

The Experts Committee of the Family Justice Council has strong concerns about the proposals contained in the Consultation paper.

Question 9: Do you agree that it is appropriate to pay the same rates for the same type of expert in both civil and criminal cases? If not, why and what would the difference be?

1. The Committee considers that paying the same rates for criminal and civil work is based on a false premise as the work undertaken, and the client groups, in the two jurisdictions is very different. The original proposals on transparency were based on the same false premise, that is, that young people in the Youth Courts were the same as those in the Family Courts, and this is simply not the case, as the changes in these proposals reflect. The circumstances and presenting issues are very different and often the children and young people find themselves in situations over which they have no control and which have not been caused in any way by their actions or choices.

2. It is accepted that 'standard' opinion relating to hair strand analysis or DNA testing for example is unlikely to differ across the two Court domains. In Family Courts, the more bespoke and complex opinion called for, relating to for example family dynamics, attachment, child development, child health and non-accidental injury require very specific knowledge not only of the often complex clinical issues but also the family court context and the life changing consequences of decisions made within this environment. Indeed, in family work, the assessments requested are often very broad ranging and inform decisions relating to most if not all aspects of the child's or young persons life circumstances thereafter. In contrast criminal reports are often very narrow and specific in their nature.

3. The amount of work involved in a typical family court assessment by Psychologists, Psychiatrists and Paediatricians, those most frequently instructed, can amount to 25 -40 hours per individual. This takes into account the large number of parties involved in instructing a single joint expert; the amount of information made available in the bundle to digest and integrate into the opinion; and the large number of issues and complex matters that the court requires assistance with. By definition, such work requires experts to have particular expertise and experience over and above the typical practitioner in that field.

4. The amount of administration is also significantly higher, given the requirement of assessing multiple family members; involvement with multiple advocates and other professionals including Guardians, Social Care professionals and health and education professionals. For example many

NHS / statutory practitioners would not be sufficiently expert to undertake work in the family courts without further specialist training and supervision, typically not available within their statutory posts. This is less likely to be the case for many criminal proceedings. Forensic psychiatrists reporting in criminal cases are likely already to be seeing the patient, as part of their NHS work, and payment for the report, which is often likely to be short and specific, is therefore only for this additional piece of work.

6. It is accepted that things need to change in the expert witness marketplace to ensure better quality and quantity of expert evidence especially in family court proceedings and, that being so, a focus on training and development of new professionals is essential. It is important that we move to a position where more quality experts are willing and able to do this work as part of their core activity, rather than it being seen as an 'add on' or 'extra'. Whether this is undertaken through statutory means or via independent practice an allowance has to be made for the associated overheads of undertaking such work on a professional basis (rather than out of one's spare bedroom), not least the amount of time and money that is spent on chasing solicitors for payment!

Question 10: What are the circumstances when prior authority would need to be sought to go above the proposed rates?

7. See comments to first question.

8. It is highly unlikely that a group of experts sufficiently skilled and professionally supported can grow and efficiently operate without going above the proposed rates when matters are complex and dynamic. The circumstances of each case, particularly in public law proceedings, are different and complexities may not emerge until work has commenced, making the seeking of prior authority difficult.

Question 11: Are there any circumstances where fixed fees would be appropriate, for example DNA and GP reports?

9. It might be possible to set a standard fee for very straightforward chemical analyses but this would require discussions with the commercial organisations who undertake this work and further information would be required. There could perhaps be a ceiling for GPs reports, except in exceptional circumstances.

Question 12: Are there particular types of experts who may cease to do the work for the proposed rates? Who are they and what can be done to address this?

