But to general surprise, his review did actually show that the main problem was not dozens of incompetent rogue experts, but problems of supply, continuity, support, time and succession planning. In other words, not an individual but a systematic and organisational problem.
- 3:06 The Chief Medical Officer suggested that expert witness work was done within the NHS, performed by groups of clinicians with in-built peer review and quality assurance. This was a great idea but the recent Cardiff University evaluation of this 'Alternative Commissioning of Experts' pilot, shows that the idea, although with many useful aspects, never quite got off the ground. It seemed the Legal Services Commission (LSC) and the NHS couldn't quite get it together to negotiate sensible contractual arrangements, amazing as that may seem.
- 3:41 But are experts needed at all? I realise I may be introducing a whole new dimension to the term 'optimist' when I say the LSC cuts may have done us a favour. They have

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made us consider '**value**' - and the value of an expert is a combination of cost, quality, availability and their effect on outcomes for children.

- 4:03 So, how many health professionals does it take to give a judge a 'light-bulb moment'? Looking at the evidence from Judith Masson's 2008 'Care Profiling Study' which was a typical family court sample, three-quarters of the cases involved neglect; Half involved physical injury but relatively few – only 7% - with major injuries. Masson describes 'substantial reliance on expert evidence' particularly adult psychiatrists or psychologists which were appointed in two-thirds of the cases. Overall 90% of cases used expert evidence and half the sample had three or more experts, one case going up to thirteen.
- 4:50 Involvement of five or more experts was associated with longer duration of case but we can't tell from that data if the cause was the case complexity or the experts. However, given the doctors that I know, get five together and you'll get six opinions. But I think we can justifiably ask some tough questions like exactly what each expert brought to the decision making in the case and how their time was used.
- 5:15 Figures for 2004 showed that a total of 5,300 experts were used in the family courts in England and Wales mostly, (about 70%) psychiatrists and psychologists, 10% paediatricians and 20% all other types. So assuming each one writes a report for maybe 10 hours per child, at the current rate of £135 an hour maximum, that's over £7m in one year, as an estimate of ongoing costs.
- 5:44 So, what is the worth of an expert? If I'm paying someone £135, or more, an hour I want to know what I'm getting. Can I guarantee rigorous attention to the detail of the case; careful and valid application of the evidence base; a precise and analytical problem solving approach; clear, thorough timely reports and opinions? What about the ability to listen to patient or client, exercise high level communication skills even in difficult and emotionally fraught circumstances? And how important is it for an expert to keep a constant focus on the well being of the child, promoting their rights under the UN Convention or even the Children's Rights Measure Wales 2011? I'm sure we all aspire to these things as much as each other within the Family Justice System, however an expert witness has to deliver all these things every time, and expects to have any of these aspects of their work minutely scrutinised by the collectively cleverest and most merciless group of people in the known universe – barristers. I always tell my trainees – don't take it personally, it is the barrister's job to make you look stupid.
- 6:54 Of course, I am a card carrying member of the obsessive, neurotic, perfectionist culture that drives the NHS, and this tendency to introspect, self question and bench mark our performance against our colleagues is pretty typical behaviour of my kind – a sort of professional herding mentality – safety in numbers (well, what do you expect after Bolam). Maybe it is something else experts are good for, and even though the court will never close itself to potentially valuable sources of expertise, it might actually be helpful for the system to offer some kind of uniform 'kite mark' for those of us experts who want to work in a suitable way. This might also help corral the one trick ponies currently galloping around untamed in some places. But it is an expert's job to stick to the knitting and answer the question and so we come to it. How many health professional experts does it take to change a lightbulb? Well, it depends on what's wrong with the lights of course. It might be the lightbulb but it might be the fuse, the switch or the power supply.
- 7:57 Let's use a traditional medical model to diagnose the problems that we might have with experts in the family justice system before attempting total operative excision. Many expert instructions are 'grape shot' in nature, leading to an expert report which is a load of answers in search of a decent question. This could be improved with earlier proactive involvement of experts, especially on composing letters of instruction, so that

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the correct, narrow, answerable question is asked of the expert. That would save time and money. 'Bearing Good Witness' identified problems with supply and succession planning, and providing quality assurance for experts' work. The current legal system which requires experts to give only their own opinion doesn't facilitate the usual clinical practice of peer review, when we discuss and share cases and opinions. Well, can I suggest that maybe everybody in family justice could benefit from a bit of performance review in closing the feedback loop? Regular feedback of case outcomes, peer group discussion between Doctors, Psychologists, Psychiatrists and even Judges, saying to each other, how did it go for you, can be very effective learning.

- 9:06 Thinking of value, we still don't know what on earth we spend our money on, amply evidenced by the interesting document that is the LSC fees schedule. We also really don't know enough about important outcomes, especially causes of delay; it may be four weeks to you but it's twenty-eight sleeps to a child. Experts could happily contribute to routine data collection on cases and bench marking of processes as part of an ongoing quality improvement. And of course value for the child is about getting it right. The particular knife-edge occupied by the child involved in the family court is indeed sharp and potentially painful. Leaving their family is a total child transplant, for them arguably more painful than a major operation such as a heart transplant, and with equally major potential long-term consequences for their life outcomes. However, leaving them in an abusive family can have even more serious long term ill effects which can also be inter-generational affecting not just them but their children. So what light can experts shine on a child's problem? Experience is necessarily a part of that, dealing with children day in day out, their growth, development, behaviour, being fully conversant with the wide range of normal and individual variation, but alert for subtle signs of concern. The day job is to treat the treatable and leave the well alone.
- 10:32 Experts can also bring limits. Not everything is knowable past a practical degree of certainty. A legal colleague recently asked me to make sure that when I was looking for supply of expert witnesses, I found some Geneticists. She told me at length the places she had gone to get an opinion on a family history, for a rare genetic bone abnormality in the mother of an injured baby. I asked what question the expert answered when they finally located them at great expense from abroad, and heard that their report didn't throw any light on whether the baby's fractures could have been accidental. The report concluded that it was impossible to say. The care order was granted. I am not criticising the expert here but their use added negative value to the case causing cost and delay because it gave a perfect answer to entirely the wrong question.
- 11:27 The expert can offer a summary of the best and most up to date available evidence from empirical research, systematic reviews and in the absence of anything else published professional consensus. The expert can offer understanding and interpretation of whether that research is valid and applicable, what it can tell you and what it can't tell you. For instance the Cardiff systematic review data that we now realise tells us that you can't reliably estimate the age of a bruise by its colour, and the amassed evidence that tells us that posterior rib fractures in babies are highly specific for abuse and that bruising in a non mobile baby is hardly ever accidental. That is carefully evaluated high quality published double peer reviewed evidence to get into a systematic review. I know because I have read those papers. This sort of evidence must be carefully differentiated from dangerous nonsense such as papers on temporary brittle bone disease drawn from biased population samples subjected to inadequate assessments and impervious to proper methodological critique.
- 12:34 Medicine and science are not perfect and don't know everything but the proper use of methodology does **not** allow you to 'prove anything with statistics'. You can support or falsify only the question you set out to answer, which brings us back to my point about the question being more important than the answer for the expert witness. So is there

light at the end of the tunnel for the expert in the family court or is it that oncoming train? My lords, ladies and gentlemen and members of the Bar, the expert witness in the family court can offer unique knowledge and skills as long as they are recruited early, instructed forensically and used effectively to assist case decision making. Our focus must be on value to the child. If we use knowledge and skills to achieve better and quicker outcomes for children in the family courts, experts are worth it.

(applause)

Nick Crichton. Speaker.

13:38 All right. Good evening everybody. I am a bit nervous speaking to so many people I know and I am going to see again and again and again, so that they can attack me. But Dame Judi Dench, I think it was, who said there is nothing wrong with having butterflies in your stomach as long as you make them fly in formation.

