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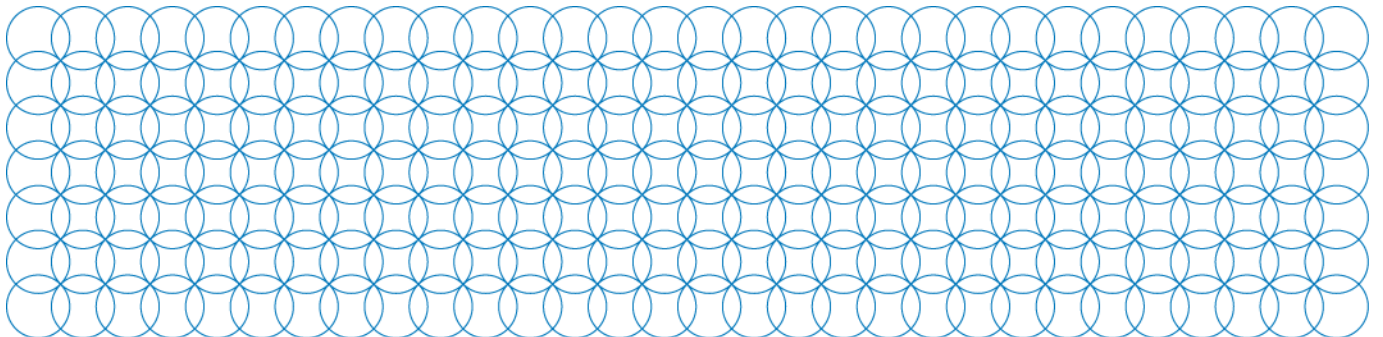
Family
Justice
Council

Standards for Expert Witnesses in the Family Courts in England and Wales

Consultation Paper

This consultation begins on 16 May 2013

This consultation ends on 18 July 2013





**Ministry
of Justice**

Standards for Expert Witnesses in the Family Courts in England and Wales

A consultation produced by the Ministry of Justice and the Family Justice Council. It is also available on the Ministry of Justice website at www.justice.gov.uk.

About this consultation

- To:** Expert witnesses supporting the family courts in England and Wales, particularly in proceedings relating to children; representative and regulatory bodies for the professions from which experts are drawn, including the health and social care sectors; Royal Colleges; members of the judiciary; family solicitors and barristers; local authority children services; expert witness training providers; academics; and others with an interest in the provision of expert evidence to the family courts.
- Duration:** From 16 May 2013 to 18 July 2013
- Enquiries (including requests for the paper in an alternative format) to:** Joe Murphy
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- How to respond:** Please send your response by 18 July 2013 to:
- Joe Murphy
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London SW1H 9AJ
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Email: familyjusticereview@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published within three months of the closure date at: www.justice.gov.uk

Contents

Ministerial Foreword	3
Foreword from the President of the Family Division	4
Executive summary	5
Introduction	7
The proposals	8
The Standards	19
Appendix 1 to the standards	21
Appendix 2 to the standards	25
Questionnaire	27
About you	29
Contact details/How to respond	30
Impact Assessment	32
Consultation principles	33
Annex A	34
Consultation principles	34

Ministerial Foreword

The Family Justice Review provided a comprehensive analysis of the complex and entrenched problems within the system of family justice in England and Wales. It identified a number of weaknesses relating to the use of experts, particularly in public law proceedings, including concerns about the quality of some expert evidence. Steps have already been taken to implement the Review's recommendations on tackling the over-use of expert evidence through amendments to the Family Procedure Rules which took effect in January 2013. Measures to strengthen the court's control on the use of expert evidence are also included in the Children and Families Bill which is currently before parliament.

Expert evidence should be used appropriately and only where it can add genuine value rather than duplicating the work of local authorities, Cafcass or CAF/CASS Cymru. But I want to acknowledge the important work undertaken by diligent, well-qualified and experienced experts who perform a difficult and responsible role in advising the family courts. There are – and will continue to be – cases in which evidence from an expert is necessary. Each case needs to be considered on its own merits and decisions about the use or commissioning of expert evidence in individual cases are rightly ones for the courts.

Nevertheless, a change in the culture of routine reliance on multiple expert reports in most public law cases is required. I am grateful to Sir James Munby for the crucial support and leadership he is providing in this respect in his role as President of the Family Division.

These standards are an important step forward in implementing the Family Justice Review's recommendations in relation to experts and in providing the assurance that the courts, children and families, and the wider public can expect. I would like to thank the Family Justice Council for its work in developing them and hope that experts and practitioners across the family justice system will take the opportunity to submit their views in response to this consultation.

I believe that these standards will support and strengthen the existing framework of accountability through the Family Procedure Rules and profession-specific standards and regulation. However, I encourage professional and regulatory bodies to use the standards as a starting point for further debate about the particular skills, experience and knowledge that should be expected of expert witnesses that are specific to their own discipline.

Lord McNally

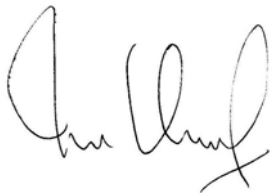
Foreword from the President of the Family Division

There are many types of case in family proceedings which benefit from high quality expert evidence. In some cases, those involving allegations of non-accidental injury for example, expert evidence is essential in order to reach a just determination. However, sometimes the parties seek to submit evidence which is of little value in helping the judge to reach the decisions which need to be made in the case. This has become something of a trend in recent years and, as the Family Justice Review highlighted, has been a major cause of delay in public law proceedings.

At the end of January this year, the Family Procedure Rules were amended to change the test for admitting expert evidence from 'reasonable' to 'necessary'. This is, clearly, a stiffer test and a significant change which enhances the scope for active case management by the judiciary. It is, therefore, even more important than before for there to be clarity on when expert evidence is needed and greater assurance that it is provided by an expert, of the appropriate discipline, with appropriate professional qualifications and experience.

