

## PRACTICE DIRECTION AMENDMENTS

The new Practice Directions and the amendments to the existing Practice Directions supplementing the Family Procedure Rules 2010 are made by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(1) of the Constitutional Reform Act 2005, and are approved by Lord McNally, Minister of State, by the authority of the Lord Chancellor.

The new Practice Directions and amendments to the existing Practice Directions come into force as follows—	
PD 5A (FORMS)	20 December 2012
PD 9A (APPLICATION FOR A FINANCIAL REMEDY)	31 January 2013
PD12C (SERVICE OF APPLICATION IN CERTAIN PROCEEDINGS RELATING TO CHILDREN)	31 January 2013
PD 12G (COMMUNICATION OF INFORMATION)	20 December 2012
PD 14E (COMMUNICATION OF INFORMATION RELATING TO PROCEEDINGS)	20 December 2012
PD 17A (STATEMENTS OF TRUTH)	31 January 2013
PD 25A (EXPERTS AND ASSESSORS IN FAMILY PROCEEDINGS) (revoked)	31 January 2013
PD 25A (EXPERTS – EMERGENCIES AND PRE PROCEEDINGS INSTRUCTIONS)	31 January 2013
PD 25B (THE DUTIES OF AN EXPERT, THE EXPERT'S REPORT AND ARRANGEMENTS FOR AN EXPERT TO ATTEND COURT)	31 January 2013
PD 25C (CHILDREN PROCEEDINGS – THE USE OF SINGLE JOINT EXPERTS AND THE PROCESS LEADING TO AN EXPERT BEING INSTRUCTED OR EXPERT EVIDENCE BEING PUT BEFORE THE COURT)	31 January 2013

PD 25D (FINANCIAL REMEDY PROCEEDINGS AND OTHER FAMILY PROCEEDINGS (EXCEPT CHILDREN PROCEEDINGS) – THE USE OF SINGLE JOINT EXPERTS AND THE PROCESS LEADING TO EXPERT EVIDENCE BEING PUT BEFORE THE COURT)	31 January 2013
PD 25E (DISCUSSIONS BETWEEN EXPERTS IN FAMILY PROCEEDINGS)	31 January 2013
PD 25F (ASSESSORS IN FAMILY PROCEEDINGS)	31 January 2013
PD 34A (RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS)	20 December 2012

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Lord Judge  
The Lord Chief Justice of England and Wales

Signed by authority of the Lord Chancellor:

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Lord McNally]  
Minister of State  
Ministry of Justice

**PRACTICE DIRECTION 5A – FORMS**

(1) In Table 2, in the entry relating to Form C69, in the column for the name of the form, after “2003” insert “or the 1996 Hague Convention”.

**PRACTICE DIRECTION 9A – APPLICATION FOR A FINANCIAL REMEDY**

(1) For the words in brackets under paragraph 6.6 substitute-  
“(Provision relating to experts in financial remedy proceedings is contained in Practice Direction 25D (Financial Remedy Proceedings and Other Family Proceedings (Except Children Proceedings) – The Use of Single Joint Experts and the Process Leading to Expert Evidence Being Put Before The Court).)”.

**PRACTICE DIRECTION 12C – SERVICE OF APPLICATION IN CERTAIN PROCEEDINGS RELATING TO CHILDREN**

(1) In the title to the Practice Direction, for “proceedings relating to children” substitute “children proceedings”.

(2) In the descriptive words under the title to the Practice Direction, for “Procedure relating to children” substitute “Children proceedings”.

**PRACTICE DIRECTION 12G - COMMUNICATION OF INFORMATION**

(1) In the table at paragraph 2.1, after the row relating to disclosure from “A party” to “An adoption panel”, insert-

“

A party	A local authority's medical adviser appointed under the Adoption Agencies Regulations 2005 or the Adoption Agencies (Wales) Regulations 2005		To enable the medical adviser to discharge his or her functions as appropriate.
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“

(2) In the table at paragraph 3.1, in the second column of the second row, for “General Social Care Council” substitute “Health and Care Professions Council”.

**PRACTICE DIRECTION 14E – COMMUNICATION OF INFORMATION RELATING TO PROCEEDINGS**

(1) In the table at paragraph 1.3, after the row relating to disclosure from “A party” to “An adoption panel”, insert-

“

A party	A local authority’s medical adviser appointed under the Adoption Agencies Regulations 2005 or the Adoption Agencies (Wales) Regulations 2005		To enable the medical adviser to discharge his or her functions as appropriate.
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“

**PRACTICE DIRECTION 17A – STATEMENTS OF TRUTH**

(1) In paragraph 1.3, for “see the practice direction which supplements Part 25” substitute “see paragraph 9.1(j) of Practice Direction 25B (The Duties Of An Expert, The Expert’s Report and Arrangements For An Expert To Attend Court)”.

**PRACTICE DIRECTION 25A AND NEW PRACTICE DIRECTIONS SUPPORTING PART 25**

(1) For Practice Direction 25A (Experts and Assessors in Family Proceedings), substitute—

- (a) Practice Direction 25A (EXPERTS – EMERGENCIES AND PRE PROCEEDINGS INSTRUCTIONS)
- (b) Practice Direction 25B (THE DUTIES OF AN EXPERT, THE EXPERT’S REPORT AND ARRANGEMENTS FOR AN EXPERT TO ATTEND COURT)
- (c) Practice Direction 25C (CHILDREN PROCEEDINGS – THE USE OF SINGLE JOINT EXPERTS AND THE PROCESS LEADING TO AN EXPERT BEING INSTRUCTED OR EXPERT EVIDENCE BEING PUT BEFORE THE COURT)
- (d) Practice Direction 25D (FINANCIAL REMEDY PROCEEDINGS AND OTHER FAMILY PROCEEDINGS (EXCEPT CHILDREN PROCEEDINGS) – THE USE OF SINGLE JOINT EXPERTS AND THE

PROCESS LEADING TO EXPERT EVIDENCE BEING PUT BEFORE THE COURT)

(e) Practice Direction 25E (DISCUSSIONS BETWEEN EXPERTS IN FAMILY PROCEEDINGS)

(f) Practice Direction 25F (ASSESSORS IN FAMILY PROCEEDINGS)

as set out at **Annex A(i) to (vi)**.

## **PRACTICE DIRECTION 34A – RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS**

(1) In the section “Applications under section 2 of the 1972 Act (rule 34.14): Republic of Ireland” –

(a) omit the heading “Republic of Ireland”;

(b) omit paragraphs 4.3 and 4.4.

(2) In the section “Applications under section 2 of the 1972 Act (rule 34.14): Hague Convention Country”, in paragraph 4.5, after “country” in the second place where it occurs, insert “(as defined in rule 34.12)”.

(3) In the section “Applications under section 2 of the 1972 Act (rule 34.14): United States of America”, in paragraph 4.8, omit “a specified State of”.

(4) In the section “Notification to the Lord Chancellor”, for “sent” in the second place where it occurs substitute “send”.

(5) In the section “certified copies of orders issued under rule 34.39” –

(a) in the heading, for “rule 34.39” substitute “rules 34.39 and 34.40”;

(b) in paragraph 7.1 –

(i) for “rule 34.39” substitute “rule 34.39 or 34.40”;

(ii) omit “obtained in a magistrates’ court”;

(c) after paragraph 7.4 insert –

“7.5 In an application under the Maintenance Regulation, the certificate will be in the form of Annex II to that Regulation.

