

APPENDIX C: Code of Guidance for Expert Witnesses in Family Proceedings

Objective

The objective of this Code of Guidance is to provide the Court with early information to enable it to determine whether it is necessary and / or practicable to ask an expert to assist the Court:

- To identify, narrow and where possible agree the issues between the parties
- To provide an opinion about a question that is not within the skill and experience of the Court
- To encourage the early identification of questions that need to be answered by an expert
- To encourage disclosure of full and frank information between the parties, the Court and any expert instructed

Action	Party and Timing
<p>1 The Duties of Experts</p> <p>1.1 Overriding Duty: An expert in family proceedings has an overriding duty to the Court that takes precedence over any obligation to the person from whom he has received instructions or by whom he is paid.</p>	
<p>1.2 Particular Duties: Among any other duties an expert may have, an expert shall have regard to the following duties:</p> <ul style="list-style-type: none"> • To assist the Court in accordance with the overriding duty • To provide an opinion that is independent of the party or parties instructing the expert • To confine an opinion to matters material to the issues between the parties and in relation only to questions that are within the expert's expertise (skill and experience). If a question is put which falls outside that expertise the expert must say so • In expressing an opinion take into consideration all of the material facts including any relevant factors arising from diverse cultural or religious contexts at the time the opinion is expressed, indicating the facts, literature and any other material that the expert has relied upon in forming an opinion • To indicate whether the opinion is provisional (or qualified, as the case may be) and the reason for the qualification, identifying what further information is required to give an opinion without qualification • Inform those instructing the expert without delay of any change in the opinion and the reason for the change 	

Action	Party and Timing
<p>2 Preparation for the CMC</p> <p>2.1 Preliminary Enquiries of the Expert: Not later than 10 days before the CMC the solicitor for the party proposing to instruct the expert (or lead solicitor / solicitor for the child if the instruction proposed is joint) shall approach the expert with the following information:</p> <ul style="list-style-type: none"> • The nature of the proceedings and the issues likely to require determination by the Court; • The questions about which the expert is to be asked to give an opinion (including any diverse cultural or religious contexts) • When the Court is to be asked to give permission for the instruction (if unusually permission has already been given the date and details of that permission) • Whether permission is asked of the Court for the instruction of another expert in the same or any related field (i.e. to give an opinion on the same or related questions) • The volume of reading which the expert will need to undertake • Whether or not (in an appropriate case) permission has been applied for or given for the expert to examine the child • Whether or not (in an appropriate case) it will be necessary for the expert to conduct interviews (and if so with whom) • The likely timetable of legal and social work steps • When the expert’s opinion is likely to be required • 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). 	<p>Solicitor instructing the expert 10 days before the CMC</p>
<p>2.2 Expert’s Response: Not later than 5 days before the CMC the solicitors intending to instruct the expert shall obtain the following information from the expert:</p> <ul style="list-style-type: none"> • That the work required is within the expert’s expertise • That the expert is available to do the relevant work within the suggested time scale • When the expert is available to give evidence, the dates and/or times to avoid, and, where a hearing date has not been fixed, the amount of notice the expert will require to make arrangements to come to Court without undue disruption to their normal clinical routines. • The cost, including hourly and global rates, and likely hours to be spent, of attending at experts / professionals meetings, attending court and writing the report (to include any examinations and interviews). 	<p>Solicitor instructing the expert 5 days before the CMC</p>