14:05 I speak from the standpoint of sitting in the family proceedings court for the last twenty years and I'm here to speak against the motion and already I feel a bit of a fraud, in truth, because I am not completely against it. I think we need a rethink. Yes we do need experts, and I've no doubt at all that expert paediatricians, psychiatrists, psychologists and their assessments are a very important part of the information that a court needs to enable it to arrive at a best interests decision for children. We are very fortunate in this country that we have the experts available and, that at least up until now, we have been able to afford them. Who wouldn't want Heather to help them make a decision in their case. I have worked quite a lot internationally, principally in Eastern Europe and Africa. Last weekend I returned from training judges in Namibia. In those countries there is no concept of the kind of assessments that we have available to us in our courts, and which until now we have taken for granted. But, and I know you saw the but coming, I have a sense that we have lost control of our own proceedings. If I look back twenty years to when the Children Act first came in, in September 1991, we rarely saw in court anyone other than the social worker and the guardian ad litem as they then were. Experts since then have become used more and more and more. I do believe that they have brought added value but, and here is another but, we need to be clear about what it is we need from an expert - who is the right expert to provide what we need and to make sure that they are properly and succinctly instructed.

16:27 I fear that we have come to abuse the use of experts. It is too easy to hear in court. *'We think we need another experts report'*. You have got a whole pile of papers and files on your desk and you have got six more cases to do today and somebody has offered you a way out. It is too easy to say, "yes we will have that expert's report" and you have tacked another three months delay on to the decision for the child.

16:57 Some points at random. I still remember being extraordinarily angry when some years ago at a seminar, a psychiatrist boasted to me that he was having his yacht refitted on the proceeds of the reports that he was providing to court. Another psychiatrist regularly provides reports to my court, even now, fifty pages long. The first two relate to this family, the last two relate to this family, and the middle forty-six are pages from his text book and I have read those. I don't read them any more, I just read the first two and the last two because I have seen it again and again and again. It is abusive. And how many more reports do I need to read that tell me this parent has got to be clean of drugs and alcohol for twelve months before we can think seriously about whether they can look after their child? I don't need reports to tell me that. There is an argument here for specialist judges and judicial continuity but that is not the debate this evening.

17:55 We have, haven't we, long since arrived at a point where proceedings are seriously delayed as we await yet another expert's report? So, yes, this is my fraudulent position.

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We do need experts, but somehow we need to find a more efficient way of securing what we need from them - and I've been speaking for five minutes now so this must be a record because I have gone five whole minutes without talking about the Family Drug and Alcohol Court, but here it is. I want to outline the model and many of you will know the model that we use in that project. We have a team of social workers; of substance misuse experts; a child and adolescent psychiatrist, and we have an adult psychiatrist available when we need him. We also have a link into the local authority housing departments and we use parent mentors. That is the team that we need to deal with people with serious drug and alcohol issues. When a case is referred to that team we get a single assessment report within twenty-one days. Often within that time we have got the parent into treatment, sometimes within 48 hours. It is the immediacy of what we are offering that is important. If we need the input of another expert, then we invite the local authority to buy in that further expert but very rarely do we find that we need anything more than the team are providing.

- 19:37 I stress that this is a model for parents using drugs and alcohol but I believe that it is a model which can be adapted for other problems. The most obvious ones that spring to mind are mental health and learning disability and also domestic abuse. I believe it's a flexible model. I want to stress another point. This team is independent of local authorities and like it or not on the big city estates in this country, the local authorities are seen as the enemy. I think that's pretty hard for social workers to hear but I hear every day, *'They only want to take my children away'*. I say *'You have got to work with these people. They want to support you'* – and they reply *'No they don't want to support me, they just watch you until you make a mistake so that they can take your child away'*.
- 20:31 I still get the argument that *'they are only trying to meet their adoption targets'* but I don't get that as often as I used to get it. I do think that's harsh - harsh for social workers to hear and in many cases it's unfair, but the important thing is that it is the perception of people that that is the position, and unless and until that changes, unless and unless and until the Munro review gets an opportunity to bite and we enable social work to get a better name, a better reputation, that's how it is. The benefit of the team that is independent of the local authority is that by and large their assessment is accepted.
- 21:24 In the Family Drug and Alcohol Court we have got away from the perception that it was the local authority who assessed us so it was always going to be negative and we have got to a position where some, not all but some, parents actually come to accept the reasons why they can't look after their child. We had one mother who appeared in my court, I think she was only about 20 or 21. She had a baby, three months old. She had been in a project for two months and she came into court weeping. We have reviews of these cases every two weeks, frequently without the lawyers attending. The lawyers attend the important hearings, the CMC, the IRH or if there is any problem that needs to be addressed. But there weren't lawyers there that day and she came into court weeping. The head of the team said *'she wants to say something to you'* and through her tears the mother said: *'I have learned so much from these people in two months and I have learned that my journey to recovery cannot take less than two years and I have learned that I can't expect my baby to wait two years'* and she gave her child up for adoption and she did it willingly, reluctantly and with great pain, but she understood why she was doing it. That is the value of an independent team.
- 22:55 Heather has already spoken about Bearing Good Witness. I was going to talk about that too. I won't quote from it but the idea in Bearing Good Witness is not so different from what I'm suggesting here - that there should be National Health Service teams of experts who can draw on the expertise that is required for this particular case and provide a single assessment. It's sad that the pilot project didn't really get going but the Family Justice Review has suggested that it ought to be revisited and I would agree with that, because what we all want is what is best for the child. And so I am not moving

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against Heather but I am moving for a rethink on the way that we obtain expert evidence and I believe that the way forward is multidisciplinary teams, independent of local authorities.

24:07 Thank you so much.

End of Nicholas Crichton's Speech.

Malek Wan Daud. Speaker.

24.18 Well, I rather felt that Nick's butterflies flew in a Bomber B52 formation all over my paper which you will see in your packs, because what I say is this: '*Experts in the family courts, are they worth it?*'. '*Yes of course*'. I remember reading Judith Masson's paper which said that three-quarters of care cases in her studies were neglect cases and I reflected on my own practice in surprise as I think barely 1% of the cases that I do are neglect cases. Therefore I say at the outset, when I approach the issue of experts in cases it comes from a particular bias.

25:07 The use of experts in family proceedings are, of course, very topical, which is absolutely right, as Heather pointed out, in these days of modern hard times. They represent a significant cost in proceedings. I say very clearly that they provide valuable information and insight into making these draconian decisions that the courts have to make and therefore represent good value for money. Ultimately they have to be good reports, they have to be based on sound methodology and just as there are poor barristers, there are poor experts. We have all of us in the family justice system been at the receiving end of poor quality professional work. That's not to say that people who provide a poor service always provide a poor service. Occasionally people who do very good work provide one piece of work that is not as good, not as well prepared and not as well thought out as the rest of the body of their work and I think that we need to bear that in mind when considering the value of experts in family proceedings.

26:24 The Norgrove Report recommends that instructions of experts remain in the hands of the judge responsible for the case, subject to tight controls and subject to judicial continuity. As Nick says, we are not talking about that this evening, there are also other things that we're not talking about, but we'll move along. Ian Peddie QC gave a talk on expert witnesses at the ALC conference last month and those of you who were there, will recognise that I have lifted quite a lot of information from his paper, with his permission.

I think we should look at our existing structure. When to instruct an expert? Section 3 of the Civil Evidence Act, is the starting point, building on the common law. Rule 25.4 of the new Family Procedure Rules and Practice Direction 25A. Any experts, who are instructed to provide work in the courts should have these rules and regulations on their desks and refer to them during the course of their work because if you don't, you run the risk of falling foul of the rules and being one of those experts that are not going to be instructed again and your report and expert opinion will have hold less weight and be less useful.

27:48 My practice, as I've said, is mostly non-accidental injury. I think that therefore more and more, there is a tension between the court appointed forensic experts and the treating doctors, the information from the hospital, the information from the health visitors. What are we relying on? As was emphasised in the Kennedy Report that the two are very distinct and a treating expert should not be propelled into the role of an independent expert instructed to assist the court. There has been in the last three months been at least one case I know of in the High Court before Mrs Justice Theis on exactly this

point. Where treating doctors who have been propelled into giving expert evidence very early on in the case, and with all sorts of difficulties afterwards. There have been complaints and there is a GMC investigation and the BMA were involved and the experts were then appointed. The treating doctors then appointed lawyers and this case took a lot of High Court time. Everybody in that case, with this satellite litigation, lost sight of why we were there. And why were we there? Disclosures had been made, some very strange medical records had been taken, assumptions made and then evidence given. What should have happened, was that there needed to have been much more robust early management of the case so that the *treating* experts should not have been propelled in to try and get early resolution. It just derailed everything.