7.6 In an application under the 2007 Hague Convention, the certificate will be comprised of the following Article 11 forms duly completed by the court officer–

- (a) the Abstract of a Decision;
- (b) the Statement of Enforceability; and
- (c) the Statement of Proper Notice.

7.7 In an application under the 2007 Hague Convention, the certificate will additionally state the jurisdictional basis upon which the order was made, with reference to the jurisdictional criteria in Article 20(1) of that Convention to be applied by the State in which recognition and/or enforcement is to be sought.”.

(6) In the section “Part 1 of the 1972 Act - modified rules” –

(a) in paragraph 9.1(a), after “(Annex 1)” insert-

“(but see the note in that Annex regarding the ongoing relevance of those rules following revocation of rule 34.26)”;

(b) in paragraph 9.1(c) omit “Specified States of”.

(7) In Annex 1, after the heading “APPLICATION OF SECTION 1 OF CHAPTER 2 OF PART 34 TO THE REPUBLIC OF IRELAND”, insert –

**“NOTE – rule 34.26 was revoked by S.I.2011/1328. Reciprocal enforcement of maintenance as between the UK and the Irish Republic has been governed by the Maintenance Regulation (Council Regulation (EC) no 4/2009) since 18th June 2011 and the relevant rules for that Regulation are contained in Chapter 3 of Part 34 of the Rules. The provisions of this Annex are therefore of relevance only where either –**

**(a) the application for registration of an order relating to an Irish maintenance order was made on or before the 18th June 2011 and was still pending on that date; or**

**(b) the order was registered prior to the 18th June 2011.**

**All other applications are governed by the Maintenance Regulation. Practice Direction 34C provides further information regarding which rules apply to applications relating to other European Union Member States.”.**



## **PRACTICE DIRECTION 25A – EXPERTS – EMERGENCIES AND PRE PROCEEDINGS INSTRUCTIONS**

*This Practice Direction supplements FPR Part 25*

### **Introduction**

**1.1** This Practice Direction and Practice Directions 25B to E relate to expert evidence and supplement FPR Part 25. This Practice Direction applies to children proceedings and all other family proceedings.

### **Emergency and urgent cases**

**2.1** In emergency or urgent cases – for example, where, before formal issue of proceedings, a without-notice application is made to the court during or out of business hours; or where, after proceedings have been issued, a previously unforeseen need for (further) expert evidence arises at short notice – a party may wish to put expert evidence before the court without having complied with all or any part of Practice Directions 25B to E. In such circumstances, the party wishing to put the expert evidence before the court must apply forthwith to the court – where possible or appropriate, on notice to the other parties – for directions as to the future steps to be taken in respect of the expert evidence in question.

### **Pre-application instruction of experts**

**3.1** When experts' reports are commissioned before the commencement of proceedings, it should be made clear to the expert that he or she may in due course be reporting to the court and should therefore consider himself or herself bound by the duties of an expert set out in Practice Direction 25B (*The Duties of An Expert, the Expert's Report and Arrangements for An Expert To Attend Court*). In so far as possible the enquiries of the expert and subsequent letter of instruction should follow either Practice Direction 25C (*Children Proceedings -the Use of Single Joint Experts and the Process Leading to an Expert Being Instructed or Expert Evidence Being Put Before The Court*) or 25D (*Financial Remedy Proceedings and other Family Proceedings (except Children Proceedings) – the Use of Single Joint Experts and the Process Leading to Expert Evidence Being Put Before The Court*).

**3.2** In particular, a prospective party to children proceedings (for example, a local authority) should always write a letter of instruction when asking a potential witness for a report or an opinion, whether that request is within proceedings or pre-proceedings (for example, when commissioning specialist assessment materials, reports from a treating expert or other evidential materials); and the letter of instruction should conform to the principles set out in Practice Direction 25C.

**3.3** It should be noted that the court's permission is required to put expert evidence (in any form) before the court in all family proceedings (see FPR 25.4(1)). In children proceedings, the court's permission is also required for an expert to be instructed and for a child to be medically or psychiatrically examined or otherwise assessed for the purposes of the provision of expert evidence in the proceedings (FPR 25.4(2)). Where the court's permission has not been given in accordance with FPR 25.4(2), evidence resulting from such instructions or examination or other assessment is inadmissible unless the court rules otherwise (FPR 25.4(3) and (4)). The court's permission will be needed to put any expert evidence before the court which was obtained before proceedings have started.

**3.4** Attention is drawn to Practice Direction 15B (*Adults Who May Be Protected Parties and Children Who May Become Protected Parties In Family Proceedings*) which gives guidance relating to proceedings where an adult party may not have capacity to conduct the litigation or to instruct an expert.

**PRACTICE DIRECTION 25B - THE DUTIES OF AN EXPERT, THE EXPERT'S REPORT AND ARRANGEMENTS FOR AN EXPERT TO ATTEND COURT**

*This Practice Direction supplements FPR Part 25*

**Scope of this Practice Direction**

**1.1** This Practice Direction focuses on the duties of an expert including the contents of the expert's report and, where an expert is to attend court, the arrangements for such attendance. Other Practice Directions supporting FPR Part 25 deal with different aspects of experts in family proceedings. The relevant Practice Directions are-

- (a) Practice Direction 25A (*Experts - Emergencies and Pre proceedings Instructions*);
- (b) Practice Direction 25C (*Children Proceedings - The Use of Single Joint Experts and the Process Leading to an Expert Being Instructed or Expert Evidence Being Put Before the Court*);
- (c) Practice Direction 25D (*Financial Remedy Proceedings and Other Family Proceedings (except Children Proceedings) - The Use of Single Joint Experts and the Process Leading to Expert Evidence Being Put Before The Court*); and
- (d) Practice Direction 25E (*Discussions Between Experts in Family Proceedings*).

**1.2** Practice Direction 15B (*Adults Who May Be Protected Parties and Children Who May Become Protected Parties In Family Proceedings*) gives guidance relating to proceedings where an adult party may not have capacity to conduct the litigation or to instruct an expert.

**The meaning of "expert"**

**2.1** In accordance with FPR 25.2(1), "expert" means a person who provides expert evidence for use in family proceedings. FPR 25.2 (2)(a) to (c) expressly refers to evidence that is not expert evidence. For example, evidence given by a children's guardian is not expert evidence.

**2.2** An expert includes a reference to an expert team which can include ancillary workers in addition to experts. In an expert team, an 'ancillary' worker may be, for example, a play therapist or similar who undertakes work with the child or family for the purpose of the expert assessment. It is perfectly possible that such workers will be experts in their own right and in their own field, but it would be cumbersome to name everyone in that position in an order giving permission for an expert to be instructed, a child to be medically or psychiatrically examined or otherwise assessed or expert evidence to be put before the court or in a letter of instruction to an expert. The purpose of the term 'expert team' is to enable a multi-disciplinary team to undertake the assessment without the order having to name everyone who may be involved. The final expert's report must, however, give information about those persons who have taken part in the assessment and their respective roles and who is responsible for the report.