Action	Party and Timing
<p>2.3 Case Management Questionnaire: Any party who proposes to ask the Court for permission to instruct an expert shall not later than 2 days before the CMC (or any hearing at which the application is to be made) file and serve a case management questionnaire setting out the proposal to instruct the expert in the following detail:</p> <ul style="list-style-type: none"> • The name, discipline, qualifications and expertise of the expert (by way of C.V. where possible) • The expert's availability to undertake the work • The relevance of the expert evidence sought to be adduced to the issues in the proceedings and the specific questions upon which it is proposed the expert should give an opinion (including the relevance of any diverse cultural or religious contexts) • The timetable for the report • The responsibility for instruction • Whether or not the expert evidence can properly be obtained by the joint instruction of the expert by two or more of the parties. • Whether the expert evidence can properly be obtained by only one party (e.g. on behalf of the child) • Whether it is necessary for more than one expert in the same discipline to be instructed by more than one party • Why the expert evidence proposed cannot be given by social services undertaking a core assessment or by the Guardian in accordance with their different statutory duties • The likely cost of the report on both an hourly and global basis. • The proposed apportionment of costs of jointly instructed experts as between the Local Authority and the publicly funded parties. 	<p>The Party proposing to instruct the expert not later than 2 days before the CMC</p>
<p>2.4 Draft Order for the CMC: Any party proposing to instruct an expert shall in the draft order submitted at the CMC request the Court to give directions (among any others) as to the following:</p> <ul style="list-style-type: none"> • The party who is to be responsible for drafting the letter of instruction and providing the documents to the expert • The issues identified by the Court and the questions about which the expert is to give an opinion • The timetable within which the report is to be prepared, filed and served • The disclosure of the report to the parties and to any other expert • The conduct of an experts' discussion • The preparation of a statement of agreement and disagreement by the experts following an experts discussion 	<p>Any Party not later than 2 days before the CMC</p>

Action	Party and Timing
<ul style="list-style-type: none"> The attendance of the expert at the Final Hearing unless agreement is reached at or before the PHR about the opinions given by the expert. 	
<p>3 Letter of Instruction</p> <p>3.1 The solicitor instructing the expert shall within 5 days of the CMC prepare (agree with the other parties where appropriate) file and serve a letter of instruction to the expert which shall:</p> <ul style="list-style-type: none"> Set out the context in which the expert’s opinion is sought (including any diverse ethnic, cultural, religious or linguistic contexts) Define carefully the specific questions the expert is required to answer ensuring <ul style="list-style-type: none"> that they are within the ambit of the expert’s area of expertise and that they do not contain unnecessary or irrelevant detail that the questions addressed to the expert are kept to a manageable number and are clear, focused and direct that the questions reflect what the expert has been requested to do by the Court List the documentation provided or provide for the expert an indexed and paginated bundle which shall include: <ul style="list-style-type: none"> a copy of the order (or those parts of the order) which gives permission for the instruction of the expert immediately the order becomes available an agreed list of essential reading all new documentation when it is filed and regular updates to the list of documents provided or to the index to the paginated bundle a copy of this code of guidance and of the protocol Identify the relevant lay and professional people concerned with the proceedings (e.g. the treating clinicians) and inform the expert of his/her right to talk to the other professionals provided an accurate record is made of the discussion Identify any other expert instructed in the proceedings and advise the expert of his/her right to talk to the other experts provided an accurate record is made of the discussion 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 he/she will have to do. There 	<p>Solicitor within instructing 5 days the expert of the CMC</p>

Action	Party and Timing	
<p>should also be a brief explanation of the ‘detailed assessment process’ in cases proceeding in the Care Centre or the High Court which are not subject to a high cost case contract</p> <ul style="list-style-type: none"> • In default of agreement the format of the letter of instruction shall be determined by the Court, which may determine the issue upon written application with representations from each party. 		
<p>4 The Expert’s Report</p> <p>4.1 Content of the Report: The expert’s report shall be addressed to the Court and shall:</p> <ul style="list-style-type: none"> • Give details of the expert’s qualifications and experience • Contain a statement setting out the substance of all material instructions (whether written or oral) summarising the facts stated and instructions given to the expert which are material to the conclusions and opinions expressed in the report • Give details of any literature or other research material upon which the expert has relied in giving an opinion • 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. • Give details of the qualifications of any person who carried out the test, examination or interview • Where there is a range of opinion on the question to be answered by the expert: <ul style="list-style-type: none"> • summarise the range of opinion and • give reasons for the opinion expressed • Contain a summary of the expert’s conclusions and opinions • Contain a statement that the expert understands his duty to the Court and has complied with that duty • Where appropriate be verified by a statement of truth. 	<p>The Expert</p>	<p>in accordance with the Court’s timetable</p>
<p>4.2 Supplementary Questions: Any party wishing to ask supplementary questions of an expert for the purpose of clarifying the expert’s report must put those questions in writing to the parties not later than 5 days after receipt of the report. Only those questions that are agreed by the parties or in default of agreement approved by the Court may be put to the expert The Court may determine the issue upon written application with representations from each party.</p>	<p>Any Party</p>	<p>within 5 days of the receipt of the report</p>