29:48 Treating experts have a very different remit and starting point from the court appointed expert. A treating expert is looking at dealing with the identified issues, treating it and looking for a positive return to normal function. That's what they are there for, that's why they are intervening in this child's life. The forensic expert instructed by the court, looks at causation, timing, prognosis with the specific aim of fact finding and all with the satisfaction of the threshold criteria in mind. That is a legal question, that is not a medical question and quite often that's the point of a good letter of instruction. It is very different from approaching it arising from a referral from the Senior House Officer who sent up a child through A & E and you are dealing with it at the time. For the court appointed expert, it is a paper review, you may or may not see the child but actually you are looking at causation and looking at the questions that the court wants.

30:53 Now I have listed in my papers, situations in practice where I say it is essential to have an expert. Very recently there has been a move from some members of the judiciary to say that in fact paediatric overviews by Paediatricians are unnecessary. We should be cutting down on such instructions, because that is another expert in the case, it's obviously more money and it's obviously going to take some time. My experience of these cases is that Paediatric overviews are essential to pull all those strands together.

I have been doing medical cases of severe accidental injury cases for ten years. I pride myself on knowing some of the medical terms, some of what is going on and I can talk about subdural haematomas and the triad until the cows come home and I frequently do. Do I, can I, pull all the strands together, do I really know what I am talking about? Probably not, and that is why a little bit of knowledge is a very dangerous thing. It is the thing, I think we need to guard against. That is why I think paediatric overviews are very very important and I have listed there the sort of issues that we would need experts on – mental illness, substance misuse etc.

32:23 Now I can see Mike Shaw here so I am tempted to embarrass him because I can... but seriously, looking at a case with issues of substance misuse, I don't really need a Psychiatrist to help me know that one of the parents needs to be free of substance misuse for twelve months before they can properly look after a child without the oversight of statutory intervention via the courts. What is useful to know are things like what are the triggers, what kind of alcoholic is this person? Are they a binge drinker? Are they somebody who can't actually manage the day without a drink? Are they one of these people that in fact they deal with the stresses and strains of life pretty well, then all of a sudden they go off on a bender, will be comatose for three days – during that period of time they can't look after themselves, never mind anyone else? So why do they drink, what are the issues, why are they seeking solace in substance misuse? And I often feel that there is a tension between my own life and the lives we pore over in minute detail because there are times when I don't manage a week without coming home and opening the fridge and popping open a bottle of wine! I think that we need to accept that these are the difficulties that people have, we all have them but to a greater or lesser degree.

34:08 When the Court is considering parents with learning difficulties who haven't been assessed, the court would clearly be assisted by such assessment. Often whilst it is clear that they have limited functioning, they are not so limited to attract the services of the statutory sector. The reality of the world in which we now live, unless you are so learning disabled you can barely dress yourself, you will not get very much of a service from adult learning disability services because there is no slack and so these people function but just not very well.

There are tools available that are useful and one of the things I highlight is the problem when the social work in the case is poor or the assessments carried out can't be relied on. What I am talking about is not just the perceptions that Nick talked about. In my submission Matthew Hutchings MP has a lot to answer for promulgating the myth of the adoption quotas that, according to him, of course, motivate all local authorities, and the perceived lack of independence of the official solicitor. People don't believe that they are there to assist.

35:31 The reality of an inner London social worker with an overstretched, amazingly high caseload or a senior practitioner is somebody who's been qualified for four years. The manager has been qualified for two years beyond that and so in my view there is a real danger of a lack of supervision; a lack of knowledge flowing from experience and of course; unsurprisingly enough in those circumstances, a large number of these practitioners are very, very demoralised. Now, is there a role for the independent social worker? Well in terms of using tools like the Sue McGaw's PAMS tool, I say, yes. My experience is that very few social workers on the front line have either had the training to conduct a PAMS assessment, if trained have ever carried out a PAMS assessment. Even if they could in theory do it, given their caseloads and what they have to do, they haven't got time because it's labour intensive and what about all the other families they are supposed to be looking after? And what about all the other children they have responsibility for? I think that is the reality, just as Nick says, once the reforms within the Munroe report have come to fruition and things have changed, if they do, there will be a much higher morale within the world of social work. There will be a re-skilling of the world of social work. We all hope this will be the case. I can see one social worker in the background disagreeing with me, you know it may well be that I live in an unduly optimistic world.

37:22 I've highlighted one case in the paper where there was a possibility of a real injustice. In this case it was the evidence of an American Paediatrician that led to the instruction of a Paediatric Radiologist and later a Paediatric Nutritionalist. It was this combination of experts who concluded that the previous diagnosis of non accidental injury was in fact incorrect, that one of the children was suffering from scurvy which caused the bones to be brittle. Now it is exceptional but that is the point of these cases. In fact, all the cases that come before the family courts are exceptional by their very nature. Ordinary families with ordinary children do not suffer the sorts of injuries that are part of my caseload. They do not have the difficulties that the families that come before the family courts, do and I think that is one of the things that we sometimes forget, just how exceptional this is.

While we are not talking about rates of pay this evening and the new rates of £135 an hour and I emphasise the new when referring to rates pay. Less than six months ago we were talking about medical experts who were charging between £250 and £300 an hour, independent social workers who were charging fees approaching £200 an hour and they had things like waiting times, travel times and I have to say that they were the exception but they existed. There were times when it became very difficult to justify and understand the fee structure. I'm not convinced that the new fee structure and the way that the Legal Services Commission have now swung their pendulum in the opposite

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direction and independent social workers seem to be perceived as having no value and are unable to charge anything for their expertise seems to me to be almost as bonkers as the psychiatrist who's repainting his yacht.

39:40 It's clear to me, and I hope that I that I have persuaded you that experts in family cases,are definitely worth it.

39:54 (applause)

Steve Goodman

40:01 I thought I'd start by recognising the demise of the paper version of Community Care, it's the last copy this week. And very unfortunately for independent social workers there is a little article about them being forced out of the court system. The quote of the former Chair of Nalgro (I can never say that), says the value of ISWs cannot be underestimated, so do we need to say more? (I think she meant overestimated anyway).

40:32 The sort of person I am is that immediately Alex asked me to do this I regretted agreeing to do it but I don't usually speak to such an august audience and I'm concerned that you'll think me an expert in the matter in hand and immediately think that I was speaking the truth personified. But it's alright, I'm a qualified social worker.

40:57 So I thought that to defend myself if I do a little bit of research about who was around tonight and I started with the chairperson The Right Honourable Sir Nicholas Wall. I also have difficulty in working out what to call people in an environment like this. Anyway, so I Googled you and almost the first thing I picked up was a speech you made to the Expert Witness Conference 2009. What was the first thing you did when you started speaking? You basically advertised your handbook 'Expert Witnesses In Children Act Cases', apparently a snip at thirty quid. So, as mimicry is the sincerest form of flattery, I'd thought I'd do the same here. So - here's my book (laughter), 'Social Work Reclaimed', which is the story of how we turned social work around in Hackney and what's better news is that it's a bargain at only twenty-two quid! So, get your copy.

42:05 So, I think I'm here because of what we did in the London Borough of Hackney over the last 4 years. I spent a lot of my social work career in Leicestershire, working as a Social Worker and as a Manager and took over the children's services in Hackney in 2004 and at that time Ofsted had made some announcements about how much progress had been made by the social workers in Hackney and I think that time they had 2 stars and apparently were performing well. And almost from the first few days I took over, I just realised what a terrible service the social workers in Hackney were providing for the families of Hackney and we thought long and hard about how we were actually going to do something about that and we realised that there was no way tweaking the service was actually going to make it better.

43:00 So, we conceived and implemented the 'Reclaim of Social Work' model. And in the process of doing that we parted company with a hundred managers and social workers that were working in Hackney who we didn't think were up to the job and we replaced them with highly competent, intelligent, confident and skilled social workers. And this totally transformed the offer to parents and, at last, we were doing what the '89 act expected us to do. Since 2004 in Hackney the number of looked after children reduced from 470 to 270 today. And that's what good social work can do with parents.