The draft standards set out in this document will make a valuable contribution to identifying appropriate expertise and promoting the more effective and intelligent use of expert evidence in family proceedings. I commend them for your consideration. I look forward to the outcome of the consultation which will be of great assistance to me when I come to consider issuing further guidance on the use of expert evidence in family proceedings.

I would like to thank the members of the Experts Working Group of the Family Justice Council and especially its Chair, Dr Heather Payne, for taking the lead in developing and drafting these standards.

A handwritten signature in black ink, appearing to read 'James Munby', written in a cursive style.

Sir James Munby

President of the Family Division

Executive summary

This paper sets out for consultation minimum standards for expert witnesses providing evidence in the family courts in proceedings relating to children in England and Wales.

The consultation is aimed at experts, the professional and regulatory bodies for the professions from which experts are drawn, and solicitors and other practitioners in the family justice system in England and Wales.

Experts play an important role in assisting the court by providing advice on matters requiring specialist expertise outside the knowledge of the court. In family proceedings relating to children, they may come from many different professions and disciplines including doctors, nurses, psychologists and independent social workers.

The standards in this paper are a response to a recommendation made by the Family Justice Review that standards should be developed for expert witnesses in the family courts. The Family Justice Review reported¹ in November 2011 following a comprehensive review in light of growing concerns that the family justice system was not delivering effectively for children and families.

Feedback submitted to the Family Justice Review indicates that there are weaknesses in the current system of oversight of experts. The purpose of the standards is to address ongoing concerns with the quality of some expert evidence by ensuring that all experts providing evidence to the family courts are able to demonstrate an acceptable level of competence and experience.

The consultation proposes that the standards would apply to all family proceedings relating to children consistent with the Family Justice Review's focus on the impact of repeated assessments and delay on children, particularly in public law proceedings.

The Ministry of Justice proposes that, in publicly funded family proceedings relating to children, solicitors may only instruct experts who meet the relevant standards. In both publicly and privately funded cases, the expectation is that parties will provide sufficient information to satisfy the court not only that an expert is needed, but also that the proposed expert meets the standards.

¹ Family Justice Review Final Report, November 2011. Available from www.justice.gov.uk/publications/policy/moj/family-justice-review-response.

The standards have been drawn up by the Family Justice Council², with input from the Ministry of Justice and the Welsh Government. They are a set of high level statements about the expectations of an expert. This approach enables the standards to be applied to the many different professions from which experts in family proceedings are drawn. This does not prevent different professions from developing the standards further and providing more profession-specific guidance in the future. In relation to doctors specifically, it is proposed that they would need to hold a licence to practise in order to act as an expert witness, as well as being registered to work as a medical practitioner.

The standards cover areas including:

- the expert's area of competence and its relevance to the particular case;
- maintaining expertise through Continuing Professional Development activities;
- statutory registration or membership of an appropriate professional body;
- applying the standards to overseas experts;
- compliance with the Family Procedure Rules and Practice Directions;
- seeking feedback from solicitors and the courts; and
- good practice in relation to fees in publicly funded cases.

Subject to the outcome of consultation, we expect that the standards would come into effect later in 2013. More detailed information will be set out in the consultation response, which we expect to publish in Summer/Autumn 2013.

We welcome comments on the standards, in particular on the scope, content and language, their applicability to different professions, and how well they fit with existing regulatory and legal requirements. We invite any evidence on the impact the standards may have. An Impact Assessment is published alongside this consultation paper.

In the first part of this paper we also seek views on some specific matters relating to the instruction of an expert which might assist experts and those instructing them to manage this process more effectively.

² The Family Justice Council is a multi-disciplinary advisory body which provides independent advice to the Government to improve the workings of the family justice system. Further information is available at www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc.

Introduction

This paper sets out for consultation minimum standards for expert witnesses providing evidence in the family courts in proceedings relating to children in England and Wales.

The consultation is aimed at experts, the professional and regulatory bodies for the professions from which experts are drawn, and solicitors and other practitioners in the family justice system in England and Wales. We invite views in particular on the scope, content and language of the standards, their applicability to different professions, how well they fit with existing regulatory and legal requirements and any evidence on the impact they may have.

An Impact Assessment indicates that experts providing evidence to the family courts are likely to be particularly affected. The proposals may lead to additional costs for some experts. The proposals may also lead to additional costs for solicitors' firms and/or parties involved in proceedings and the public sector (primarily HM Courts and Tribunal Service), but these potential costs may be offset by other savings. An Impact Assessment has been published on the Ministry of Justice website alongside this consultation paper.

Comments on the Impact Assessment are very welcome. We are also inviting respondents to provide any information on potential equalities impacts (question 13 in this consultation paper).

Copies of the consultation paper are being sent to the bodies listed in Annex A. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Background

The Family Justice Review

The Family Justice Review reported³ in November 2011 following a comprehensive review of the system of family justice in light of increasing pressures on the system and growing concerns that the system was not delivering effectively for children and families. The Review made ten recommendations designed to address problems it identified with the quality, supply and commissioning of expert evidence. This included a recommendation that standards should be developed for expert witnesses in the family courts.

The standards in this paper respond to that recommendation. They have been drawn up by the Family Justice Council⁴, with input from the Ministry of Justice and the Welsh Government. They take into account feedback received following informal consultation with some regulatory bodies, experts and members of the legal profession. As explained further below, this consultation paper proposes that the standards would apply to family proceedings relating to children (both public and private law cases). This reflects the Family Justice Review's focus on the impact of repeated assessments and delay on children, particularly in public law proceedings.

The Review also concluded that experts were instructed too frequently in public law proceedings and that this contributed to delays, with negative consequences for the welfare of children. The Government introduced a Children and Families Bill⁵ before Parliament on 4 February 2013 containing provisions relating to the use of expert evidence. This includes a duty on the court to permit expert evidence to be put before it only when it is necessary, in the opinion of the court, to assist the court to resolve the proceedings justly. In the interim period before primary legislation can take effect, changes have been made to the Family Procedure Rules 2010⁶ designed to support more effective control by the court on the use of expert evidence. The proposals in this consultation paper should complement these legislative measures by

³ Family Justice Review Final Report, November 2011. Available from www.justice.gov.uk/publications/policy/moj/family-justice-review-response.