### **The expert's overriding duty**

**3.1** An expert in family proceedings has an overriding duty to the court that takes precedence over any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

### **Particular duties of the expert**

**4.1** An expert shall have regard to the following, among other, duties:

- (a) to assist the court in accordance with the overriding duty;
- (b) to provide advice to the court that conforms to the best practice of the expert's profession;
- (c) to answer the questions about which the expert is required to give an opinion (in children proceedings, those questions will be set out in the order of the court giving permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court);
- (d) to provide an opinion that is independent of the party or parties instructing the expert;
- (e) to confine the opinion to matters material to the issues in the case and in relation only to the questions that are within the expert's expertise (skill and experience);
- (f) where a question has been put which falls outside the expert's expertise, to state this at the earliest opportunity and to volunteer an opinion as to whether another expert is required to bring expertise not possessed by those already involved or,

in the rare case, as to whether a second opinion is required on a key issue and, if possible, what questions should be asked of the second expert;

- (g) in expressing an opinion, to take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed;
- (h) to inform those instructing the expert without delay of any change in the opinion and of the reason for the change.

### **The requirement for the court's permission**

**5.1** The general rule in family proceedings is that the court's permission is required to put expert evidence (in any form) before the court (FPR25.4(1)). The court is under a duty to restrict expert evidence to that which in the opinion of the court is necessary to assist the court to resolve the proceedings. The overriding objective in FPR1.1 applies when the court is exercising this duty. In children proceedings, the court's permission is required to instruct an expert and for a child to be medically or psychiatrically examined or otherwise assessed for the purposes of the provision of expert evidence in the proceedings (FPR25.4(2)).

### **Preliminary enquiries which the expert should expect to receive**

#### **6.1 In good time for the information requested to be available for -**

(a) **the court hearing** when the court will decide whether to give permission for the expert evidence to be put before the court (or also in children proceedings, for the expert to be instructed or the child to be examined or otherwise assessed); or

(b) **the advocates' meeting or discussion** where one takes place before such a hearing,

the party or parties intending to instruct the expert shall approach the expert with some information about the case.

**6.2** The details of the information to be given to the expert are set out in Practice Direction 25C, paragraph 3.2 and Practice Direction 25D paragraph 3.3 and include the nature of the proceedings, the questions for the expert, the time when the expert's report is likely to be required, the timing of any hearing at which the expert may have to give evidence and how the expert's fees will be funded.

**6.3** Children proceedings are confidential which means in those proceedings parties raising preliminary enquiries of an expert who has not yet been instructed can only tell the expert information which he or she will need about the case to be able to answer the preliminary questions raised.

### **Balancing the needs of the court and those of the expert**

**7.1** It is essential that there should be proper co-ordination between the court and the expert when drawing up the case management timetable: the needs of the court should be balanced with the needs of the expert whose forensic work is undertaken as an adjunct to his or her main professional duties.

### **The expert's response to preliminary enquiries**

**8.1** In good time for the court hearing when the court will decide whether or not to give permission for the expert evidence to be put before the court (or also in children proceedings, for the expert to be instructed or the child to be examined or otherwise assessed) or for the advocates' meeting or discussion where one takes place before that hearing, the party or parties intending to instruct the expert will need confirmation from the expert—

- (a) that acceptance of the proposed instructions will not involve the expert in any conflict of interest;
- (b) that the work required is within the expert's expertise;
- (c) that the expert is available to do the relevant work within the suggested time scale;
- (d) when the expert is available to give evidence, of the dates and times to avoid and, where a hearing date has not been fixed, of the amount of notice the expert will require to make arrangements to come to court (or to give evidence by telephone conference or video link) without undue disruption to his or her normal professional routines;
- (e) of the cost, including hourly or other charging rates, and likely hours to be spent attending experts' meetings, attending court and writing the report (to include any examinations and interviews);
- (f) of any representations which the expert wishes to make to the court about being named or otherwise identified in any public judgment given by the court.

## **Content of the expert's report**

**9.1** The expert's report shall be addressed to the court and prepared and filed **in accordance with the court's timetable** and must—

- (a) give details of the expert's qualifications and experience;
- (b) include a statement identifying the document(s) containing the material instructions and the substance of any oral instructions and, as far as necessary to explain any opinions or conclusions expressed in the report, summarising the facts and instructions which are material to the conclusions and opinions expressed;
- (c) state who carried out any test, examination or interview which the expert has used for the report and whether or not the test, examination or interview has been carried out under the expert's supervision;
- (d) give details of the qualifications of any person who carried out the test, examination or interview;
- (e) answer the questions about which the expert is to give an opinion and which relate to the issues in the case;
- (f) in expressing an opinion to the court—
  - (i) take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed, identifying the facts, literature and any other material, including research material, that the expert has relied upon in forming an opinion;
  - (ii) describe the expert's own professional risk assessment process and process of differential diagnosis, highlighting factual assumptions, deductions from the factual assumptions, and any unusual, contradictory or inconsistent features of the case;
  - (iii) indicate whether any proposition in the report is an hypothesis (in particular a controversial hypothesis), or an opinion deduced in accordance with peer-reviewed and tested technique, research and experience accepted as a consensus in the scientific community;
  - (iv) indicate whether the opinion is provisional (or qualified, as the case may be), stating the qualification and the reason for it, and identifying what further information is required to give an opinion without qualification;
- (g) where there is a range of opinion on any question to be answered by the expert—

- (i) summarise the range of opinion;
  - (ii) identify and explain, within the range of opinions, any “unknown cause”, whether arising from the facts of the case (for example, because there is too little information to form a scientific opinion) or from limited experience or lack of research, peer review or support in the relevant field of expertise;
  - (iii) give reasons for any opinion expressed: the use of a balance sheet approach to the factors that support or undermine an opinion can be of great assistance to the court;
- (h) contain a summary of the expert’s conclusions and opinions;
- (i) contain a statement that the expert—
- (i) has no conflict of interest of any kind, other than any conflict disclosed in his or her report;
  - (ii) does not consider that any interest disclosed affects his or her suitability as an expert witness on any issue on which he or she has given evidence;
  - (iii) will advise the instructing party if, between the date of the expert’s report and the final hearing, there is any change in circumstances which affects the expert’s answers to (i) or (ii) above;
  - (iv) understands their duty to the court and has complied with that duty; and
  - (v) is aware of the requirements of FPR Part 25 and this practice direction;
- (j) be verified by a statement of truth 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.”

(FPR Part 17 deals with statements of truth. Rule 17.6 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

## **Arrangements for experts to give evidence**

### *Preparation*

**10.1** Where the court has directed the attendance of an expert witness, the party who instructed the expert or party responsible for the instruction of the expert shall, **by a date specified by the court prior to the hearing at which the expert is to give oral**

**evidence (“the specified date”) or, where in care or supervision proceedings an Issues Resolution Hearing (“the IRH”) is to be held, by the IRH, ensure that—**

- (a) a date and time (if possible, convenient to the expert) are fixed for the court to hear the expert’s evidence, substantially in advance of the hearing at which the expert is to give oral evidence and no later than a specified date prior to that hearing or, where an IRH is to be held, than the IRH;
- (b) if the expert’s oral evidence is not required, the expert is notified as soon as possible;
- (c) the witness template accurately indicates how long the expert is likely to be giving evidence, in order to avoid the inconvenience of the expert being delayed at court;
- (d) consideration is given in each case to whether some or all of the experts participate by telephone conference or video link, or submit their evidence in writing, to ensure that minimum disruption is caused to professional schedules and that costs are minimised.