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- 43:41 Now we've left Hackney and we formed, this is my second advert, we a social enterprise called 'Morning Lane' for those of you who know about London and Hackney you'll know that's where the Hackney social services offices were, and now we're helping local authorities up and down the country looking to see whether they can implement similar improvements. We're very much helped by the Munro Report and the 'Reclaim Social Work' model is quoted extensively in that report.
- 44:09 So, good social work. Good social work is about clear assessment, swift action and based on evidence. Social workers who endlessly assess, then merely sit and wait, usually at their computers, and admonish and extol parents to be different, are poor social workers. Social workers need to be able to use sophisticated methods and tools that have a good evidence base and use them with empathy and skill. In this way many parents can be helped to be better parents and the risk to children reduced. Approaches such as family group conferences, mediation, the work that Nick and Mike have done in the Drug and Alcohol Court are all sensible approaches, many of which should be done by local authorities before families ever appear in court. If this was to be the case nationally, far fewer cases would ever come to court and those that did would be much more clear-cut and therefore fewer experts would be required.
- 45:09 It occurs to me that some of the problems we have in children's social care nationally is reflected in the picture painted by Judith Masson about the court proceedings themselves. Malaise in the social work profession, malaise in the legal profession has really led to experts being called to hide the problem, rather than address it head on. What the courts need to do is exactly the same as what we've done in Hackney under the 'Reclaim Social Work' banner and what we are now helping other authorities do. We need to solve the problem and not wallpaper over it.
- 45:42 Another quote from you, I think, chair, or, almost another quote from you. *"It is my firm view that the competent and conscientious social worker has nothing to fear and much intellectually to gain from the undertaking of child protection work"*. I think that is the phrase that you used about experts. And to my view this applies to Magistrates and Judges too. If local authority social workers and magistrates and judges took this advice, did their job well, then the need for court appointed experts will diminish. Moreover if health colleagues, particularly paediatricians, and I'm sure Heather does, but not all do, played their full and rightful part in the assessment and management of child protection cases before they ever got to court then again the need for experts will diminish even further.
- 46:27 It is my contention that the use of expert witnesses to provide a vehicle by which parents' solicitors can say to the parents: 'enough is enough, I think you should withdraw your objections' is only letting judges and magistrates off the hook. It is their role to evaluate the evidence and to make a decision and although it may be comfortable for them to use experts for that to happen, enabling the parents to arrive at that decision themselves, it takes no account of the delay for the child in the matter and the possible harm that delay might do to the child. So, procrastination. We all know that taking a child away from a family is one of the most heartrending and difficult decisions we have to make as a society. We all in our private lives from time to time have to make difficult decisions, sometimes the balance is 60, 40, what do I do? Some of us procrastinate for years about that, others are quick to make it. Who makes the best decisions, the procrastinators or the jumpers? It's not really that easy to say.
- 47:29 Expert witnesses are sometimes used in care proceedings as a form of procrastination but lengthening the time is not in the child's best interest, so why procrastinate, what we should do is act instead. It may be that if procrastination might work for a small minority of cases in the court. It might make changes in a small number of my children that come

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to court but remember Masson's work shows that even when care orders are not granted in court, something like 85% of the children who are returned home, have subsequent major issues that have to be dealt with. So really, I think we should almost be Benthamites in this and say 50 young children for whom a delay of a year is an extraordinary proportion of their life, wait for that long for a settled future for the sake of one changed position for one child. I just don't think that is acceptable, buying time for that child, and their parents, is time lost for all of the other children.

48:41 Experts might of course sound very plausible, use a good evidence base, bring information to bear to support their conclusions, you would expect nothing less. But you must remember it is still only their opinion and it is the court that must decide. Allowing experts to influence parents' views and to stop opposing the care application is common place and we know that it's really not the way forward. We are tolerating a system where the role of judges and social workers is being taken by expert witnesses in some cases, but there is no such thing as an expert who is independent. They all have a value base and many are influenced by that great man Freud who is very good when it comes to middle class angst but may be not so good when it comes to working out what are the best theories to use in the families that we deal with.

49:40 Michael Rutter, Professor Stephen Scott, and others, argue strongly for evidence based work with families and the research shows that the best evidence base for explaining and changing family problems and dynamics comes from behavioural and systemic thinking where the here and now, the systems that people inhabit in the present are better explanations and predictors of future behaviour than delving into people's childhood experience and the innermost depths of their minds. Yet, many expert witnesses continue to practice within psychodynamic paradigms. Even when expert witnesses are not substituting for the work that should be done by the local authority social workers, i.e. when it is not about family functioning, there is still a long history of experts getting it wrong.

50:24 The very term expert leads to non-experts kowtowing to their views and courts giving greater weight to their opinions because of the label that they have. Liam Donaldson concluded that lack of quality of expert witnesses was a function of lack of quantity, because Doctors don't want to be vilified by the press – well welcome to the world of child protection social workers. The same has happened here, good social workers often move on to other roles, GAL's for instance and of course there are still highly competent social workers in local authority Child Protection teams; the general level of competence is just not good enough. This has led, quite understandably, to the courts having low expectations of social workers and it really doesn't have to be like that. Bearing good witness quotes David Spicer who makes the point that the lack of quality of Doctors starts before a case ever gets to court, a lack of appetite to stand up and be counted.

51:27 So, what exactly are we all frightened of, judges, social workers, doctors. We need to reclaim the ground in a system that is legitimately ours and act with confidence, be assertive and play the part that the system has given us, in that way children will get a good deal, we will be fair to parents and the need for expert witnesses will diminish.

Chair

51:54 Thank you very much to all four speakers. This is really as I said before, if you want to make a point make it, or if you want to ask a question, ask a question, I think there is a roving mic...2 roving mics, even better. Forgive my eyesight, which is terrible, if I don't recognise you. Can we have someone starting it all off, please?

Questions from the Floor

52:16 My name is Tracy Boyland and I am a domestic violence risk assessor who didn't assess the risk of that coffee cup there (laughter). I noted that there was very little mention of domestic violence among the four speakers, apart from a brief mention from Judge Crichton about the possibility of specialist courts and specialist domestic violence teams. I find that unusual because a glance through the serious case reviews from 2010/ 2011 will show that 50% of those cases involved domestic abuse, quite severe domestic abuse and very poor assessment thereof, so I was a little surprised that there was very little said about it.

53:04 I also have a suggestion in terms of the matters that were being discussed around timescales, around costs and in particular something Dr Payne was saying about the forensic instructions given to experts. Because, as a domestic violence risk assessor, I very often become involved in cases where there have already been assessments done by Psychiatrists, by Psychologists and others, who actually lack the expertise in domestic violence and, therefore, a lot of money has been spent and a lot of time has been spent, hoping to get answers, particularly about the future behaviour of perpetrators and the answers haven't been forthcoming. In fact sometimes, as Steve Goodman was saying, there is a great psychodynamic analysis of the person sitting in front of them, very little to say about the risks a particular person poses to whom, and in what circumstances, which is, of course, what domestic violence risk assessment will give you.

54:08 So, I suppose my point is, that one of the ways in which that could be solved is to appoint an appropriate expert. If you're looking for an expert in a particular field that is outside the expertise of the medical profession and, perhaps, doesn't belong in a medical model appoint an appropriate expert with the appropriate expertise. They are out there and I think that will reduce time scales and reduce costs for many cases.

54:36 So that's my suggestion but I also have another couple of very brief points, if I may. I was...as someone who's been working in the family courts in public law cases for several years, I welcome cross-examination on my cases and I think where children are being removed from their family of origin the evidence should be, and ought to be, thoroughly tested and I think that is perfectly right and proper. I find it disappointing to hear barristers quoting themselves as saying that their job is to make the expert look stupid. I believed that the family courts ought to be a collaborative process. Sometimes I think I find barristers very adversarial but a lot of the time I find that the central concern is the well being and the welfare of the child and I don't always find that is what is happening in court. I don't always find that I am made to look stupid, or feel stupid, but in fact there is a collaborative process happening. My final little point is that I was very recently in court, last week in a case where I was instructed by Hackney local authority where the case was moved forward by an assessment so they still are being used by Hackney.