⁴ The Family Justice Council is a multi-disciplinary advisory body which provides independent advice to the Government to improve the workings of the family justice system. Further information is available at <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc>.

⁵ See <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>.

⁶ The Family Procedure Rules (FPR) are a single set of rules governing the practice and procedure in family proceedings in the high court, county courts and magistrates' courts. See www.justice.gov.uk/courts/procedure-rules/family. All references in this document to the Family Procedure Rules include amendments inserted via the Family Procedure (Amendment) (No. 5) Rules 2012 (SI 2012/3061) (which came into force on 31 January 2013). The majority of the amendments are to Part 25 but there are also a small number of amendments to Part 1.

providing assurance to the court about the quality of expert evidence where the court determines that such evidence is indeed necessary.

The role of experts

The family courts make crucial decisions that affect the safety and future lives of children and their families. The role of the expert witness is to assist the court by providing advice on matters requiring specialist expertise outside the knowledge of the court. Regardless of who instructs or pays them, the expert has a clear primary responsibility to the court⁷ to provide a competent⁸ and impartial opinion, in order to enable the court to discharge its fundamental duty in its final determination of the case to regard the child's welfare as paramount⁹.

Experts usually undertake court work as an adjunct to their main professional role, which might be in the public sector or private practice. They are instructed as an expert by virtue of the knowledge, skills and experience they have built up in their main profession, and their competence to apply those skills appropriately within a court setting.

Expert witnesses in family proceedings relating to children come from many different professions and disciplines including doctors (for example paediatricians and psychiatrists), nurses, psychologists and independent social workers. They have expertise in a wide range of matters including child health and development, mental health problems, drug and alcohol abuse and sexual abuse. An expert may, for example, be asked to provide an opinion on whether or not an injury to a child is likely to have been caused by accident, the outcome of drug testing of a parent, or to assess a parent's capacity to meet the needs of their child.

Current assurance processes

The Family Procedure Rules

The role and obligations of all involved in the instruction, work and evidence of expert witnesses in the family courts are laid out in the Family Procedure Rules¹⁰ and supporting Practice Directions. The procedural rules and other guidance to be applied concerning the use and conduct of experts in children proceedings are in Part 25 of the rules (as amended) and Practice Directions 25A, 25B, 25C, 25E and 15B. The rules and Practice Directions facilitate

⁷ Cresswell J *National Justice Cia Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68, 81-82; see also FPR; Practice Direction (PD) 25B.

⁸ RCPCH 2011 *Jones v Kaney*: Supreme Court abolishes expert immunity *Jones v Kaney* Response3; see above PD 25B.

⁹ Children Act 1989 Paramountcy principle.

¹⁰ The overriding duty of the expert is to the court; Rule 25.3 and PD 25B (3.1).

communication and discussion¹¹ between the parties and the experts: this should include feedback to the expert after the case is decided¹².

Experts must provide independent advice that conforms to the best practice of their profession and confine their opinion to matters within their skills and experience. This is verified through a signed statement of truth, and may be tested through cross-examination if they are called to give oral evidence in court.

We would welcome views on whether the ‘statement of truth’ which experts must include in their report should include a certification that the expert meets the standards. This would mean that proceedings for contempt of court may be brought against an expert who makes or causes to be made a false statement without an honest belief in its truth¹³.

Question 1: Do you think that the expert’s statement of truth should be amended to include a statement that the expert believes that they meet the standards?

Please indicate yes or no. If you do not agree, please give reasons.

In family proceedings relating to children, a party wishing to instruct an expert must seek the permission of the court. The court therefore has a higher degree of control compared with other family proceedings and therefore needs to be satisfied that the preferred expert is appropriate, based on information submitted by the party wishing to instruct (or lead party if more than one party is involved in the instruction). As experts are commonly instructed jointly, each party involved in the instruction has an opportunity to input into the choice of expert and into the questions put to the expert in the letter of instruction.

Instructing solicitors (where the litigant is represented) have a key role in selecting a suitable expert, drawing on their previous experience in family proceedings and knowledge of the details of the case.

Experts should provide information on their qualifications and expertise, preferably in the form of a curriculum vitae (CV), at the point when a party or their solicitor is making initial enquiries about the expert’s availability and suitability to provide evidence in a particular case and this information should be made available to the court. **We would welcome views on whether a model template for experts CVs would be helpful to assist this process.**

¹¹ Practice Direction 25E which supplements Part 25 of the FPR. Rule 25.16 sets out the details of how and when experts’ discussions are to be arranged their purpose and content.

¹² See Rule 25.19.

¹³ PD 25B (9.1) (j) provides for there to be a statement of truth at the end of the experts report in the following form- “I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.” Rule 17.6 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.

This could cover each of the areas highlighted in the standards including qualifications, details of statutory regulation or voluntary registration (where applicable) and details of experience relevant to work as an expert witness.

Question 2: Do you think it would be helpful if a model template were developed for expert CVs?

Please indicate yes or no. Please give reasons.

Experts can expect to receive terms of engagement from the legal representative or litigant in person that are clear and confirmed in writing and which conform to the requirements laid down in the Family Procedure Rules and Practice Directions 25B and 25C. The questions posed in the letter of instruction should be clear, specific and relevant to the key issues to be decided in the case. The court will give directions approving the questions which the expert is required to answer.¹⁴

It is important that the expert is clear about the questions posed and does not spend time answering irrelevant questions that will not assist the court to determine the outcome of the proceedings. However, it has been suggested that it may assist the expert to include one open question, which invites the expert to add any additional information which they consider to be necessary to complete their report. **We would welcome views on the benefits and drawbacks of including an open question.**

Question 3: Do you think there should be an open question in the letter of instruction asking the expert to add any additional information which they consider relevant?