*Experts attending court*

**10.2** Where expert witnesses are to be called, all parties shall, **by the specified date or, where an IRH is to be held, by the IRH, ensure that—**

- (a) the parties’ advocates have identified (whether at an advocates’ meeting or by other means) the issues which the experts are to address;
- (b) wherever possible, a logical sequence to the evidence is arranged, with experts of the same discipline giving evidence on the same day;
- (c) the court is informed of any circumstance where all experts agree but a party nevertheless does not accept the agreed opinion, so that directions can be given for the proper consideration of the experts’ evidence and opinion;
- (d) in the exceptional case the court is informed of the need for a witness summons.

**PRACTICE DIRECTION 25C – CHILDREN PROCEEDINGS – THE USE OF SINGLE JOINT EXPERTS AND THE PROCESS LEADING TO AN EXPERT BEING INSTRUCTED OR EXPERT EVIDENCE BEING PUT BEFORE THE COURT**

*This Practice Direction supplements FPR Part 25*

**Scope of this Practice Direction**

**1.1** This Practice Direction applies to children proceedings and contains guidance on –

- (a) the use of single joint experts;
- (b) how to prepare for the hearing at which the court will consider whether to give permission for an expert to be instructed, a child to be medically or psychiatrically examined or otherwise assessed for the purposes of provision of expert evidence in the proceedings or for putting expert evidence (in any form) before the court including–
  - (i) preliminary enquiries of experts;
  - (ii) the content of an application for the court’s permission in addition to matters mentioned in FPR 25.7;
  - (iii) matters to be set out in the draft order to be attached to the application for permission; and
- (c) the letter of instruction to the expert.

**1.2** “Children proceedings” includes proceedings under Schedule 1 to the 1989 Act as those proceedings are proceedings which relate wholly or mainly to the maintenance or upbringing of a minor referred to in FPR 25.2(1).

**Single joint experts**

**2.1** FPR 25.4 applies to a single joint expert (“SJE”) in addition to an expert instructed by one party. This means that the court’s permission is required to put expert evidence from an SJE (in any form) before the court (FPR 25.4(1)). The court’s

permission is also required to instruct an SJE and for a child to be medically or psychiatrically examined or otherwise assessed for the purposes of provision of evidence from an SJE (FPR 25.4(2)). Wherever possible, expert evidence should be obtained from an SJE instructed by both or all the parties. To that end, a party wishing to instruct an expert should as soon as possible after the start of the proceedings first give the other party or parties a list of the names of one or more experts in the relevant speciality whom they consider suitable to be instructed.

**2.2** Within 5 business days after receipt of the list of proposed experts, the other party or parties should indicate any objection to one or more of the named experts and, if so, supply the name(s) of one or more experts whom they consider suitable.

**2.3** Each party should disclose whether they have already consulted any of the proposed experts about the issue(s) in question.

**2.4** Where the parties cannot agree on the identity of the expert, each party should think carefully before seeking the permission of the court to instruct their own expert because of the costs implications. Disagreements about the use and identity of an expert may be better managed by the court in the context of the application for the court's permission to instruct the expert and for directions for the use of an SJE (see paragraph 2.6 below).

#### *Instructing separate experts*

**2.5** If the parties seek the permission of the court to instruct separate experts,-

- (a) they should agree in advance that the reports will be disclosed; and
- (b) the instructions to each expert should comply, so far as appropriate, with paragraphs 4.1 and 6.1 below (*Letter of instruction*).

#### *Where two or more parties wish to instruct an SJE*

**2.6** If two or more parties wish to instruct an SJE, before applying to the court for permission and directions for the use of an SJE, the parties should-

- (a) so far as appropriate, comply with the guidance in paragraphs 3.2 (Preliminary enquires of the expert) and paragraphs 3.10 and 3.11 below;
- (b) receive the expert's confirmation in response to preliminary enquires referred to in paragraph 8.1 of Practice Direction 25B;
- (c) have agreed in what proportion the SJE's fee is to be shared between them (at least in the first instance) and when it is to be paid; and

- (d) if applicable, have obtained agreement for public funding.

**2.7** The instructions to the SJE should comply, so far as appropriate, with paragraphs 4.1 and 6.1 below (*Letter of instruction*).

### **Preparation for the permission hearing**

**3.1** Paragraphs 3.2 to 3.11 give guidance on how to prepare for the hearing at which the court will consider whether to give permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court. The purpose of the preparation is to ensure that the court has the information required to enable it to exercise its powers under FPR 25.4 and 25.5.

### ***Preliminary enquiries of the expert***

#### **3.2 In good time for the information requested to be available for the hearing**

at which the court will consider whether to give permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court or for the advocates' meeting or discussion where one takes place before that hearing, the party or parties intending to instruct the expert shall approach the expert with the following information—

- (a) the nature of the proceedings and the issues likely to require determination by the court;
- (b) the issues in the proceedings to which the expert evidence is to relate;
- (c) the questions about which the expert is to be asked to give an opinion (including any ethnic, cultural, religious or linguistic contexts) and which relate to the issues in the case;
- (d) the date when the court is to be asked to give permission for the instruction (or if - unusually - permission has already been given, the date and details of that permission);
- (e) whether permission is to be asked of the court for the instruction of another expert in the same or any related field (that is, to give an opinion on the same or related questions);
- (f) the volume of reading which the expert will need to undertake;
- (g) whether or not permission has been applied for or given for the expert to examine the child;

- (h) whether or not it will be necessary for the expert to conduct interviews - and, if so, with whom;
- (i) the likely timetable of legal and social work steps;
- (j) in care and supervision proceedings, any dates in the Timetable for the Child which would be relevant to the proposed timetable for the assessment;
- (k) when the expert's report is likely to be required;
- (l) whether and, if so, what date has been fixed by the court for any hearing at which the expert may be required to give evidence (in particular the Final Hearing); and whether it may be possible for the expert to give evidence by telephone conference or video link: see paragraphs 10.1 and 10.2 (*Arrangements for experts to give evidence*) of Practice Direction 25B;
- (m) the possibility of making, through their instructing solicitors, representations to the court about being named or otherwise identified in any public judgment given by the court;
- (n) whether the instructing party has public funding and the legal aid rates of payment which are applicable.

***Confidentiality of children proceedings and making preliminary enquiries of an expert***

**3.3** For the purposes of the law of contempt of court, information relating to children proceedings (whether or not contained in a document filed with the court or recorded in any form) may be communicated only to an expert whose instruction by a party has been permitted by the court (see FPR 12.73(1)(a)(vii) and 14.14(c)(vii)) as children proceedings are confidential.

**3.4** Before permission is obtained from the court to instruct an expert in children proceedings, the party seeking permission needs to make the enquiries of the expert referred to above in order to provide the court with information to enable it to decide whether to give permission. In practice, enquiries may need to be made of more than one expert for this purpose. This will in turn require each expert to be given sufficient information about the case to decide whether or not he or she is in a position to accept instructions. Such preliminary enquiries, and the disclosure of information about the case which is a necessary part of such enquiries, will not require the court's permission and will not amount to a contempt of court.