(inaudible)

55:52 **Chair**

May I just say that I take your point. It does seem to me that if there is issue in the case of domestic violence, you want to go to somebody who knows about domestic violence and that is the function of the court to actually to say to the parties, and to everybody, I want to know about this particular issue and I want someone who can assess it for us properly. Can we have another comment please?

56:14 I'm Penny Cooper from City Law School.

On this question of: 'Are they worth it – experts?', I wonder if the answer is an equivocal sometimes they are and sometimes they are not. But, we are not very good at identifying the cases where they are worth it and this is harking back to something in the Norgrove final report. Do we need more guidance for judges and more of a look from judges at the cases where an expert witness is proposed, to see if it is really necessary? And, if we have got the right one who is going to give reliable expert evidence?

56:49 Absolutely, that's certainly my view for the judge to identify the issue with the parties and then to say what evidence do we need to address the issue. Sometimes it is not necessary to have an expert at all, sometimes it is. I mean if you have a broken limb for example, the parents say it happened because the child was stuck in a cot, a Doctor can tell you that as soon as possible.

57:12 **Heather Payne**

I think this is what I mean about front-loading of expertise. One of the things that somebody with expertise can actually contribute to that decision making process is what questions are answerable because quite a lot of questions get asked that are simply not answerable given the current state of knowledge, so there is no point. It is like the Geneticist that I quoted, it was practically speaking irrelevant to know what that Geneticist had to say about the inheritance of brittle bone disease and rare bone disorders because that wasn't the question at issue. It became a red herring, an expensive and time-consuming red herring and that is my point. Had somebody asked me...when a colleague asked me about it – the first thing I said was '*well what did you want to know?*' and it became immediately clear that what they wanted to know was unknowable so that is my point about when you use the expertise and I don't know if Doctor Liz Gillett later on will say something about the possibility of using a sort of look at a limited bundle in order to advise on that.

Nicholas Crichton

58:36 The President's comments I think bring us back to the point that I avoided about the need for experienced specialist judges and continuity of tribunal and this has been touched on in the family justice review quite heavily because there are far too many judges, in my personal opinion, who are doing this work only about eight, maybe ten, weeks a year. If that is all you are doing, you don't build up the knowledge and the confidence to embark upon the exercise of discussing exactly what is needed and what isn't needed. Too many of those judges are, perhaps, the least experienced person in the court who are being asked to make the decisions. One other point I want to make, after listening to Malek, and maybe I should have alluded to this. In my work in the family proceedings court, the vast majority of cases I'm dealing with are the neglect cases and of course, where he is working, and higher up the judicial tree, you're dealing with the injury cases and there is a very different atmosphere when you're dealing with those sorts of issues.

1.00:00 I'm Mary Ryan, I'm a solicitor

I have worked a lot in care proceedings in the past and I am also part of the team evaluating the family drug and alcohol court. I just wanted to raise an issue about who is seeking expert assessment sometimes. I entirely agree that, actually, if you had judicial continuity and specialist judges, you could reduce the need for experts as if you had the Hackney model and the sort of Munro reforms within social work you might also manage to reduce them. But, in our experience, in doing the evaluation for the family drug and alcohol court, the interesting fact was that often it was the local authority lawyers who were concerned about whether or not the team approach to assessment

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was going to be strong enough if the case, for whatever reason, moved out of (FDAC) and into another court so they were wanting expert evidence to prove their cases. They were the ones who were most concerned at the lack of an adult Psychiatrist; for example, so I think it is not always parents who are seeking additional expert evidence. It is about the local authority wanting to dot the i's and cross the t's in terms of their evidence because they are concerned their social workers won't be able to produce the sort of strength of evidence that the judges and the magistrates and the courts are going to want, so that is one issue. The other issue is, I entirely agree, that parents need to feel involved and engaged in what is being done to them through assessment. Social workers can make them feel engaged and can make them accept the assessment but it is, unfortunately, all too rare at the moment.

1.01:55 (inaudible background conversation)

1.02:00 I am a District Judge from Brighton Family Hearing Centre. I am strongly in favour of experts provided, as the first speaker said, they are the proper experts, the right experts and that, they are properly instructed and that is the training on the JSB training courses. Make sure you have got the right expert and the right instructions, but what I want to say is of course, one has to identify which area we are talking about and I want to talk about the private law jurisdiction for a minute. Many of those cases are highjacked by adult issues and the last thing that seems to matter is the interest of the child. It's a nightmare because it is difficult to stop the adult issues embroiling themselves in the child issues. The other thing is that I do not believe that we are properly listening to the voice of the child. We are not listening to the inner voice of the child and if you think I don't know, I do and I think we need to address those matters before we decide on what we are going to do about experts. Thank you very much

Chair

1.03:23 Can we have Dr Jacobs?

Thank you. I am Brian Jacobs. I am a child Psychiatrist at the Maudsley. I have worked for something like twenty-five years as an individual expert and the last few years also as part of the multidisciplinary team at the Maudsley. I have concerns about the governance of experts and the quality of experts. I have concerns because I think it is very variable. I have concerns about the appropriate use of experts. In other words, I think there are times when I actually decline instructions because it is not appropriate. Or, I feel that the social workers really ought to have these skills but consultation with me might help them have more confidence and that would be a heck of a lot cheaper and quicker. There are other cases where I think long expert reports done by a multidisciplinary group have actually come to the plum-wrong conclusion because they have missed that there is something biological going on in the case. And, in a way, Malek has referred to that in the scurvly case he is referring to.

1:05 I have come across cases where other sorts of things such as Autism have been missed and Mike and I (I am sorry to take your name again, Mike) have done some thinking about would there be a way, without prejudicing the case, a panel of people who were experts, who wouldn't then be instructed, but who could work with the judge to think is there really, in terms of the evidence that is actually there, is there a need really to appoint an expert and, if so, what is the critical question that's being asked? So for me, that has been reflected in instructions that are a sort of scatter gun approach and others that actually have been very specific. I wondered why they are as they are, until I have actually met the people and then I have really understood why these questions have been put in the way they have. And the honest answer is that there are never going to be enough multidisciplinary teams, there are not enough child mental health experts in the country to service the NHS needs, let alone the court needs. So you are going to have to be more selective, you are going to have to train yourself to use single experts when you

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really can get away with that and you are going to have to reserve multidisciplinary team work for those occasions when they really are more than a single mind can bear. I just offer those comments.

1.07:05 I am Anne Haig, Chair of NAGALRO.

I think it is very interesting and there are obviously very good examples of where work is being well done. But we are living in the real world and, across the board, one of the things I would say, is the role of the independent social worker is actually bringing specific experience. Sometimes its language ability or knowledge of cultures. They are bringing a particular expertise to the situation and many are actually instructed by local authorities when they don't have that. In fact, acting as a guardian which is most of my work. I, at the moment, have a case from Hackney where an independent social worker has been asked to do a parenting assessment because they are bringing a particular expertise. What was being identified in the letter of instruction was experience in that area. Nagalro also get many phone calls from people looking for an independent social worker with a particular expertise and that comes from across the country. So, I think that it is very important to acknowledge that it is not always, as has been referred to particularly by the Directors of Social Services, that we are doing a duplication of local authority social work but actually people are bringing particular expertise into the situation. I do think that the letter of instruction is very important. One of the things that I really welcome at the moment is Juliet Brophy from Oxford actually doing a research project in relation to the role and work of the independent social worker, so it can be evaluated. So far, we believe the interim stages are actually very positive and I think it will be very helpful in making a judgement on the value when that research comes through. One of the things that did rather worry me and it was in relation to Malek's presentation, which I really welcomed. I mean nobody has ever offered me £200 per hour (laughter). Obviously, I am not worth that but I do worry very much that people are being offered £30 an hour because some of the very experienced people would be lost, and we did a survey of our members who undertake that work. Many of them had been working in different areas of social work for many years before they became independent social workers. But well over 50% of the people that we had surveyed, had been working as independent social workers after say 15 to 20 years, in practice and some of them have been independent social workers where people have wanted to reuse them for over 15 years in that role.