Please indicate yes or no. Please give reasons.

Expert opinion should always be underpinned by sound argument and evidence, and draw upon skills, knowledge and experience appropriate to the particular case. But this does not mean there will never be occasions when the evidence is disputed; indeed, the testing of evidence in court is an important part of the process. Medical and scientific opinion may change over time, as new discoveries are made and new methodologies are developed which may change the received consensus.

Professional standards and statutory regulation

Expertise arising from professional qualification, knowledge, skill or experience (such as an independent social worker, psychologist, paediatrician or academic) is generally subject to standards, regulation and professional development requirements determined by the 'professional community' specific to that discipline or skill.

¹⁴ See Rule 25.8(2)(a).

Many professions are subject to statutory regulation, and the duties and standards imposed by regulators such as the General Medical Council (GMC), Health and Care Professions Council (HCPC) and Care Council for Wales (CCW) will apply whenever an expert undertakes work in the courts. Regulators have a responsibility to respond to complaints and, if necessary, to investigate the fitness to practise of any doctor or registered health professional. The GMC has produced guidance¹⁵ for doctors on how to perform expert witness work in accordance with its professional standards.

Some professions such as psychotherapists are not subject to statutory regulation, but have professional and representative bodies that set standards, set training requirements and provide accreditation schemes. A system of voluntary accreditation has been established for organisations holding voluntary registers of people working in a range of health and social care occupations. The Accredited Voluntary Registers (AVR) scheme was launched in December 2012 and is administered by the Professional Standards Authority for Health and Social Care (PSA). Organisations can apply to the PSA for accreditation of their register and a list of accredited registers will be available on the PSA website¹⁶. An organisation accredited by the PSA will have demonstrated that it has in place effective processes for setting standards and that it is administered effectively.

Experts may also choose to belong to a representative body specifically for experts (such as the Academy of Experts or the Expert Witness Institute) which may set its own criteria for entry to the organisation.

Professional competence does not necessarily guarantee competence as an expert witness. Experts also need to develop their knowledge of the legal framework in which they operate (including the Family Procedure Rules 2010) and develop skills in writing reports and presenting evidence in court. A number of organisations offer training courses for expert witnesses in these areas, including specialist training providers, university departments and professional bodies.

Reputation

Market forces also have an effect in the selection of experts. Experts that have developed a good reputation with local solicitors and courts in a particular area are more likely to be instructed again. However, 'word of mouth' relies on good local networks and may only be effective over a confined geographical area. Experts may be asked to provide evidence in cases far from where they are usually based. Feedback reported to the Family Justice Review also suggested that in some cases an expert may be instructed because they are known and trusted when another, unfamiliar expert might have more appropriate skills and experience.

¹⁵ *Protecting children and young people: The responsibilities of all doctors*. Available from www.gmc-uk.org/guidance/ethical_guidance.asp

¹⁶ www.professionalstandards.org.uk

Purpose of the standards

Despite the existence of the controls on expert evidence described above, feedback submitted to the Family Justice Review indicated that there are ongoing concerns with the quality of some expert evidence. Occasional media reports have also picked up concerns about particular experts who have been the subject of complaints to regulatory bodies. In part these problems may reflect wider pressures in the system. This can mean that the courts have limited time or limited information on which to make a decision about whether to permit a particular expert to be instructed. It may also reflect difficulties experienced by solicitors acting for parties in identifying an expert who is able to undertake the work within the timetable for the case.

These standards have been developed with the aim of improving outcomes for children in family proceedings by reducing delay and improving the quality, supply and use of expert witnesses of all disciplines, in line with identified needs. The purpose of the standards is to address weaknesses in the current system and:

- Begin a process of improving the quality of expert witness evidence which can be enhanced over time as the market adapts to the new criteria;
- Promote a shared understanding among practitioners in the family justice system about the expectations of expert witnesses;
- Ensure all experts providing evidence to the family courts in proceedings relating to children are prepared and able to demonstrate an acceptable level of competence and experience;
- Give parties instructing an expert, their solicitors and the courts a tool to enable them to test the credentials of experts;
- Assist well qualified experts – or those considering becoming an expert – to demonstrate their suitability and encourage them to maintain and improve their expertise;
- Stimulate debate within individual professions and encourage representative bodies and others such as expert witness agencies to develop or enhance their own systems for offering assurance and quality control to those responsible for commissioning experts;
- Assist professional and regulatory bodies to assess any complaints made against expert witnesses in the context of their own professional codes of practice, taking the standards into account; and
- Increase confidence in the family justice system.

Question 4: Do you agree that minimum standards are needed for experts involved in family proceedings relating to children?

Please indicate yes or no. If you do not agree, please give reasons.

Question 5: Do you have any comments on the advantages and disadvantages of current assurance processes?

Please give details.

Scope

The focus of the standards in this consultation paper is on experts used in family proceedings relating to children. These include care and supervision proceedings, adoption and related proceedings and private law cases relating to contact and residence. This is consistent with the scope of the proposed legislative changes referred to in the background section above.

Experts may also be called upon in other family proceedings such as divorce and financial remedy matters, for example accountants or property surveyors concerned with the value of assets. However, we propose that these proceedings are outside the scope of these proposals for the following reasons:

- The focus of the Family Justice Review's concerns about experts was on the impact on children, and we do not currently have evidence of a problem with quality that needs to be addressed in relation to other types of proceedings;
- Evidence¹⁷ suggests that experts are a common feature in proceedings relating to children, and particularly care and supervision proceedings; and
- Experts play an important role in what can be very difficult and complex proceedings relating to children in which the court must reach decisions with long-term and often irreversible effects for children. We consider therefore that there is a clear need to focus efforts on these proceedings. Accordingly the standards have a focus on health, social care and related professions.