### ***Expert's response to preliminary enquiries***

**3.5** In good time for the hearing at which the court will consider whether to give permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court, **the party or parties** intending to instruct the expert must obtain the confirmations from the expert referred to in paragraph 8.1 of Practice Direction 25B. These confirmations include that the work is within the expert's expertise, the expert is available to do the work within the relevant timescale and the expert's costs.

**3.6** Where the parties **cannot agree who should be the single joint expert** before the hearing at which the court will consider whether to give permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court, they should obtain the above confirmations in respect of all experts whom they intend to put to the court for the purposes of FPR 25.11(2)(a) as candidates for the appointment.

### ***The application for the court's permission mentioned in FPR 25.4***

#### *Timing and oral applications for the court's permission mentioned in FPR 25.4*

**3.7** An application for the court's permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court should be made as soon as it becomes apparent that it is necessary to make it. FPR 25.6 makes provision about the time by which applications for the court's permission should be made.

**3.8** Applications should, wherever possible, be made so that they are considered at any directions hearing or other hearing for which a date has been fixed or for which a date is about to be fixed. It should be noted that one application notice can be used by a party to make more than one application for an order or direction at a hearing held during the course of proceedings. An application for the court's permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court may therefore be included in an application notice requesting other orders to be made at such a hearing.

**3.9** Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing) and, if possible, the other parties of the nature of the application and the reason for it. The party should provide the court and the other party with as much as possible of the information referred to in FPR 25.7 and paragraph 3.10 below. That party should then make the application orally at the hearing. An oral application of this kind should be the exception and reserved for genuine cases where circumstances are such that it has only become apparent shortly before the hearing that an expert opinion is necessary.

*The application*

**3.10** In addition to the matters specified in FPR 25.7(2)(a) and (3), an application for the court's permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court, must state-

- (a) the discipline, qualifications and expertise of the expert (by way of C.V. where possible);
- (b) the expert's availability to undertake the work;
- (c) the timetable for the report;
- (d) the responsibility for instruction;
- (e) whether the expert evidence can properly be obtained by only one party (for example, on behalf of the child);
- (f) why the expert evidence proposed cannot properly be given by an officer of the service, Welsh family proceedings officer or the local authority (social services undertaking a core assessment) in accordance with their respective statutory duties or any other party to the proceedings or an expert already instructed in the proceedings;
- (g) the likely cost of the report on an hourly or other charging basis;
- (h) the proposed apportionment (at least in the first instance) of any jointly instructed expert's fee; when it is to be paid; and, if applicable, whether public funding has been approved.

***The terms of the draft order to be attached to the application for the court's permission***

**3.11** FPR 25.7(2)(b) provides that a draft of the order giving the court's permission as mentioned in FPR 25.4 is to be attached to the application for the court's permission.

That draft order must set out the following matters—

- a) the issues in the proceedings to which the expert evidence is to relate and which the court is to identify;
- b) the questions relating to the issues in the case which the expert is to answer and which the court is to approve ensuring that they
  - (i) are within the ambit of the expert's area of expertise;
  - (ii) do not contain unnecessary or irrelevant detail;
  - (iii) are kept to a manageable number and are clear, focused and direct;
- c) the party who is responsible for drafting the letter of instruction and providing the documents to the expert;
- d) the timetable within which the report is to be prepared, filed and served;
- e) the disclosure of the report to the parties and to any other expert;
- f) the organisation of, preparation for and conduct of any experts' discussion (*see Practice Direction 25E – Discussions between Experts in Family Proceedings*);
- g) the preparation of a statement of agreement and disagreement by the experts following an experts' discussion;
- h) making available to the court at an early opportunity the expert reports in electronic form;
- i) the attendance of the expert at court to give oral evidence (alternatively, the expert giving his or her evidence in writing or remotely by video link), whether at or for the Final Hearing or another hearing; unless agreement about the opinions given by the expert is reached at or before the Issues Resolution Hearing ("IRH") or, if no IRH is to be held, by a date specified by the court prior to the hearing at which the expert is to give oral evidence.

**Letter of instruction**

**4.1** The party responsible for instructing the expert shall prepare (in agreement with the other parties where appropriate), a letter of instruction to the expert and shall —

(a) set out the context in which the expert's opinion is sought (including any ethnic, cultural, religious or linguistic contexts);

(b) set out the questions approved by the court and which the expert is required to answer and any other linked questions ensuring that they –

(i) are within the ambit of the expert's area of expertise;

(ii) do not contain unnecessary or irrelevant detail;

(iii) are kept to a manageable number and are clear, focused and direct; and

(iv) reflect what the expert has been requested to do by the court

(Annex A to this *Practice Direction* sets out suggested questions in letters of instruction to (1) child mental health professionals or paediatricians, and (2) adult psychiatrists and applied psychologists, in Children Act 1989 proceedings);

(c) list the documentation provided, or provide for the expert an indexed and paginated bundle which shall include—

(i) an agreed list of essential reading; and

(ii) a copy of this Practice Direction and Practice Directions 25B and E and where appropriate Practice Direction 15B;

(d) identify any materials provided to the expert which have not been produced either as original medical (or other professional) records or in response to an instruction from a party, and state the source of that material (such materials may contain an assumption as to the standard of proof, the admissibility or otherwise of hearsay evidence, and other important procedural and substantive questions relating to the different purposes of other enquiries, for example, criminal or disciplinary proceedings);

(e) identify all requests to third parties for disclosure and their responses in order to avoid partial disclosure, which tends only to prove a case rather than give full and frank information;

(f) identify the relevant people concerned with the proceedings (for example, the treating clinicians) and inform the expert of his or her right to talk to them provided that an accurate record is made of the discussions;

(g) identify any other expert instructed in the proceedings and advise the expert of their right to talk to the other experts provided that an accurate record is made of the discussions;

(h) subject to any public funding requirement for prior authority, define the contractual basis upon which the expert is retained and in particular the funding

mechanism including how much the expert will be paid (an hourly rate and overall estimate should already have been obtained), when the expert will be paid, and what limitation there might be on the amount the expert can charge for the work which they will have to do. In cases where the parties are publicly funded, there may also be a brief explanation of the costs and expenses excluded from public funding by Funding Code criterion 1.3 and the detailed assessment process.

### **Adult who is a protected party**

**5.1** Where the adult is a protected party, that party's representative shall be involved in any instruction of an expert, including the instruction of an expert to assess whether the adult, although a protected party, is competent to give evidence (*see Practice Direction 15B-Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings*).

### **Asking the court to settle the letter of instruction to a single joint expert**

**6.1** Where possible, the written request for the court to consider the letter of instruction referred to in rule 25.12(2) should be set out in an e-mail to the court and copied by e-mail to the other instructing parties. The request should be sent to the relevant court or (by prior arrangement only) directly to the judge dealing with the proceedings. In the magistrates' court, the request should be sent to the relevant court or (by prior arrangement only) to any district judge (magistrates' courts) hearing the proceedings (and copied to the legal adviser) or to the legal adviser. The court will settle the letter of instruction, usually without a hearing to avoid delay; and will send (where practicable, by e-mail) the settled letter to the lead solicitor for transmission forthwith to the expert, and copy it to the other instructing parties for information.