1.10:05 (off mic inaudible...)The bits that worried me if I can just go to it, is when you are writing in situations of practice. In your last bullet point you mention the removal of the role of the ISW. Well, I hope that it won't be a removal. I think we do need to look what we need for a particular case and look for that expertise. I just hope you don't know more than I know, when you say 'removal'. Thank you.

1.10:43 **Malek Wan Daud**

Two things really. I think the removal of the role of the ISW is, as you say, the real world. Whilst there were people who were abusing the system and charging £200 an hour, they were rare but the legal services commission, logged on to that and said that was the reason why they couldn't possibly justify this any more. It was repetition and the removal of the role of the ISW is because nobody would want to do the sort of work that is required for £30 an hour and that is the thing that I worry about. Why would you for £30 an hour, really?

1.11:23 **Nicholas Crichton**

Can I just say and I hope I am not being unfair but in my experience, and I stress that I am talking about FPC level, too often I have a sense that the independent social worker

is being asked to do work that the local authority social worker hasn't got time to do. Or, has attempted to do but hasn't done in enough depth. And I refer, in particular, to kinship assessments and so often local authority social workers just haven't got time to do it or they skimp on it and we get a very unsatisfactory, very short report which rules out an aunt or a grandparent and when an ISW comes in, you get a much more considered piece of work which often turns the thing around. That is just an observation but I think Steve ought to have the last word.

1.12:15 **Steve Goodman**

The issue is that we all know that children in social care in this country has got a long way to travel to get as good as it can be and while it is doing that travelling then there is going to be calls for independent social workers and other people to fill in the gaps. The point that I am making is that the right way forward is actually to improve local authority social work so that, over time, the need for experts from other fields to come in and, as Nick says, to do stuff that local authority social workers should be doing anyway. That will gradually diminish, that's got to be the way forward and just to say another little bit about some of the things that are happening in Hackney.

1.13:01 Of course, there will always be cases where experts will be needed in the court arena and I don't think anyone is saying in every case there should be an expert or in no cases there should be an expert. The issue is what is the direction of travel and we are arguing that the direction of travel should be that the experts should be used in fewer occasions for particularly specific reasons. In Hackney, I'm sure, though I don't work for Hackney, I haven't worked for Hackney for 18 months now, I'm sure they are asking for experts in particular cases. Also in Hackney, though before it ever gets to court, social workers have access to adult psychiatry, clinical systemic practice, head of psychology - they can go to people like that, they can joint work with families with those people and they can really be using the best possible tools, in the best possible way to try to change things round before we ever need to start care proceedings. That's the point. If social work is done well then the need for court cases would be less and the need for experts will be less.

1.14:07 **The Chair**

I agree. I have to justify bringing these documents with me. In practice there is the need to consider, every judge ought to consider, whether the expert evidence could be given by the social services or by the guardian under their respective statutory duties. That's one thing we ought to be considering much more than we do. Doctor Freedman will be next.

1.14:40 I'm Judith Freedman. I speak on behalf of over 500 expert witnesses to the family courts who have for the first time formed a consortium. An organisation to speak on our behalf, which has never happened before in the family courts. From that perspective, we're aware that we have managed in the family justice system to replicate the private law situation, that we know so well, which is that one side complains, the other side complains and they never talk to each other. That's exactly where we are. You want to know how to write letters of instruction? Talk to us, let us tell you what we know. There is nothing more disheartening as an expert witness than realising you have a tremendous amount of information to offer to the courts about how to think about family members. Only your questions don't allow you to do that. In fact your questions have totally missed the point of what the case is about in the course of your assessment.

1.15:54 We need to be able to interact with you about that. We also need your feedback. I spoke with the president about this, years ago, when he came and gave a talk at the Portman Clinic. I think you were a bit surprised then, Sir, to realise that in fact, we don't

get feedback about how useful, or not, our reports are. Yes, as Brian Jacobs says, we know that there are reports that miss the mark. But, unless we have that feedback system operating, we all miss the opportunity to learn about the value of what we are doing.

1.16:42 I also, on a slightly different subject, want to say something about the NHS multidisciplinary reports. I think there's been a sense through this discussion that the 'gold standard' of what the medical profession has to offer the family courts is held in the NHS. I want you not to have any misconceptions about that. The NHS court services will close in short order if the LSCs rates are held to. The teaching programmes in London cannot afford to work - we are being told that by our chief executives. So we will fold. Even outside of London, most court services in the NHS are telling me that they will fold. Not only will you lose the high degree of experience; the opportunity to use the multidisciplinary teams, which largely comes from the NHS but we will also lose the opportunity to train the next generation of expert witnesses. I think this is one of the most serious results of the capping of expert witness fees.

The Chair

1.18:08 Thank you very much. May I just say that your last point is a very worrying one. As far as feedback is concerned - it's in the practice direction. I'm becoming very defensive - we have told people to do it and they don't seem to do it. So what more can one do, please go ahead.

1.18:27 Hello, I'm Jan Moxley Blount, I am here on behalf of the False Accusation Support Organisation but I am also representing 'Parents Protecting Children UK' and several organisations, academics and others who attempt to support families wrongfully caught up in the child protection system. This is often because of misunderstood Autism spectrum disorders but also historic mental health difficulties, learning disabilities and chronic illnesses including ME and metabolic disorders. Steve Goodman mentioned the dangers of Freudian expert reports. These are particularly inappropriate in families with autism. I am involved in two current cases where courts have made crazy and unfair decisions based on Freudian expert reports of autistic families. The gentleman at the back at the Maudsley spoke of missed Aspergers syndrome. Freudians always miss Autism, however expert they claim to be. The families we are working with, have not broken down, the parents are not incompetent, abusive or unloving but they have been misunderstood or miss-represented by a teacher, social worker, midwife or busy GP who has pressed the panic button rather than taking the time and trouble to observe, question and investigate. The groups I represent are extremely concerned about the proposal to foreshorten family court time and we wonder what safeguards will be put in place to ensure that children are not accidentally adopted because there isn't time to consider other options. For example, providing support in their families of origin. When these erroneous cases reach the family courts they are extremely complex to work out and it can take much longer than six months for assessment reports to be prepared, circulated and considered.

1.20:13 On the 21st November in reply to a parliamentary question from the Countess of Marr, Lord Hill said that the decision that a child cannot safely return home must be made in the light of the best available evidence. Many regarding that in the current system, obtaining the best available evidence takes much more than six months. I did warm to Judge Crichton's idea of specialist teams to make assessments independent of the local authority and I wonder if this could be a way forward for some of the families where the local authorities have simply got it wrong.

The Chair

I am very sympathetic to all of that.

1.21:01 I am James Meston, I'm a circuit judge.

Could I just really take one or two points up? One is that the question of instructing the expert, when the question is unanswerable or the answer is unknowable. Surely the good expert instructed in those circumstances, will say so as soon as he or she receives the letter of instructions, or ought to, and you don't waste the sort of time which has been suggested. I was a bit surprised – I know occasionally you see the red herring instructions looking for a genetic disorder when it is patently obvious that that is just flying a kite but I just can't conceive of a case where an expert instructed in those situations knows or ought to know that the answer isn't to be found, doesn't say so straight away.

1.21:59 I am afraid the other point I wanted to make is a separate one and it was taking issue with Malek about the paediatric overview, because we all do these – some of us have to do these injury cases and it is terribly reassuring to think that by the time you have got all the experts in, you can have one final go with a distinguished paediatrician who will pull all the threads together. I have to say, in my experience of too many of these, it just doesn't happen. It causes delay and the so-called 'expert of experts', very often takes up time and muddies the water. I'd like to be proved wrong on that because, obviously, we do need the best evidence and we do need somebody to pull the threads together but, usually, that has to be the lawyers having heard all the other experts rather than getting somebody else in. The other point is really a separate one to do with independent social workers. Again I entirely agree with the idea that the independent social worker is necessary, in the right case, to fill the gaps which the local authority social workers can't fill. But, very often, I think we do overlook the role of the guardian and it is very often the guardian who is the true expert who himself, or herself, fulfils the role without the need to recourse to an independent social worker.

