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

Response of the Association of Lawyers for Children

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Details: The Association of Lawyers for Children [“ALC”] is a national association of lawyers working in the field of children law. It has over 1300 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners practicing in different areas of the country. Several leading members are specialists with over 20 years experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children’s law, and several hold judicial office. The ALC exists to promote access to justice for children and young people within the legal system in England and Wales in the following ways:

(i) lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
(ii) lobbying against the diminution of such mechanisms;
(iii) providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children;
(iv) providing a forum for the exchange of information and views involving the development of the law in relation to children and young people;
(v) being a reference point for members of the profession, Governmental organisations and pressure groups interested in children law and practice.

The ALC is automatically a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law.
The ALC has a long track record of multidisciplinary training. Our membership includes many expert witnesses involved in providing support to or reports for those engaged in Family Court Proceedings. We have supported those who wish to be involved in providing expert reports for proceedings and support the maintaining of high standards and the promoting of good practice in the instruction of experts. The maintaining of an available pool of suitably experienced experts is essential to achieving positive outcomes for children, and ensuring the voice of the child is heard. The importance of the role of experts within proceedings should not be underestimated, and although recent guidance and practice seeks to limit the use of experts, this should not be taken as an indication that expert evidence has become any less vital to ensuring just outcomes for children and young people. We support the moves to demonstrate the skills and standards of expert evidence in a proactive manner, as a key indicator of the added value that experts bring to proceedings. These proposals support this ongoing process.

In response to the specific questions asked.

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

We support this proposal and agree the statement of truth should be so amended, as this enhances the role of the court expert and identifies them as accepting and achieving a high level of professional practice. A solicitor or lay person identifying an expert to instruct can then have confidence that the individual is aware of the court’s expectations and is not only a specialist in their own discipline but has experience of the court process. The onus of checking that is the case cannot rest with the instructing party, and even routine enquiry would take time and cannot be certain. To have a clear statement of truth would assist all concerned, and reflects existing best practice.

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

Yes, a standard form to CV’s would assist instructing parties in identifying the expertise they are looking for, the expert’s current roles and continuing professional development undertaken. The expert professional bodies and legal representative bodies would need to have input. Often
lawyers and experts spend a lot of time contacting and following up possible instructions, a lot of
time and costs are incurred; having focused information would avoid that, and ensure appropriate
possibilities are followed up.

The experts’ model CV should contain the statement of truth as to compliance with the standards
so that it is at the identification of an expert stage (pre-instruction) that the self-veriﬁcation is
given. Instructing parties and the court can then be reassured that the standard is met. While it is
right this is conﬁrmed in the report itself, by then the instruction has been commissioned and
completed, so in that sense too late to ensure that the expert is fully aware of and conforms to the
expectations"

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

The current Practice Directions and further guidance being produced to support the Revised
Public Law Outline in public law proceedings already provides structure to the format of
questions and provides a template. We understand that further guidance is under consideration
by the President of the Family Division looking at the format of reports. Increased emphasis on
judicial oversight of questions and the requirement that the questions are approved by the court
at the time the directions for instruction are given, mean this matter can be considered on a case
by case basis. In our experience, if the expert has nothing further to add then, even if this type of
open question has been included they simply say so. However, the existence of an open question
gives a clear marker to the expert to flag up any aspect of the instruction which is misconceived
or where additional expert assessment should be considered, or simply to state that more
information should be sought.

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

Existing Practice Directions and guidance to support the Public Law Outline and Revised Public
Law Outline, establishes existing expectations, the standards appended to the reﬂect existing best
practice. We encourage the setting of minimum standards to emphasis the quality of assessment
undertaken for court proceedings. It also allows for the very different types of individuals who
are commissioned in court proceedings, some who are members of professional bodies and those who are not, to achieve expected standards. This enhances the quality and reputation of the evidence available and increases confidence in the system.

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

Current assurance processes vary between professions, the range of individuals who may be called upon to provide expert evidence in family proceedings is vast, and covers disciplines as different as psychologists to computer data recovery experts. It would be impossible to have one mechanism for assurance and potentially dangerous to do so, the current system has some flexibility and allows for new disciplines to be considered. It also allows individual professional bodies to monitor their own members under their own professional responsibilities, ensuring independence. This is key to lay parties having trust in the system, and courts having confidence that the expert evidence commissioned is truly expert and independent. One of the key features of current instructions is the principle of the paramountcy of the child to which all work, and all parties have to accept that the safety of the child comes first, so any information or opinion that is given places the paramountcy principle at its heart. We do not have a “Rent-an-Expert” system, something we can justly be proud of, independent assurance processes give enhanced credibility to that, as all involved can have confidence that the individual instructed is truly going to be independent. While this can mean different experts are apparently working to different requirements, the introduction of the standards and a formatted CV will give the court the information it needs to decide on suitability for the particular case.

**Question 6: Do you agree with the proposed scope of the standards for experts?**

Yes as a starting point, we would support the same standards applying to all expert instructions in family proceedings

**Question 7: Do you consider that there are any components that should be removed from the standards?**

No. We note the proposal that solicitors would need to confirm to the Legal Aid Agency that an expert meets the standard before funding for them would be met by legal aid. We have no
objection to that principle but are concerned that this would become a further bureaucratic hurdle to expert instruction. A solicitor can only provide the CV, they can give no further information, to suggest that solicitors should go online to check lists of professionals bodies is unrealistic, often several enquires will be made in a short time, this will be particularly so under the Revised Public Law Outline, which front loads the work to be undertaken. One of the key problems in the current system is cost risk faced by solicitors when the Legal Aid Agency second guess at the end of the case the work done, we will simply lose more solicitors and experts from family work if a further risk is built into the system. Concerns about quality of reports in a small number of cases should not lead to all experts being tarred with the same brush or to solicitors having further unnecessary administrative burdens imposed on them. The mischief, to such extent as it exists, will be addressed by promoting the standards and by guidance on use of experts and on expert reports. It is our view that once the court has authorized the instructions, given the greater information needed now for that to happen, including a CV, cost information and draft questions, that direction should be sufficient for the Legal Aid Agency and the expert.

**Question 8: Do you consider that there are any components missing that should be added to the standards?**

Yes, the current form of letter of instruction contains many aspects attributable to the demands of the public funding system, these should be considered as part of the standards, unless The Legal Aid Agency were to commit to dealing direct over payment issues. Considerable amounts of time and costs are spent by both experts and solicitors on payment issues, standard systems and requirements for this would avoid many of the uncertainties over this and the financial risks run by both solicitors and experts. A standard LOI is attached by way of example.

**Question 9: Do you have any comments on the way the standards have been drafted?**

No

**Question 10: Do you have any other comments to make?**

No, save to say that we see this as an ongoing process and that we would recommend that all disciplines are included in further discussion to work on issues and perfecting the final format.
Question 11: Are there other relevant bodies or professions which you consider should be added to those set out in Appendix 1 and Appendix 2

Our members have not as yet proposed others, but we would not see this as a closed list, but one that other organizations should be open to join in order to promote best practice amongst their members.

Question 12:

We have no comment on the impact assessments.

Question 13:

We have no comment on the impact assessments.