## **ANNEX A**

**(drafted by the Family Justice Council)**

**Suggested questions in letters of instruction  
to child mental health professional or paediatrician  
in Children Act 1989 proceedings**

## **A. The Child(ren)**

1. Please describe the child(ren)'s current health, development and functioning (according to your area of expertise), and identify the nature of any significant changes which have occurred

- Behavioural
- Emotional
- Attachment organisation
- Social/peer/sibling relationships
- Cognitive/educational
- Physical
  - Growth, eating, sleep
  - Non-organic physical problems (including wetting and soiling)
  - Injuries
  - Paediatric conditions

2. Please comment on the likely explanation for/aetiology of the child(ren)'s problems/difficulties/injuries

- History/experiences (including intrauterine influences, and abuse and neglect)
- Genetic/innate/developmental difficulties
- Paediatric/psychiatric disorders

3. Please provide a prognosis and risk if difficulties not addressed above.

4. Please describe the child(ren)'s needs in the light of the above

- Nature of care-giving
- Education
- Treatment

in the short and long term (subject, where appropriate, to further assessment later).

## **B. The parents/primary carers**

5. Please describe the factors and mechanisms which would explain the parents' (or primary carers) harmful or neglectful interactions with the child(ren) (if relevant).

6. What interventions have been tried and what has been the result?
7. Please assess the ability of the parents or primary carers to fulfil the child(ren)'s identified needs now.
8. What other assessments of the parents or primary carers are indicated?
  - Adult mental health assessment
  - Forensic risk assessment
  - Physical assessment
  - Cognitive assessment
9. What, if anything, is needed to assist the parents or primary carers now, within the child(ren)'s time scales and what is the prognosis for change?
  - Parenting work
  - Support
  - Treatment/therapy

### **C. Alternatives**

10. Please consider the alternative possibilities for the fulfilment of the child(ren)'s needs
  - What sort of placement
  - Contact arrangements

Please consider the advantages, disadvantages and implications of each for the child(ren).

**Suggested questions in letters of instruction  
to adult psychiatrists and applied psychologists  
in Children Act 1989 proceedings**

1. Does the parent/adult have - whether in his/her history or presentation - a mental illness/disorder (including substance abuse) or other psychological/emotional difficulty and, if so, what is the diagnosis?
2. How do any/all of the above (and their current treatment if applicable) affect his/her functioning, including interpersonal relationships?

3. If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional difficulty or personality disorder which could be associated with risk to others, based on the available evidence base (whether published studies or evidence from clinical experience)?
4. What are the experiences/antecedents/aetiology which would explain his/her difficulties, if any, (taking into account any available evidence base or other clinical experience)?
5. What treatment is indicated, what is its nature and the likely duration?
6. What is his/her capacity to engage in/partake of the treatment/therapy?
7. Are you able to indicate the prognosis for, time scales for achieving, and likely durability of, change?
8. What other factors might indicate positive change?

(It is assumed that this opinion will be based on collateral information as well as interviewing the adult).

**PRACTICE DIRECTION 25D – FINANCIAL REMEDY PROCEEDINGS AND OTHER FAMILY PROCEEDINGS (EXCEPT CHILDREN PROCEEDINGS) – THE USE OF SINGLE JOINT EXPERTS AND THE PROCESS LEADING TO EXPERT EVIDENCE BEING PUT BEFORE THE COURT**

*This Practice Direction supplements FPR Part 25*

**Scope of this Practice Direction**

**1.1** This Practice Direction applies to financial remedy proceedings and other family proceedings except children proceedings and contains guidance on –

- (a) the use of single joint experts;
- (b) how to prepare for the hearing at which the court will consider whether to give permission for putting expert evidence (in any form) before the court including:
  - (i) preliminary enquiries of experts;
  - (ii) information to be given to the court before the hearing;
- (c) the letter of instruction to the expert.

**Single joint experts**

**2.1** FPR 25.4 applies to a single joint expert (“SJE”) in addition to an expert instructed by one party. This means that the court’s permission is required to put expert evidence from an SJE (in any form) before the court. However, in family proceedings (except children proceedings) there is no requirement for the court’s permission to be obtained before instructing an expert. Wherever possible, expert evidence should be obtained from a single joint expert instructed by both or all the parties (“SJE”). To that end, a party wishing to instruct an expert should first give the other party or parties a list of the names of one or more experts in the relevant speciality whom they consider suitable to be instructed.

**2.2** **Within 10 business days after receipt of the list of proposed experts**, the other party or parties should indicate any objection to one or more of the named experts and, if so, supply the name(s) of one or more experts whom they consider suitable.

**2.3** Each party should disclose whether they have already consulted any of the proposed experts about the issue(s) in question.

**2.4** Where the parties cannot agree on the identity of the expert, each party should think carefully before instructing their own expert and seeking the permission of the court to put that expert evidence before it because of the costs implications. Disagreements about the use and identity of an expert may be better managed by the court in the context of an application for the court's permission to put the expert evidence before the court and for directions for the use of an SJE (see paragraph 2.6 below).

*Agreement to instruct separate experts*

**2.5** If the parties agree to instruct separate experts and to seek the permission of the court to put the separate expert evidence before it,-

- (a) they should agree in advance that the reports will be disclosed; and
- (b) the instructions to each expert should comply, so far as appropriate, with paragraphs 4.1 and 6.1 below (*Letter of instruction*).

*Agreement to instruct an SJE*

**2.6** If there is agreement to instruct an SJE, **before applying to the court for permission to put the expert evidence before it and directions for the use of an SJE**, the parties should-

- (a) so far as appropriate, comply with the guidance in paragraphs 3.3 (Preliminary enquiries of the expert) and paragraphs 3.11 and 3.12 below;
- (b) receive the expert's confirmation in response to preliminary enquires referred to in paragraph 8.1 of Practice Direction 25B;
- (c) have agreed in what proportion the SJE's fee is to be shared between them (at least in the first instance) and when it is to be paid; and
- (d) if applicable, have obtained agreement for public funding.

**2.7** The instructions to the SJE should comply, so far as appropriate, with paragraphs 4.1 and 6.1 below (*Letter of instruction*).

## **The test for permission and preparation for the permission hearing**

**3.1** The test in FPR 25.1 which the court is to apply to determine whether permission should be given for expert evidence to be put before the court has been altered from one which refers to expert evidence being restricted by the court to that which is reasonably required to resolve the proceedings to one which refers to the expert evidence being in the opinion of the court necessary to assist the court to resolve the proceedings. The overriding objective of the FPR, which is to enable the court to deal with cases justly, having regard to any welfare issues involved, continues to apply when the court is making the decision whether to give permission. In addition, the rules (FPR 25.5(2)) now tell the court what factors it is to have particular regard to when deciding whether to give permission. In financial remedy proceedings the expectation is that the new test and factors are a reflection of current practice and so are unlikely in practice to alter the use of expert evidence in these proceedings.

**3.2** Paragraphs 3.3 to 3.12 below give guidance on how to prepare for the hearing at which the court will apply the test in FPR 25.1 and the factors in FPR 25.5(2) and decide whether to give permission for expert evidence to be put before the court. The purpose of the preparation is to ensure that the court has the information required to enable it to exercise its powers under FPR 25.4 and 25.5 in line with FPR 25.1.