Heather Payne

1.23:29 Certainly, if there is an obvious idiocy in the letter of instruction, then my first port of call is to pick up the phone and discuss it and I frequently discuss letters of instruction with my instructing Solicitor. Part of the problem is that until you've actually read the whole bundle, you don't discover that it was the wrong question, so obviously it's helpful then to point people in the right direction but that is after the event and I am frequently left with the feeling that somebody else could have known what I have come to know rather sooner. The point about doing an overview is exactly that because it does take into account, it does focus on the child, it does focus on the child's experience which may involve domestic violence, it may involve emotional abuse, it may involve neglect and, in fact, the reality is that usually there is a combination of these things, even though neglect is the most common reason for being in the system. But it does come down to 'what do you want to know?'. Is this child being neglected? Well, in fact, the truth is we don't actually have terribly good medical ways of knowing that, and so it may well be that a doctor or paediatrician is not the best person to ask. But, nevertheless, the question's precisely about 'is the child thriving, is the child growing?'. So, in other words, the indicators that we can tell whether a child is getting everything that they need to flourish or are they anywhere near that boundary of significant harm or over it, that's what an overview can tell you that bits, specialists who look at bits of children can't always. So, it depends what you need.

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Female Speaker

1.25:49 Well, I want to respond to a number of the questions because I am a practising child care Solicitor and I think that I have been practising for over twenty years in that respect. The first thing I want to say is in response to the judge that mentioned guardians. The fact of the matter is that guardians in cases now are no longer an expert and, in fact, they no longer are able or have the capacity to do the work that we previously regarded guardians as doing. I am not criticising the individual guardian but I think the context in which we are working, one has to recognise that social workers used to be experts but this is increasingly rare. So you have the expertification of the work that we do and we are increasingly under pressure in all aspects - in the NHS, in private practice and judges. But what I think is required is intelligent ownership of the work that we do in an increasingly difficult environment and that does come back to the continuity of judges, it does come back to specialisation and intelligent communication and I don't know why any expert who gets a letter of instruction that doesn't ask the questions which they, in their expert understanding, think should be asked doesn't immediately pick up the phone and tell the Solicitor.

1:27 It is quite a craft and a difficult thing for young Solicitors to do proper letters of instruction but we do have the capacity to communicate and I want to relate that to the question of the overview paediatrician. In my view, in complicated questions dealing with removal of children, neglect or non accidental injury or the big one, the most important one, where great miscarriage occurs: suspected sexual abuse. A paediatric overview is most important and often crucial and the front loading point is very important because – I've got a case at the moment where the expert is desperately crying out for the evidence. I am desperately trying to get the evidence and she is directing what is required in order for the court to be informed. It comes back to the question of really intelligent communication. The practice direction does say that we as solicitors should tell the expert the outcome and I think it is only respectful to do that with an expert who has contributed to the legal process and it is now enshrined and we do it.

1.28:19 I'm Samuel Stein

Like Brian and Judith I am a child psychiatrist who does expert work but I am also a member of the Social Security and Child Support Tribunal and sit with the tribunal service. I wonder if there is something the family courts could learn from something like DLA appeals where you sit with a judge who does the legal stuff, a doctor who does the medical stuff and a disability qualified person who knows most about disability and, in combination, you then manage the case and that would tackle many of the issues being raised today. Because, essentially, the experts sit on the bench collectively sharing experience and that may resolve a lot of the issues and I get paid a lot less by the tribunal service than £200 an hour!!!

Ben

1.29:24 Thank you – my name is Ben Jamal and I represent an organisation that undertakes domestic violence risk assessments in private and public law proceedings. I just wanted to comment. It seems to me there is a broad consensus on the panel. There is broad agreement that we need to rationalise the use of experts but that experts, if we can achieve that, are worth it and that the key questions that we need to agree and clarify are who do we need, what do we need and what do we need them for and the areas of debate perhaps are around the mechanisms for achieving that. Whether we achieve that through processes of specialist courts; whether we achieve it, as Steve Goodman would have it, by looking at what we do at an earlier stage and the partnerships between social workers and specialist services at an earlier point in the process. But, it seems to me, that there is an immediate and fundamental question that

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we have to address now which is who has the authority for determining these questions and the immediate problem we have is the answer at the moment, it seems to me, is that the authority rests with the Legal Services Commission. We are experiencing, particularly in private law proceedings, more and more cases where prior authority has not been granted. We know what the driver is, and we accept the driver of costs but the rationale which is given is not one of cost, the rationale that is given is that it is refused because you really don't need this type of expert or you really don't need this type of assessment.

1:30 So even in cases where we are very clear the court has determined very clearly what type of assessment we require and what type of expert we require to undertake this assessment, it is the Legal Services Commission that actually has the authority to determine what happens. The issue is there are immediate consequences because what then is the immediate consequence is the court will then often go and instruct an expert who is affordable but is not able to answer the questions that are required. The long term consequence is as a number of people have addressed, is that experts who are available at the moment in the field, potentially will not be available in the coming months and years because they are being driven out, they are being priced out of the market place. So the question, I guess I have, is it seems to me that there is a fundamental need at the moment within the system for very active dialogue with the government and the Legal Services Commission to address these questions and to say how we can actually work in partnership to ensure that we have the experts we require, doing the right job.

1.32:07 **Malek Wan Daud**

I haven't got anything that will make you any happier but I think one of the difficulties that we have, you are absolutely right, both in public law and private law, the Legal Services Commission is refusing assessments for domestic violence. One of the things that they complain about is, for example, the length of the assessments. Those run by the DVIP run for 32 weeks. Immediately what is run back to us is that this is outside the timescale for the child and then you have this ongoing debate despite the fact that there is a decision about it. I have a case that is running on that basis at the moment and we are in and out of court like a fiddlers elbow and, I think, we are all getting to the stage where it is not just the parents who are going to need some assistance to manage their anger. But there is the IDAP project and work that is being done with probation and Cafcass and the Legal Services Commission is also on to that little idea too and I suspect that very quickly IDAP will be overrun.

Ben Jamal

1.33:20 The organisation I represent is DVIP and if I can just correct the impression that has been given there. The treatment process working with a perpetrator to address their violence is a 32-week group work intervention process. (Inaudible) the assessments and as you will be aware the Legal Services Commission won't fund any interventions. The assessment is a discrete process that doesn't take anything like that – it is 6 – 8 weeks.

1.34:07 **Female Speaker**

I have a direct question for Steve.

Clearly the number of looked-after children in Hackney decreased over the period of the reclaimed process. It is great to hear that that number declined but that meant there was an equivalent number of cases that didn't go to court – one would assume. Was

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there any research gathered, any data gathered, as to what happened in those cases. Were those court cases, therefore, shorter because, by definition, the social work would have been better – one would have hoped if everything else was improving – one would assume that the court reports were better, the evidence was better – what kind of impact did that have on the expert evidence? What happened in the parallel system because if we don't know that then we are assuming that meant it was better in the court – do we know that?

1.35:07 **Steve Goodman**

Well, basically, given that when I first started, I was getting involved in care proceedings that had been going on for longer than a year and that was seen to be normal in Hackney, five years ago. They absolutely have decreased in time. I haven't got the actual figures. The numbers in care proceedings in Hackney went down from about 116 to between 30 and 40, so I think all those things are happening but what I am waiting for now, is Donald Forrester at the Goldberg centre in Bedfordshire is about, in spring, to release the first part of his research. He has compared the reclaim social work model in Hackney with another controlled authority and that will start to give us some data around exactly what has happened to the families that have gone through this system.

Female Speaker

I don't know the absolute detail of that but obviously if he is looking at the work it will presumably say something about that.

Steve Goodman

1.36:05 I don't know if Nick knows anything about it.

Female Speaker

Sometimes I think it is like a holy grail.

1.36:24 **Chair**

Any further contributions please. Yes please

1.36:26 My name is Poonam Bhari. I am a family barrister at 14 Grays Inn Square.