9. The fixed rate of £70-£100 per hour is considerably lower, than that currently payable; strong views relayed to Committee members are to the effect that many experts will cease to do the work in family proceedings, both those who currently work in multi-disciplinary teams and those who work as single experts. A survey undertaken by the Royal College of Psychiatrists (to which over a third of the Faculty membership responded) clearly indicates that 60.5% of those currently working in multi disciplinary teams and 63.6% of single experts would stop doing the work. If these figures were to be replicated across other areas of expertise it would have a very serious impact on the work of the family courts. It is estimated, for example, that no more than 140 consultant child and adolescent psychiatrists do any work for the family courts, mostly as single experts. Virtually all such single expert case reports are done in consultants' private time, multi disciplinary work involves several people often working in pairs for different parts of the assessment or requiring team members behind a one way screen in elements of the assessment. It is therefore expensive to undertake as it multiplies the time and costs. The suggested fee level is far below that charged by Trusts services which is usually in the range of £200 -£500 per hour.

10. For experts trying to establish professional practices overhead costs can be very significant in terms of the purchase and extensive use of psychometric assessments; clinical supervision; administration; accommodation and financial management. Many expert witnesses will not have other work that can 'subsidise' Court work and for professional practice to grow and develop professional standards have to be maintained. The Court should also not expect the NHS or statutory services indirectly to 'subsidise' individuals doing 'private work' by allowing them to use rooms, tests etc when this is not part of their contract.

11. This being so, there needs to be focus on supporting best practice teams (whether within statutory services or independent practice) with an acceptance that this comes with an 'on cost' – and that the individual does not 'earn' the amount of money paid per hour but that is the organisation's income. If the rates are as low as suggested there is not sufficient income to maintain appropriate professional standards and cover administration 'on costs', consequently organisations will either go out of business, lower their standards (by using fewer psychometric tests or not engaging in peer review,) or change the nature of the work that they do. It is understood that 'fixed fees' for solicitors has resulted in some small legal firms ceasing to trade or their Family departments being subsidised by other more profitable parts of the firm. There is no equivalent subsidy available in most health professionals' practice.

12. For many experts this work is unattractive as it often leads to separation of children from their parents.

Additional comments

13. The implications for the current pilot work on Alternative Commissioning of Experts are worrying. There are particular demands on

creating and sustaining multi disciplinary teams on the NHS. These teams have overhead and staff costs but no fixed income. The Committee notes with concern the situation that has arisen with fixed fees for solicitors, many of whom feel that they cannot provide a reasonable service at the rates currently being paid; it is feared that this will be replicated in expert reporting. The Committee notes that in the pilot scheme currently running, the pilots have been individually costed for each team, but the consultation proposes a blanket fee across the board. The Committee considers that while the pilot scheme is running, and until it has been evaluated, it would be a mistake to introduce changes to rates or methods of payment.

14. There is a considerable amount of work which the Committee feels should be done before these proposals can be considered. Are experts necessary in many cases? What is the role of the expert? Are experts in fact being used in cases to compensate for problems in other areas, e.g. inexperienced social workers and/or guardians? The authority of an expert in a case may determine that case and shape the decisions made by local authorities. Experts can prevent cases coming to court, make individuals reflect on the situation and even prevent the removal of children.

15. The LSC acknowledged, during a meeting with the Committee, that it lacks detailed information on the current situation and cannot make more sophisticated proposals without more detail, which it hopes to receive as part of the responses received to this consultation. The Committee respectfully suggests that the information gathering exercise should be undertaken before any firm proposals are made. It considers that a more appropriate approach would be to investigate the possibility of a service level agreement, akin to those which already operate within the NHS, which would enable a model for the delivery of these reports to be established. This would need to be addressed on two levels: (i) an immediate market issues and (ii) a longer term strategic approach to work with the existing and developing professional structures in order to make it easier for experts to undertake this important work and ensure that it is secured for the future. A dialogue with Primary Care Trusts would be required to progress this.

16. In addition, the Committee notes, and shares, the anxiety felt by many experts over the Government's proposals around the identification of experts and the changes in press reporting. The fear is that many experts will cease to undertake this work as a result of these proposals, and that, combined with fee reductions, will cause an exodus from an area that is currently already stretched. If there is a withdrawal of those willing to undertake this work, the law of supply and demand could lead to pressure to increase costs, rather than achieve the savings the LSC seeks.