### ***Preliminary enquiries of the expert***

**3.3 In good time for the information requested to be available for the hearing** at which the court will consider whether to give permission for expert evidence to be put before the court, the party or parties intending to instruct the expert shall approach the expert with the following information—

- (a) the nature of the proceedings and the issues likely to require determination by the court;
- (b) the issues in the proceedings to which the expert evidence is to relate;
- (c) the questions about which the expert is to be asked to give an opinion and which relate to the issues in the case;
- (d) whether permission is to be asked of the court for the use of another expert in the same or any related field (that is, to give an opinion on the same or related questions);
- (e) the volume of reading which the expert will need to undertake;
- (f) whether or not it will be necessary for the expert to conduct interviews and, if so, with whom;

- (g) the likely timetable of legal steps;
- (h) when the expert's report is likely to be required;
- (i) whether and, if so, what date has been fixed by the court for any hearing at which the expert may be required to give evidence (in particular the Final Hearing); and whether it may be possible for the expert to give evidence by telephone conference or video link: see paragraphs 10.1 and 10.2 (*Arrangements for experts to give evidence*) of Practice Direction 25B;
- (j) the possibility of making, through their instructing solicitors, representations to the court about being named or otherwise identified in any public judgment given by the court;
- (k) whether the instructing party has public funding and the legal aid rates of payment which are applicable.

### ***Expert's response to preliminary enquiries***

**3.4** In good time for the hearing at which the court will consider whether to give permission for expert evidence to be put before the court, the solicitors or party intending to instruct the expert must obtain the confirmations from the expert referred to in paragraph 8.1 of Practice Direction 25B. These confirmations include that the work is within the expert's expertise, the expert is available to do the work within the relevant timescale and the expert's costs.

**3.5** Where parties **cannot agree who should be the single joint expert** before the hearing at which the court will consider whether to give permission for expert evidence to be put before the court, they should obtain the above confirmations in respect of all experts whom they intend to put to the court for the purposes of rule 25.11(2)(a) as candidates for the appointment.

### ***The application for the court's permission to put expert evidence before the court***

#### *Timing and oral applications for the court's permission*

**3.6** An application for the court's permission to put expert evidence before the court should be made as soon as it becomes apparent that it is necessary to make it. FPR 25.6 makes provision about the time by which applications for the court's permission should be made.

**3.7** Applications should, wherever possible, be made so that they are considered at any directions hearing or other hearing for which a date has been fixed or for

which a date is about to be fixed. It should be noted that one application notice can be used by a party to make more than one application for an order or direction at a hearing held during the course of proceedings. An application for the court's permission to put expert evidence before the court may therefore be included in an application notice requesting other orders to be made at such a hearing.

- 3.8** Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing) and, if possible, the other parties of the nature of the application and the reason for it. The party should provide the court and the other party with as much as possible of the information referred to in FPR 25.7 and paragraph 3.11 below. That party should then make the application orally at the hearing. An oral application of this kind should be the exception and reserved for genuine cases where circumstances are such that it has only become apparent shortly before the hearing that an expert opinion is necessary.
- 3.9** In financial remedy proceedings, unless the court directs otherwise, parties must apply for permission to put expert evidence before the court as soon as possible and no later than the first appointment. The expectation is that the court will give directions extending the time by which permission should be obtained where there is good reason for parties to delay the decision whether to use expert evidence and make an application for the court's permission.
- 3.10** Examples of situations where the time for requesting permission to put expert evidence before the court is likely to be extended are where-
- (a) a decision about the need for expert evidence cannot be made until replies to questionnaires in relation to Forms E have been fully considered; or
  - (b) valuations of property are agreed for the purposes of the Financial Dispute Resolution appointment but no agreement is reached to resolve the proceedings at that appointment and the court cannot make a consent order as mentioned in FPR 9.17(8). In these circumstances, it may become clear to a party that he or she will want to use expert valuations of property and an application for the court's permission for such valuation to be put before it may be made orally at the end of the appointment to avoid the need for a separate hearing about this issue. As with other oral applications, the party should

provide the court and the other party with as much as possible of the information referred to in FPR 25.7 and paragraph 3.11 below. FPR 9.17(9) requires the court to give directions for the future course of the proceedings where it has not made a consent order including, where appropriate, the filing of evidence.

### *The application*

**3.11** In addition to the matters specified in FPR 25.7(2)(a), an application for the court's permission to put expert evidence before the court must state—

- (a) the discipline, qualifications and expertise of the expert (by way of C.V. where possible);
- (b) the expert's availability to undertake the work;
- (c) the timetable for the report;
- (d) the responsibility for instruction;
- (e) whether the expert evidence can properly be obtained by only one party;
- (f) why the expert evidence proposed cannot properly be given by an expert already instructed in the proceedings;
- (g) the likely cost of the report on an hourly or other charging basis;
- (h) the proposed apportionment (at least in the first instance) of any jointly instructed expert's fee; when it is to be paid; and, if applicable, whether public funding has been approved.

### ***The draft order to be attached to the application for the court's permission***

**3.12** FPR 25.7(2)(b) provides that a draft of the order giving the court's permission to put expert evidence before the court is to be attached to the application for the court's permission. That draft order must set out the following matters—

- a) the issues in the proceedings to which the expert evidence is to relate;
- b) the party who is to be responsible for drafting the letter of instruction and providing the documents to the expert;
- c) the timetable within which the report is to be prepared, filed and served;
- d) the disclosure of the report to the parties and to any other expert;
- e) the organisation of, preparation for and conduct of any experts' discussion (see Practice Direction 25E-Discussions between Experts in Family Proceedings);

- f) the preparation of a statement of agreement and disagreement by the experts following an experts' discussion;
- g) making available to the court at an early opportunity the expert reports in electronic form;
- h) the attendance of the expert at court to give oral evidence (alternatively, the expert giving his or her evidence in writing or remotely by video link), whether at or for the Final Hearing or another hearing; unless agreement about the opinions given by the expert is reached by a date specified by the court prior to the hearing at which the expert is to give oral evidence.

### **Letter of instruction**

**4.1** The party responsible for instructing the expert shall, **within 5 business days after the permission hearing**, prepare (in agreement with the other parties where appropriate), file and serve a letter of instruction to the expert which shall—

- (a) set out the context in which the expert's opinion is sought (including any ethnic, cultural, religious or linguistic contexts);
- (b) set out the questions which the expert is required to answer and ensuring that they -
  - (i) are within the ambit of the expert's area of expertise;
  - (ii) do not contain unnecessary or irrelevant detail;
  - (iii) are kept to a manageable number and are clear, focused and direct; and
  - (iv) reflect what the expert has been requested to do by the court;
- (c) list the documentation provided, or provide for the expert an indexed and paginated bundle which shall include—
  - (i) an agreed list of essential reading; and
  - (ii) a copy of this Practice Direction and Practice Directions 25B, 25E and where appropriate Practice Direction 15B;
- (d) identify any materials provided to the expert which have not been produced either as original medical (or other professional) records or in response to an instruction from a party, and state the source of that material (such materials may contain an assumption as to the standard of proof, the admissibility or otherwise of hearsay evidence, and other important procedural and substantive questions relating to the different purposes of other enquiries);

(e) identify all requests to third parties for disclosure and their responses in order to avoid partial disclosure, which tends only to prove a case rather than give full and frank information;

(f) identify the relevant people concerned with the proceedings and inform the expert of his or her right to talk to them provided that an accurate record is made of the discussions;

(g) identify any other expert instructed in the proceedings and advise the expert of their right to talk to the other experts provided that an accurate record is made of the discussions;

(h) subject to any public funding requirement for prior authority, define the contractual basis upon which the expert is retained and in particular the funding mechanism including how much the expert will be paid (an hourly rate and overall estimate should already have been obtained), when the expert will be paid, and what limitation there might be on the amount the expert can charge for the work which they will have to do. In cases where the parties are publicly funded, there may also be a brief explanation of the costs and expenses excluded from public funding by Funding Code criterion 1.3 and the detailed assessment process.