I think the question I have for the panel is has the court actually lost sight of why we are there at times and is it the role of the court to give the parent time to effect change? That is what seems to be happening in some cases that I do. I am speaking particularly about the chronic neglect cases where there has been Social Services involvement for five years, sometimes ten. You have a body of evidence, you have pre proceedings work where you've got the social worker evidence, you might even have a psychological assessment as well. Then you get to court and you start a whole process again of wanting further psychiatric assessments, adult assessments of the parents, psychological assessments of the parents, child and adolescent psychiatrists. You are a year down the line and, really, is that the function of the court to give that parent a chance to see if they can actually change when you have five, or ten, years worth of evidence?

1.37:39 **Steve Goodman**

Can I just say a couple of things about that?

Firstly, of course one of the problems facing the court is that they may look at what the Social Workers have done in those five years and found that they haven't actually done much to help the family, so the Local Authority has presented the court with quite a problem, so I think I can understand that. On the other hand it is also the case that in

more obvious cases like the drug abusing woman who has had six children adopted already, we still sometimes get courts saying that some sort of residential assessment should be done and that is just barmy. I mean, residential assessments tell you nothing anyway, so I think that (laughter) apart from somebody who can live in a residential place safely with their baby - that is all they tell you. There is no evidence base to show that they work at all and shouldn't be used (laughter). But, I do understand the problem the court will have if they can't see that good social work has gone on to try to change what's going on in that family because, it could be, if good social work had been offered to that family, that they might have actually turned around and be okay parents.

Nicholas Crichton

1.38:48 Suddenly, I have got to disagree. In the Family Drug and Alcohol Court, we did have a woman who had had six children adopted and she has done it with the seventh and that is the huge challenge and Poonam, I think, raises a very important question because if we've got a parent who has failed one, two, three children and the last one was taken into care six months ago and here she is with a new baby, we have got to look at that and say any signs of a capacity to change and, in most cases, I think we would say no. But, what happens if the new baby is two, or three, years later? We then have a responsibility, don't we, to look at the situation afresh? Here we go, we have to mention article 8 and the much-maligned human rights act. I am a huge believer in article 8, not just because parents have a right to their private and family life but so does this new baby and on his, or her, behalf, we have got to explore it. Whether we can find ways of doing that more quickly is quite important but I am glad to see some heads nodding, you know, my friends,

Malek Wan Daud

Even my head is nodding!

Nicholas Crichton

But children have a prime need and I am fond of saying a primal need to be brought up within their birth families, if that is possible and it must be our responsibility to explore it properly.

1.40:32 Thanks very much. I am Judith Harwin – also involved in the FDAC evaluation project and from Brunel University.

I really just want to pick up on the last two points. Really to say that we have looked a lot at the purpose of the expert assessment and Nick has brought out that one function of a multidisciplinary team and the value of it is its independence but, I think, the core question is for the expert assessment – can it help effect change? We have referred a lot to outcomes and I am not sure whether I have heard anything today that has helped me understand – what is a good outcome from an expert assessment and how would you judge its effectiveness? I think the value of a model like the FDAC and I am only speaking from the preliminary evidence that we have got from the small scale evaluation, is that within a multidisciplinary team, working with a court and monitoring change over time - that is the key part. It is not a one off assessment but it is judging the ability of the parent to change against often appalling lengthy problems and, perhaps, not the best of handling prior to the proceedings. Whilst I completely agree with the point that we hope that in the long run social workers will be more effective, there will always be cases that need to come to court, whatever, and I think that is why we do need to ask the question, what can happen now? I would like us more to consider the value of a multidisciplinary ongoing approach, as an alternative, for far more cases in the Family Drug and Alcohol Court. It is not a specialist court, it is dealing with bread and butter care proceedings.

1.42:37 **Steve Goodman**

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I think the only thing to say is absolutely I admire the work that Nick and Mike and others are doing in there. My point is that local authorities should be doing that before we ever get to care proceedings.

1.42:55 Female Speaker

Can I make one more comment on that and that is I think that is absolutely true but one mustn't ignore the fact that the court itself can be a very powerful change agent and the international evidence shows that we don't know whether social workers themselves, are able to bring about that kind of change and I speak as a social work educator.

Chair

1.43:14 Could I embarrass Mike just one more time because these are his words, not mine. Or were you about to say it, Mike? Mike breaks it down very simply. The parent with a drug and alcohol problem says, '*I think I want to change my life because I want to keep this child*'. The FDAC team says: '*you can change your life and we can help you*'. But Judith's point is, the court says, you have got to change your life if you want to keep your child and that is an important component of the process. Sorry Mike, I know I pinched it.

Male Speaker

1.43:57 I think if I were a child who had sat here this evening, listening to today, I might say, "my life is thoroughly miserable and awful and dreadful but unfortunately, I don't think you are going to be able to help me at all because you have no money and no resources. I would be ever so grateful if you told me you couldn't help me and leave me alone to get on with it."

(applause)

Chair

1.44:29 The problem is a lot of children are actually abused in that situation. Whose hand is up? Thank you Audrey.

1.44:32 Audrey Damaser, from the family proceedings court

Just a couple of things. First of all, the question tonight is - experts are they worth it? Why are we asking that? One reason is because of expense isn't it? Also the other crucial thing is delay and that is why we are actually looking at it and I just wondered that if we continue to request experts at the rate that we are, there is a whole issue about supply and, you know, where are all these experts going to come from in a timely fashion? I think the other matter that I just wanted to raise and it is at the risk of being very controversial but is blood still thicker than water when we come to the right of family to life? I have just been born and does that right to family life mean that I have to stay in foster care for the next two years, whilst you assess my parents and my right to a family life in a new family diminishes? It is all about the court – we are assessing risk and we are also, to a certain extent, gambling with this child's life and I think that something has to be done. Of course, I work with Nick, I don't always agree with him but, you know, really having experienced FDAC and I know we are only looking at particular cases, but I would like to see every court have a multidisciplinary team. You don't need the expert, as somebody said earlier, sitting alongside the judge, but you would be able to refer to them so that we can get the questions right. You know, we could save an awful lot of time if we were able to do that, so I just wanted to make those points. Thank you.

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Female speaker

1.46:21 So can I just add, the person who carries the risk, is not us, it is the child.

Chair

Lady in the front row here.

1.46:32 Thank you, I am Alison Inman, Chair of the Essex family panel so I am a magistrate, rather than a judge, so a total non expert and dealing with the bread and butter neglect cases within Essex. I think in the FPC, we are often really, really cautious about saying 'no' to experts. I think we sometimes know by the smell that actually this isn't going to take you any further and you know that the three of you on the bench know that, your legal advisers are sort of 'umming' and 'aahing' and it is really, really difficult to have the confidence to say, actually this isn't going to take us any further at all. I just wondered what advice sort of from on high, there was for us in the FPC about that.

Chair

1.47:19 Well, I have said it many times. It is your case, you tell the lawyers what to do. If you don't want an expert, say you don't want an expert and explain why and you give reasons (laughter). It is very, very easy – not difficult but I can say things until I am blue in the face. I have been saying this to justices up and down the country – it is your case. You are volunteers, you are not paid and the lawyers are used to the environment and they try and pull one over on you. There is no doubt about that at all but it is your case and if you don't want an expert, say so. It is your decision, it is a judicial decision – not a CAFCASS decision, or the lawyers decision, it is your decision.

1.47:57 **Malek Wan Daud** – Just remember Nancy Reagan – just say no.

Chair

My clock says it's nearly 6 o'clock..7 o'clock!

It has been a very enjoyable discussion and thank you very much indeed. It shows the value, in my view, of the Family Justices Council. Because we are multidisciplinary and the point that Dr Freeman made went home with me that we really need to talk to each other a great deal more. It's been a very valuable experience, I've made a lot of notes, and I'm very grateful to our panel and I'd like to thank them in the conventional way....(applause).

Thank you very much for coming. I hope it's not still raining outside.

1.48:41 LADIES AND GENTLEMEN, BEFORE YOU DISAPPEAR INTO THE NIGHT, CAN I ASK YOU TO FILL OUT YOUR FEEDBACK FORMS, PLEASE? BEFORE YOU LEAVE. PLEASE LEAVE THEM ON THE DESK AT THE FRONT. I'LL BE VERY GREATFUL. THEY ARE IN YOUR BUNDLES, THANK YOU.

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