In all other family proceedings, parties or their solicitors would have the option of using the standards (in full or in part), should they wish to do so, as a tool when they are deciding which expert to instruct or whether to seek the court's permission to put expert evidence before the court.

¹⁷ Cassidy, D., and Davey, S. (2011). *Family Justice and Children's Proceedings – Review of Public and Private Law Case Files in England and Wales*. Ministry of Justice, London. Available from www.justice.gsi.gov.uk.

Nevertheless, we would welcome views on the scope of the proposed standards and whether they could – or should – apply to other types of family proceedings.

Question 6: Do you agree with the proposed scope of the standards for experts (family proceedings relating to children)?

Please indicate yes or no. If you do not agree, please give reasons.

Approach

The standards set out below have been prepared following some informal consultation with experts, lawyers, and professional bodies. The standards are a set of high level statements about the expectations of an expert and apply when professional expertise is being used in the context of providing evidence in family proceedings. This approach enables the standards to be applied to the many different professions from which experts in family proceedings relating to children are drawn. It also allows the standards to complement – and not conflict with – other profession-specific standards. This approach has the benefit of simplicity and avoids the need for multiple variations and adaptations to address the specifics of each profession. This does not prevent different professions from developing the standards further and providing more profession-specific guidance in the future.

In relation to doctors specifically, it is proposed that they would need to hold a licence to practise in order to act as an expert witness, as well as being registered to work as a medical practitioner with the General Medical Council. The potential impact on retired doctors is considered in the Impact Assessment accompanying this consultation.

The standards are to be used with the Family Procedure Rules 2010 (as amended); Practice Directions 25A, 25B, 25C, 25E and 15B; and the Family Justice Council (FJC) document '*Guidelines for the instruction of medical experts from overseas in family cases*'¹⁸.

The Ministry of Justice proposes that in **publicly funded family proceedings relating to children**¹⁹ (where one or more of the parties is in receipt of legal aid), solicitors may only instruct experts who meet the relevant standards. Instructing solicitors will need to confirm to the Legal Aid Agency (LAA)²⁰, when making an application for payment and/or prior authority, that the expert

¹⁸ December 2011. See www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc

¹⁹ Changes to the legal aid scheme which took effect in April 2013 mean that legal aid funding remains available in public law proceedings, but that most private law proceedings are out of scope of the new scheme. There are exceptions, for example, where domestic violence is an issue or where the court has decided that the child should be made a party to the proceedings.

²⁰ A new Legal Aid Agency (LAA) began administering legal aid from April 2013 following the abolition of the Legal Services Commission (LSC).

meets the standards or why exceptionally they do not. When considering applications for prior authority or when assessing cases, the LAA will expect to see evidence to show that the instructing solicitor has made reasonable efforts to assure themselves that the expert meets the standards. This might include, for example, holding a CV on file together with evidence of enquiries of the expert. The LAA will produce guidance on this issue.

In both **publicly and privately funded cases**, as noted above, instructing solicitors (where the litigant is represented) have a key role in selecting a suitable expert. Under the Family Procedure Rules, the court must also approve the instruction of an expert and the questions to be put to that expert. Parties should therefore be ready to provide assurances to the court that the expert meets the standards so that the court can be satisfied that the proposed expert is suitable. As well as supplying a full CV, when instructing an expert they have not used before or have not used recently, this could involve checking statutory registration where applicable or alternatively membership of a recognised professional body where statutory regulation does not exist. In the case of statutory regulators, this can often be done quickly and simply by inputting the expert's name into the relevant website. As indicated in his foreword to this consultation paper, the President of the Family Division, Sir James Munby, intends to draw on the outcome of this consultation when considering further guidance to the courts on the use of expert evidence in family proceedings.

We believe it is important to begin the process of improving quality as soon as possible. Putting in place some minimum expectations should start to influence the behaviour of experts, the courts and solicitors. We also aim to stimulate debate within each profession, and encourage others such as expert representative bodies and agencies to consider the standards in relation to their own membership criteria, promoting effective and consistent oversight of expert witnesses by these bodies.

The Ministry of Justice has not, however, ruled out consideration of possible legislative or regulatory measures in the future should this prove necessary.

Further consultation questions on the standards

Question 7: Do you consider that there are any components that should be removed from the standards? Please indicate yes or no. Please give details.

Question 8: Do you consider that there are any components that are missing and should be added to the standards? Please indicate yes or no. Please give details.

Question 9: Do you have any comments on the way the standards have been drafted? Please provide alternative drafting suggestions.

Question 10: Do you have any other comments about the standards?

Question 11: Are there other relevant bodies or professions which you consider should be added to those set out in Appendix 1 and Appendix 2 to the standards? Please indicate yes or no. Please give details.

Consultation questions on the Impact Assessment

An Impact Assessment has been produced to accompany this consultation.

Question 12(a): Have the right impacts been identified in the Impact Assessment? (b) Do you have evidence of other impacts which have not been considered? Please indicate yes or no. Please give details.

Question 13: Are you aware of any potential equality impacts that may result from the proposals? Please indicate yes or no. Please give details.

We are particularly interested in evidence on the impacts upon experts themselves.

Implementation

Subject to the outcome of consultation, we expect that the standards would come into effect later in 2013. More detailed information on the timing of implementation will be set out in the consultation response, which we expect to publish in Summer/Autumn 2013. Once finalised, the intention is to incorporate the standards within a suite of 'expectation documents' which will set out the key contributions and good practice which the family courts can expect of the main agencies involved in the family justice system.

We believe that Local Family Justice Boards²¹ will have an important role to play in working with experts, solicitors and members of the judiciary to embed the standards into local practice via local training programmes, including development opportunities for new expert witnesses such as mini-pupillages, learning events and peer support, and the dissemination of information on the new standards.

²¹ There are 46 Local Family Justice Boards across England and Wales. These Boards bring together individuals from agencies across the family justice system working together to provide locally tailored, system-wide solutions to improve the family justice system.