### **Adult who is a protected party**

**5.1** Where the adult is a protected party, that party's representative shall be involved in any instruction of an expert, including the instruction of an expert to assess whether the adult, although a protected party, is competent to give evidence (*see Practice Direction 15B-Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings*).

### **Asking the court to settle the letter of instruction to a single joint expert**

**6.1** Where possible, the written request for the court to consider the letter of instruction referred to in rule 25.12(2) should be set out in an e-mail to the court and copied by e-mail to the other instructing parties. The request should be sent to the relevant court or (by prior arrangement only) directly to the judge dealing with the proceedings. In the magistrates' court, the request should be sent to the relevant court or (by prior arrangement only) to any district judge (magistrates' courts) hearing the proceedings (and copied to the legal adviser) or to the legal adviser. The court will settle the letter of instruction, usually without a hearing to avoid delay; and will send (where practicable, by e-mail) the settled letter to the party responsible for instructing

the expert for transmission forthwith to the expert, and copy it to the other instructing parties for information.

## **PRACTICE DIRECTION 25E – DISCUSSIONS BETWEEN EXPERTS IN FAMILY PROCEEDINGS**

*This Practice Direction supplements FPR Part 25*

### **Scope**

**1.1** This Practice Direction supports FPR25.16 by providing details about how and when experts discussions are to be arranged, their purpose and content. This Practice Direction applies to children proceedings and all other family proceedings.

### **Experts’ discussion or meeting: purpose**

**2.1** In accordance with FPR 25.16, the court may, at any stage, direct a discussion between experts for the purpose outlined in paragraph (1) of that rule. FPR 25.16(2) provides that the court may specify the issues which the experts must discuss. The expectation is that those issues will include-

- (a) the reasons for disagreement on any expert question and what, if any, action needs to be taken to resolve any outstanding disagreement or question;
- (b) an explanation of existing evidence or additional evidence in order to assist the court to determine the issues.

One of the aims of specifying the issues for discussion is to limit, wherever possible, the need for the experts to attend court to give oral evidence.

### **Experts’ discussion or meeting: arrangements**

**3.1** Subject to the directions given by the court under FPR 25.16, the solicitor or other professional who is given the responsibility by the court (“the nominated professional”) shall **within 15 business days after the experts’ reports have been filed and copied to the other parties**, make arrangements for the experts to have discussions. Subject to any specification by the court of the issues which experts must discuss under FPR 25.16(2), the following matters should be considered as appropriate—

- (a) where permission has been given for the instruction of experts from different disciplines, a global discussion may be held relating to those questions that concern all or most of them;
- (b) separate discussions may have to be held among experts from the same or related disciplines, but care should be taken to ensure that the discussions complement each other so that related questions are discussed by all relevant experts;
- (c) 5 business days **prior to a discussion or meeting**, the nominated professional should formulate an agenda including a list of questions for consideration. The agenda should, subject always to the provisions of FPR 25.16(1), focus on those questions which are intended to clarify areas of agreement or disagreement.

Questions which repeat questions asked in the court order giving permission for an expert to be instructed or expert evidence to be put before the court or the letter of instruction or which seek to rehearse cross-examination in advance of the hearing should be rejected as likely to defeat the purpose of the meeting.

The agenda may usefully take the form of a list of questions to be circulated among the other parties in advance and should comprise all questions that each party wishes the experts to consider.

The agenda and list of questions should be sent to each of the experts **not later than 2 business days before the discussion**;

- (d) the nominated professional may exercise his or her discretion to accept further questions after the agenda with the list of questions has been circulated to the parties. **Only in exceptional circumstances should questions be added to the agenda within the 2-day period before the meeting. Under no circumstances should any question received on the day of or during the meeting be accepted.** This does not preclude questions arising during the meeting for the purposes of clarification. Strictness in this regard is vital, for adequate notice of the questions enables the parties to identify and isolate the expert issues in the case before the meeting so that the experts' discussion at the meeting can concentrate on those issues;
- (e) the discussion should be chaired by the nominated professional. A minute must be taken of the questions answered by the experts. Where the court has given a direction under FPR 25.16(3) and subject to that direction, a Statement of Agreement and Disagreement must be prepared which should be agreed and signed by each of the experts who participated in the discussion. In accordance

with FPR25.16(3) the statement must contain a summary of the experts' reasons for disagreeing. The statement should be served and filed **not later than 5 business days after the discussion has taken place;**

- (f) in each case, whether some or all of the experts participate by telephone conference or video link to ensure that minimum disruption is caused to professional schedules and that costs are minimised.

#### **Meetings or conferences attended by a jointly instructed expert**

**4.1** Jointly instructed experts should not attend any meeting or conference which is not a joint one, unless all the parties have agreed in writing or the court has directed that such a meeting may be held, and it is agreed or directed who is to pay the expert's fees for the meeting or conference. Any meeting or conference attended by a jointly instructed expert should be proportionate to the case.

*(Practice Direction 25C, paragraphs 2.1 to 2.7 deals generally with single joint experts in children proceedings and Practice Direction 25D paragraphs 2.1 to 2.7 deals with single joint experts in relation to other family proceedings).*

#### **Court-directed meetings involving experts in public law Children Act cases**

**5.1.** In public law Children Act proceedings, where the court gives a direction that a meeting shall take place between the local authority and any relevant named experts for the purpose of providing assistance to the local authority in the formulation of plans and proposals for the child, the meeting shall be arranged, chaired and minuted in accordance with the directions given by the court.

## PRACTICE DIRECTION 25F – ASSESSORS IN FAMILY PROCEEDINGS

*This Practice Direction supplements FPR Part 25*

### Scope of this Practice Direction

1.1 This Practice Direction applies to the appointment of assessors in family proceedings in England and Wales.

### Appointment of assessors in family proceedings

2.1 The power to appoint one or more assessors to assist the court is conferred on the High Court by section 70(1) of the Senior Courts Act 1981, and on a county court by section 63(1) of the County Courts Act 1984. In practice, these powers have been used in appeals from a district judge or costs judge in costs assessment proceedings – although, in principle, the statutory powers permit one or more assessors to be appointed in any family proceedings where the High Court or a county court sees fit.

2.2 **Not less than 21 days before making any such appointment**, the court will notify each party in writing of the name of the proposed assessor, of the matter in respect of which the assistance of the assessor will be sought and of the qualifications of the assessor to give that assistance.

2.3 Any party may object to the proposed appointment, either personally or in respect of the proposed assessor's qualifications.

2.4 Any such objection must be made in writing and filed and served **within 7 business days of receipt of the notification from the court of the proposed appointment**, and will be taken into account by the court in deciding whether or not to make the appointment.