Action	Party and Timing
<p>5 Experts Discussion (Meeting)</p> <p>5.1 Purpose: The Court will give directions for the experts to meet or communicate:</p> <ul style="list-style-type: none"> • To identify and narrow the issues in the case. • To reach agreement on the expert questions • To identify the reasons for disagreement on any expert question and to identify what if any action needs to be taken to resolve any outstanding disagreement/question • To obtain elucidation or amplification of relevant evidence in order to assist the Court to determine the issues • To limit, wherever possible, the need for experts to attend Court to give oral evidence. 	<p>The Court at the CMC</p>
<p>5.2 The Arrangements for a Discussion/Meeting: In accordance with the directions given by the Court at the CMC, the solicitor for the child or such other professional who is given the responsibility by the Court shall make arrangements for there to be a discussion between the experts within 10 days of the filing of the experts reports. The following matters should be considered:</p> <ul style="list-style-type: none"> • 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. • 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 • 7 days prior to a discussion or meeting the solicitor for the child or other nominated professional should formulate an agenda to include a list of the questions for consideration. This may usefully take the form of a list of questions to be circulated among the other parties in advance. The agenda 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 days before the discussion • The discussion should usually be chaired by the child’s solicitor or in exceptional cases where the parties have applied to the Court at the CMC, by an independent professional identified by the parties or the Court. In complex medical cases it may be necessary for the discussion to be jointly chaired by an expert. A minute must be taken of 	<p>Child’s Solicitor within 10 days of the filing of the experts reports</p>

Action	Party and Timing
<p>the questions answered by the experts, and 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. The statement should be served and filed not later than 5 days after the discussion has taken place</p> <ul style="list-style-type: none"> • Consideration should be given in each case to whether some or all of the experts participate by telephone conference or video link to ensure that minimum disruption is caused to clinical schedules. 	<p>Timing</p>
<p>5.3 Positions of the Parties: Where any party refuses to be bound by an agreement that has been reached at an experts’ discussion that party must inform the Court at or before the PHR of the reasons for refusing to accept the agreement.</p>	<p>Any Party at the PHR</p>
<p>5.4 Professionals Meetings: In proceedings where the Court gives a direction that a professionals meeting shall take place between the Local Authority and any relevant named professionals 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 directions given by the Court.</p>	
<p>6 Arranging for the Expert to attend Court</p> <p>6.1 Preparation: The party who is responsible for the instruction of an expert witness shall ensure:</p> <ul style="list-style-type: none"> • That a date and time is fixed for the Court to hear the expert’s evidence that is if possible convenient to the expert and that the fixture is made substantially in advance of the Final Hearing and no later than at the PHR (i.e. no later than 2 weeks before the Final Hearing) • That if the expert’s oral evidence is not required the expert is notified as soon as possible • That 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. 	<p>Every Party responsible for the instruction of an expert by the PHR</p>

Action	Party and Timing
<p>6.2 All parties shall ensure:</p> <ul style="list-style-type: none"> • That where expert witnesses are to be called the advocates attending the PHR have identified at the advocates meeting the issues which the experts are to address • That wherever possible a logical sequence to the evidence is arranged with experts of the same discipline giving evidence on the same day(s) • That at the PHR 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 the parties reasons for not accepting the same • That in the exceptional case the Court is informed of the need for a witness summons. 	<p>All Parties at the PHR</p>
<p>7 Post Hearing Action</p> <p>7.1 Within 10 days of the Final Hearing the solicitor instructing the expert should provide feedback to the expert by way of a letter informing the expert of the outcome of the case, and the use made by the Court of the expert’s opinion. Where the Court directs that a copy of the transcript can be sent to the expert, the solicitor instructing the expert should obtain the transcript within 10 days of the Final Hearing.</p>	<p>Solicitor instructing the expert within 10 days of the Final Hearing</p>