The Standards

Standards for Expert Witnesses in Family Proceedings in England and Wales

Compliance with the standards (1.1-1.12 below) is expected from an expert witness in family proceedings in England and Wales, whatever their field of practice or country of origin.

The parties or their representatives should assure themselves of the expert's suitability by making appropriate enquiries and provide information to the court, to satisfy the judge that an expert demonstrates they can comply with the standards, prior to instruction in a case relating to children. The evidence required can be provided in a CV, which when appended to the expert's report is guaranteed by the statement of truth²².

- 1.1 The expert's area of competence is appropriate to the issue(s) upon which the court has identified that an opinion is required, and relevant experience is evidenced in their CV.
- 1.2 The expert has been active in the area of work or practice, (as a practitioner or academic and subject to peer appraisal), has sufficient experience of the issues relevant to the instant case, and is familiar with the breadth of current practice or opinion.
- 1.3 The expert has working knowledge of the social, developmental, cultural norms and accepted legal principles applicable to the case presented at initial enquiry, and has the cultural competence skills to deal with the circumstances of the case.
- 1.4 The expert is up-to-date with Continuing Professional Development appropriate to their discipline and expertise, and is in continued engagement with accepted supervisory mechanisms relevant to their practice.
- 1.5 If the expert's current professional practice is regulated by a UK statutory body (See Appendix 1) they are in possession of a current licence to practise or equivalent.
- 1.6 If the expert's area of professional practice is not subject to statutory registration (e.g. child psychotherapy, systemic family therapy, mediation, and experts in exclusively academic appointments) the expert would be expected to demonstrate appropriate qualifications and/ or

²² See PD 25B (9.1) for the contents of the expert's report; including the requirement for the verification by a statement of truth (PD 25B, (9.1) (j)).

registration with a relevant professional body on a case by case basis. Registering bodies usually provide a code of conduct and professional standards and may be accredited by the Professional Standards Authority for Health and Social Care (See Appendix 2). If the expertise is academic in nature (e.g. regarding evidence of cultural influences) then no statutory registration is required (even if this includes direct contact or interviews with individuals) but consideration should be given to appropriate professional accountability.

- 1.7 The expert is compliant with any necessary safeguarding requirements, information security expectations, and carries professional indemnity.
- 1.8 If the expert's current professional practice is outside the UK they can demonstrate that they are compliant with the FJC 'Guidelines for the instruction of medical experts from overseas'²³.
- 1.9 The expert has undertaken appropriate training, updating or quality assurance activity relevant to the role of expert in the family courts in England and Wales within the last year.
- 1.10 The expert has a working knowledge of, and complies with, the requirements of Practice Directions relevant to providing reports for and giving evidence to the family courts in England and Wales. This includes compliance with the requirement to identify where their opinion on the instant case lies in relation to other accepted mainstream views and the overall spectrum of opinion in the UK.

Expectations in relation to experts' fees

- 1.11 The expert should state their hourly rate in advance of agreeing to accept instruction, and give an estimate of the number of hours the report is likely to take. This will assist the legal representative to apply expeditiously to the Legal Aid Agency if prior authority is to be sought in a publicly funded case.

Feedback for expert witnesses in the family justice system

- 1.12 The expert should seek appropriate feedback from the legal representative regarding the outcome of the case, and the value and weight placed on the expert's own evidence. Where a party is not represented, the expert should seek feedback on the outcome of the case, and consider seeking other feedback bearing in mind that a litigant in person is likely to have limited experience of court processes. This is an essential part of the overall quality assurance of expert witness practice, for individual professional reflection and development.

²³ December 2011. See www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc

Appendix 1 to the standards

UK Health and Social Care Professions and Statutory Regulators with responsibilities within England and Wales

The Professional Standards Authority for Health and Social Care (PSA)²⁴ (formerly the Council for Healthcare Regulatory Excellence) oversees statutory bodies that regulate health and social care professionals in the UK. It assesses their performance, conducts audits, scrutinises their decisions and reports to Parliament. It also sets standards for organisations holding voluntary registers for health and social care occupations and accredits those that meet them. It shares good practice and knowledge, conducts research and introduces new ideas to the sector including the concept of right-touch regulation. It monitors policy developments in the UK and internationally and provides advice on issues relating to professional standards in health and social care.

The General Medical Council²⁵ (GMC) is the independent regulator for doctors in the UK. The GMC's statutory purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine through the Medical Register.

The General Dental Council²⁶ regulates dental professionals in the UK. All dentists, dental nurses, dental technicians, clinical dental technicians, dental hygienists, dental therapists and orthodontic therapists must be registered with the GDC to work in the UK.

The Nursing and Midwifery Council²⁷ regulates nurses and midwives in the UK, setting standards for work, education and a code of conduct for all registered nurses and midwives.

Care Council for Wales²⁸ The Care Council for Wales is the social care workforce regulator in Wales responsible for promoting and securing high standards across the social services and social care workforce. It regulates social workers in Wales and managers of care services, including residential care homes for children and adults and managers of domiciliary care for both adults and children.

²⁴ www.professionalstandards.org.uk

²⁵ www.gmc-uk.org

²⁶ www.gdc-uk.org

²⁷ www.nmc-uk.org

²⁸ www.ccwales.org.uk

The General Optical Council²⁹ is the regulator for the optical professions in the UK. Its purpose is to protect the public by promoting high standards of education, performance and conduct amongst opticians.

The General Pharmacy Council³⁰ is the independent regulator for pharmacists, pharmacy technicians and pharmacy premises in Great Britain. Its role is to protect, promote and maintain the health, safety and wellbeing of members of the public by upholding standards and public trust in pharmacy.

The General Chiropractic Council³¹ is a UK-wide statutory body with regulatory powers established by the Chiropractors Act 1994. Its duties are to protect the public by establishing and operating a scheme of statutory regulation for chiropractors, to set the standards of chiropractic education, conduct and practice and to ensure the development of the profession of chiropractic, using a model of continuous improvement in practice.

