

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

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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.

1.3

In accordance with FPR 25.2(1), “children proceedings” means-

- (a) proceedings referred to in FPR 12.1 and 14.1 and any other proceedings which relate wholly or mainly to the maintenance or upbringing of a minor;**
- (b) applications for permission to start proceedings mentioned in paragraph (a);**
- (c) applications made in the course of proceedings mentioned in paragraph (a).**

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. Section 13(8) of the 2014 Act 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;

(aa) in children proceedings, to comply with the Standards for Expert Witnesses in Children Proceedings in the Family Court which are set out in the Annex to this Practice Direction;

(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 (see section 13(5) of the 2014 Act for children proceedings and FPR 25.4(2) for other family proceedings.). 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 section 13(1) and (3) of the 2014 Act.

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;
- (vi) in children proceedings, has complied with the Standards for Expert Witnesses in Children Proceedings in the Family Court which are set out in the Annex to 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.”

Where the report relates to children proceedings the form of statement of truth must include -

“I also confirm that I have complied with Standards for Expert Witnesses in Children’s Proceedings in the Family Court which are set out in the Annex to Practice Direction 25B- The Duties of an Expert, the Expert’s Report and Arrangements for an Expert to Attend Court.”

(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.

ANNEX

'Standards for Expert Witnesses in Children Proceedings in the Family Court'

Subject to any order made by the court, expert witnesses involved in family proceedings (involving children) in England and Wales, whatever their field of practice or country of origin, must comply with the standards (1-11).

1. The expert's area of competence is appropriate to the issue(s) upon which the court has identified that an opinion is required, and relevant experience is evidenced in their CV.
2. The expert has been active in the area of work or practice, (as a practitioner or an academic who is subject to peer appraisal), has sufficient experience of the issues relevant to the instant case, and is familiar with the breadth of current practice or opinion.
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.
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.
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.
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 should demonstrate appropriate qualifications and/ or registration with a relevant professional body on a case by case basis. Registering bodies usually provide a code of conduct and professional standards and should 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.
7. The expert is compliant with any necessary safeguarding requirements, information security expectations, and carries professional indemnity insurance.
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 in family cases'¹.
9. The expert has undertaken appropriate training, updating or quality assurance activity – including actively seeking feedback from cases in which they have provided evidence - relevant to the role of expert in the family courts in England and Wales within the last year.

¹ December 2011. See www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc.

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

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.

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)² (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 Council³ (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 Council⁴ 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 Council⁵ 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 Wales: 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, **care homes for adults** and domiciliary care for both adults and children. **It also regulates social work students and residential child care workers.**

The General Optical Council⁶ 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 Council⁷ 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 Council⁸ is a UK-wide statutory body with regulatory powers established by the Chiropractors Act 1994. Its duties are to protect the public

2 www.professionalstandards.org.uk

3 www.gmc-uk.org

4 www.gdc-uk.org

5 www.nmc-uk.org

6 www.optical.org

7 www.pharmacyregulation.org/about-us

8 www.gcc-uk.org/page.cfm

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 Council⁹ 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.

The **Health and Care Professions Council** regulates health and social care professionals with protected titles¹⁰. Further information is set out in the table below.

Profession	Protected title(s)
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.	<ul style="list-style-type: none"> • Art psychotherapist • Art therapist • Dramatherapist • Music therapist
Biomedical scientist A biomedical scientist analyses specimens from patients to provide data to help doctors diagnose and treat disease.	<ul style="list-style-type: none"> • Biomedical scientist
Chiropodist/Podiatrist A chiropodist / podiatrist diagnoses and treats disorders, diseases and deformities of the feet.	<ul style="list-style-type: none"> • Chiropodist • Podiatrist
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.	<ul style="list-style-type: none"> • Clinical scientist
Dietician A dietician uses the science of nutrition to devise eating plans for patients to treat medical conditions, and to promote good health.	<ul style="list-style-type: none"> • Dietician
Hearing aid dispenser Hearing aid dispensers assess, fit and provide aftercare for hearing aids.	<ul style="list-style-type: none"> • Hearing aid dispenser
Occupational therapist	<ul style="list-style-type: none"> • Occupational

⁹ www.osteopathy.org.uk

¹⁰ www.hpc-uk.org/aboutregistration/protectedtitles

<p>An occupational therapist uses specific activities to limit the effects of disability and promote independence in all aspects of daily life.</p>	<p>therapist</p>
<p>Operating department practitioner</p> <p>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
<p>Orthoptist</p> <p>Orthoptists specialise in diagnosing and treating visual problems involving eye movement and alignment.</p>	<ul style="list-style-type: none"> • Orthoptist
<p>Paramedic</p> <p>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</p> <p>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</p> <p>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</p> <p>Prosthetists and orthotists are responsible for all</p>	<ul style="list-style-type: none"> • Prosthetist • Orthotist

<p>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>	
<p>Radiographer</p> <p>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</p> <p>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

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 five training schools in Child and Adolescent Psychotherapy (e.g. the Tavistock and Portman NHS Foundation Trust) . Child Psychotherapists who have qualified in one of these trainings (minimum 4 years in-service clinical training, doctoral or doctoral equivalent) are eligible for full membership of the Association and are able to work as autonomous professionals within the NHS or in independent practice. 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.pschoanalytic-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.

NAGALRO

www.nagalro.com

Professional association for Family Court Advisers, Children's Guardians and Independent Social Workers.

British Association of Social Workers (BASW);

www.basw.co.uk

UK professional association of social workers.

Confederation of Independent Social Work Agencies UK (CISWA)

www.ciswauk.org

CISWA-UK is a not for profit organisation which brings independent social work providers together with the aim of improving the professionalism and expertise of agencies providing services to children and families.