The General Osteopathic Council³² regulates the practice of osteopathy in the United Kingdom. By law osteopaths must be registered with the Council in order to practise in the UK. It works with the public and osteopathic profession to promote patient safety by registering qualified professionals and sets, maintain and develop standards of osteopathic practice and conduct.

²⁹ www.optical.org

³⁰ www.pharmacyregulation.org/about-us

³¹ www.gcc-uk.org/page.cfm

³² www.osteopathy.org.uk

The **Health and Care Professions Council** regulates health and social care professionals with protected titles³³. Further information is set out in the table below.

Profession	Protected title(s)
<p>Arts therapist An art, music or drama therapist encourages people to express their feelings and emotions through art, such as painting and drawing, music or drama.</p>	<ul style="list-style-type: none"> • Art psychotherapist • Art therapist • Dramatherapist • Music therapist
<p>Biomedical scientist A biomedical scientist analyses specimens from patients to provide data to help doctors diagnose and treat disease.</p>	<ul style="list-style-type: none"> • Biomedical scientist
<p>Chiropodist/Podiatrist A chiropodist / podiatrist diagnoses and treats disorders, diseases and deformities of the feet.</p>	<ul style="list-style-type: none"> • Chiropodist • Podiatrist
<p>Clinical scientist A clinical scientist oversees specialist tests for diagnosing and managing disease. They advise doctors on using tests and interpreting data and they also carry out research to understand diseases.</p>	<ul style="list-style-type: none"> • Clinical scientist
<p>Dietician A dietician uses the science of nutrition to devise eating plans for patients to treat medical conditions, and to promote good health.</p>	<ul style="list-style-type: none"> • Dietician
<p>Hearing aid dispenser Hearing aid dispensers assess, fit and provide aftercare for hearing aids.</p>	<ul style="list-style-type: none"> • Hearing aid dispenser
<p>Occupational therapist An occupational therapist uses specific activities to limit the effects of disability and promote independence in all aspects of daily life.</p>	<ul style="list-style-type: none"> • Occupational therapist
<p>Operating department practitioner Operating department practitioners participate in the assessment of the patient prior to surgery and provide individualised care.</p>	<ul style="list-style-type: none"> • Operating department practitioner

³³ www.hpc-uk.org/aboutregistration/protectedtitles

<p>Orthoptist Orthoptists specialise in diagnosing and treating visual problems involving eye movement and alignment.</p>	<ul style="list-style-type: none"> • Orthoptist
<p>Paramedic Paramedics provide specialist care and treatment to patients who are either acutely ill or injured. They can administer a range of drugs and carry out certain surgical techniques.</p>	<ul style="list-style-type: none"> • Paramedic
<p>Physiotherapist Physiotherapists deal with human function and movement and help people to achieve their full physical potential. They use physical approaches to promote, maintain and restore wellbeing.</p>	<ul style="list-style-type: none"> • Physiotherapist • Physical therapist
<p>Practitioner psychologist Psychology is the scientific study of people, the mind and behaviour. Psychologists attempt to understand the role of mental functions in individual and social behaviour.</p>	<ul style="list-style-type: none"> • Practitioner psychologist • Registered psychologist • Clinical psychologist • Counselling psychologist • Educational psychologist • Forensic psychologist • Health psychologist • Occupational psychologist • Sport and exercise psychologist
<p>Prosthetist/Orthotist Prosthetists and orthotists are responsible for all aspects of supplying prostheses and orthoses for patients. A prosthesis is a device that replaces a missing body part. An orthosis is a device fixed to the body.</p>	<ul style="list-style-type: none"> • Prosthetist • Orthotist
<p>Radiographer Therapeutic radiographers plan and deliver treatment using radiation. Diagnostic radiographers produce and interpret high-quality images of the body to diagnose injuries and diseases.</p>	<ul style="list-style-type: none"> • Radiographer • Diagnostic radiographer • Therapeutic radiographer
<p>Social workers in England</p>	<ul style="list-style-type: none"> • Social worker
<p>Speech and language therapist Speech and language therapists assess, treat and help to prevent speech, language and swallowing difficulties.</p>	<ul style="list-style-type: none"> • Speech and language therapist • Speech therapist

Appendix 2 to the standards

Examples of professional bodies / associations relating to non-statutorily regulated work

Mediation:

Resolution UK

www.resolution.org.uk/

Resolution's members are family lawyers committed to the constructive resolution of family disputes. Members follow a Code of Practice that promotes a non-confrontational approach to family problems, encourage solutions that consider the needs of the whole family and in particular the best interests of children.

Association of Child Psychotherapists (Psychoanalytic)

www.childpsychotherapy.org.uk

The Association of Child Psychotherapists is the professional organisation for Child and Adolescent Psychoanalytic Psychotherapy in the UK. The Association recognises and monitors seven training schools in Child and Adolescent Psychotherapy (e.g. the Anna Freud Centre). Child Psychotherapists who have qualified in one of these trainings (minimum 3 years, doctoral equivalent) are eligible for full membership of the Association and are able to work as autonomous professionals within the NHS. Child Psychotherapists are appointed at similar grades to Clinical Psychologists.

The UK Council for Psychotherapy (UKCP)

www.psychotherapy.org.uk

The UKCP is a membership organisation with over 75 training and listing organisations, and over 7,000 individual practitioners. UKCP holds the national register of psychotherapists and psychotherapeutic counsellors, listing those practitioner members who meet exacting standards and training requirements. Organisational members / associations are grouped together in modality colleges representing all the main traditions in the practice of psychotherapy in the UK including

- Association for Cognitive Analytic Therapy
- Association for Family Therapy and Systemic Practice
- Gestalt Psychotherapy and Training Institute
- Institute of Transactional Analysis
- Institute for Arts in Therapy and Education

The British Association for Counselling & Psychotherapy (BACP)

www.bacp.co.uk

BACP is a membership organisation and a registered charity that sets standards for a wide variety of therapeutic practice and provides information for therapists, clients of therapy, and the general public. It has over 37,000 members and is the largest professional body representing counselling and psychotherapy in the UK. BACP accredits training courses for counsellors and psychotherapists and is dedicated to ensuring its members practice responsibly, ethically and to the highest of standards.

The British Association for Behavioural and Cognitive Psychotherapies (BABCP)

www.babcp.com

The BABCP is the lead organisation for Cognitive Behavioural Therapy in the UK. It is a multi-disciplinary interest group for people involved in the practice and theory of behavioural and cognitive psychotherapy. The BABCP maintain standards for practitioners of Behavioural & Cognitive Psychotherapy by providing the opportunity for members who meet minimum criteria to become accredited.

British Psychoanalytic Council

www.psychoanalytic-council.org

Psychoanalytic or psychodynamic psychotherapy draws on theories and practices of analytical psychology and psychoanalysis. It is a therapeutic process which helps patients understand and resolve their problems by increasing awareness of their inner world and its influence over relationships both past and present. It differs from most other therapies in aiming for deep seated change in personality and emotional development. Psychoanalytic and psychodynamic psychotherapy aim to help people with serious psychological disorders to understand and change complex, deep-seated and often unconsciously based emotional and relationship problems thereby reducing symptoms and alleviating distress.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1: Do you think that the expert's statement of truth should be amended to include a statement that the expert believes that they meet the standards?

Please indicate yes or no. If you do not agree, please give reasons.

Question 2: Do you think it would be helpful if a model template were developed for expert CVs?

Please indicate yes or no. Please give reasons.

Question 3: Do you think there should be an open question in the letter of instruction asking the expert to add any additional information which they consider relevant?

Please indicate yes or no. Please give reasons.

Question 4: Do you agree that minimum standards are needed for experts involved in family proceedings relating to children?

Please indicate yes or no. If you do not agree, please give reasons.

Question 5: Do you have any comments on the advantages and disadvantages of current assurance processes?

Please give details.

Question 6: Do you agree with the proposed scope of the standards for experts (family proceedings relating to children)?

Please indicate yes or no. If you do not agree, please give reasons.

Question 7: Do you consider that there are any components that should be removed from the standards? Please indicate yes or no. Please give details.

Question 8: Do you consider that there are any components that are missing and should be added to the standards? Please indicate yes or no. Please give details.

Question 9: Do you have any comments on the way the standards have been drafted? Please provide alternative drafting suggestions.

Question 10: Do you have any other comments about the standards?

Question 11: Are there other relevant bodies or professions which you consider should be added to those set out in Appendix 1 and Appendix 2 to the standards? Please indicate yes or no. Please give details.

Question 12(a): Have the right impacts been identified in the Impact Assessment? (b) Do you have evidence of other impacts which have not been considered? Please indicate yes or no. Please give details.

Question 13: Are you aware of any potential equality impacts that may result from the proposals? Please indicate yes or no. Please give details.

We are particularly interested in evidence on the impacts upon experts themselves.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 18 July 2013 to:

Joe Murphy
Ministry of Justice
Family Justice
4th Floor, 4.32
102 Petty France
London SW1H 9AJ
Tel: 020 3334 6967
Email: familyjusticereview@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at www.justice.gov.uk/index.htm.

Alternative format versions of this publication can be requested from Joe Murphy (details above).

Publication of response

A paper summarising the responses to this consultation will be published in Summer/Autumn 2013. The response paper will be available on-line at www.justice.gov.uk/index.htm.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other

things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact Assessment

An Impact Assessment has been published on the Ministry of Justice website (www.justice.gov.uk) alongside this consultation.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Annex A

List of individuals and organisations who have been sent a copy of the consultation paper

Academy of Experts
Academy of Medical Royal Colleges
Association of Child Psychotherapists
Association of Directors of Childrens Services
Association of Directors of Social Services Cymru
Association of HM District Judges
Association of Lawyers for Children
Bond Solon
British Association for Behavioural and Cognitive Psychotherapies, The
British Association for Counselling & Psychotherapy, The
British Medical Association
British Psychoanalytic Council, The
British Psychological Society
Brophy, Dr Julia
CAFCASS
CAFCASS Cymru
Care Council for Wales
Carter Brown Associates
Chartered Institute of Legal Executives
Confederation of Independent Social Work Agencies
Consortium of Expert Witnesses to the Family Courts
Council of HM Circuit Judges
Council of HM District Judges (magistrates' courts)
Doughty, Dr Julie, Cardiff University
Expert Witness Institute
Faculty of Forensic and Legal Medicine, Royal College of Physicians
Family Law Bar Association
General Chiropractic Council
General Dental Council
General Medical Council
General Optical Council
General Osteopathic Council
General Pharmacy Council
Harwin, Professor Judith, Brunel University
Health and Care Professions Council

Hoyano, Dr Laura, Oxford University
Justices' Clerks' Society
Law Society, The
Lucy Faithfull Foundation
Maclean, Mavis, Oxford University
Magistrates' Association, The
Masson, Professor Judith, Bristol University
Medical Defence Union
Medical Protection Society
Medicolegal Society, The
Nursing and Midwifery Council
Official Solicitor, The
Professional Standards Authority for Health and Social Care
Psychology Associates
Resolution
Royal College of Anaesthetists
Royal College of General Practitioners
Royal College of Midwifery
Royal College of Nursing
Royal College of Paediatrics and Child Health
Royal College of Pathologists
Royal College of Psychiatrists
Royal College of Radiologists
Royal College of Speech and Language Therapists
Royal College of Surgeons
Society of Expert Witnesses
Tucker, Jason, Cardiff University
UK Council for Psychotherapy, The
UK Register of Expert Witnesses

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Alternative format versions of this report are available on request from Joe.Murphy@justice.gsi.gov.uk.