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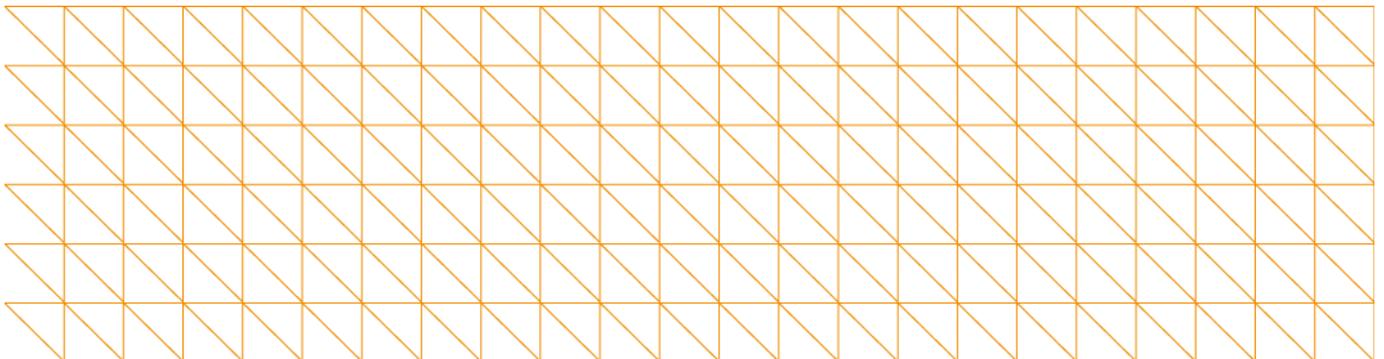
Family  
Justice  
Council

# **Joint Ministry of Justice and Family Justice Council Response:**

## Standards for expert witnesses in Children's Proceedings in the family courts

Response to Consultation

This response is published on 8 November 2013







Ministry  
of Justice



## **Joint Ministry of Justice and Family Justice Council Response**

Standards for expert witnesses in Children's  
Proceedings in the family courts

Response to consultation carried out by the Ministry of Justice and the Family  
Justice Council

This information is also available on the Ministry of Justice website:  
**[www.justice.gov.uk](http://www.justice.gov.uk)**

## About this consultation

**To:** Expert witnesses supporting the family courts in England and Wales, particularly in proceedings relating to children; representative and regulatory bodies for the professions from which experts are drawn, including the health and social care sectors; Royal Colleges; members of the judiciary; family solicitors and barristers; local authority children services; expert witness training providers; academics; and others with an interest in the provision of expert evidence to the family courts.

**Duration:** The consultation ran from 16 May to 18 July 2013.

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## Introduction

This document is the post-consultation response to the joint Ministry of Justice and Family Justice Council consultation paper '*Standards for expert witnesses in the family courts*<sup>1</sup>'.

It covers:

- the background to the consultation paper;
- a summary of the responses to the consultation paper;
- a detailed response to the specific questions raised; and
- the next steps following this consultation.

Further copies of this response and the consultation paper can be obtained by contacting at the address below:

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This report is also available on the Ministry's website: [www.justice.gov.uk](http://www.justice.gov.uk).

Alternative format versions of this publication can be requested from the contact details as set above.

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<sup>1</sup> This was the title of the consultation document. Following feedback received during the consultation we have decided to change the title of the final standards as explained in the response.

## Executive Summary

The joint Ministry of Justice and Family Justice Council<sup>2</sup> consultation in respect of standards for expert witnesses in the family court ran from 16 May to 18 July 2013. 140 responses were received which covered the main practitioner and regulatory groups as well as responses from delivery agencies, representative groups, including those representing experts, solicitors, local authorities and members of the judiciary. Responses were also received from individual experts and members of the public.

The Ministry of Justice and the Family Justice Council are grateful to all respondents. This response, and the proposed next steps for implementation, has been agreed by both bodies.

In summary, there is clear and overwhelming support for the introduction of new minimum standards for expert witnesses in family proceedings relating to children. The consultation was titled 'Standards for Expert Witnesses in the Family Courts'. A number of respondents suggested that this was confusing as the scope of the standards, as set out in the consultation paper, was narrower - being restricted to children's proceedings only. The Ministry and the Council accept this view and, as a consequence, the title of the final standards will be changed to reflect the focus on children's proceedings. The title of the final standards will therefore be:

*'Standards for Expert Witnesses in Children's Proceedings in the family court'*

There was, as expected, much discussion about the content and drafting of the standards themselves with many respondents taking the opportunity to propose additions to the standards, seeking clarification of the rationale behind the proposed standards or, in some cases, seeking to have standards removed.

The Ministry of Justice and the Family Justice Council have considered the responses carefully. However, it is not proposed to make significant changes to the standards as they were set out in the original consultation paper. The main exception to this is that what was standard 1.12 in the consultation document has been removed. This standard related to feedback for expert witnesses and read as follows:

*1.12 The expert should seek appropriate feedback from the legal representative regarding the outcome of the case, and the value and weight placed on the expert's own evidence. Where a party is not represented, the expert should seek feedback on the outcome of the case, and consider seeking*

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<sup>2</sup> The Family Justice Council is a multi-disciplinary advisory body which provides independent advice to the Government to improve the workings of the family justice system. Further information is available at <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc>.

*other feedback bearing in mind that a litigant in person is likely to have limited experience of court processes. This is an essential part of the overall quality assurance of expert witness practice, for individual professional reflection and development.*

The Ministry of Justice and the Family Justice Council accept the point raised by the majority of responses that this requirement, as drafted, was inappropriate for these standards. This is because the provision of feedback was not within the control of an individual expert and they should, therefore, not be held accountable for failing to meet it. However, the requirement to seek feedback is included in standard 9 relating to continuing professional development.

Both the Ministry of Justice and the Family Justice Council view these standards as a starting point and are conscious of the need to ensure that these can be readily applied to the full range of professions and disciplines which may be called upon to provide expert evidence in family proceedings involving children. Many of the changes proposed in responses would have proved difficult to implement as a first step towards the provision of common standards in this area. That is why it has been decided to recommend the introduction of all but one of the standards which were subject to consultation. The Ministry of Justice and the Family Justice Council will continue to work with all groups with an interest in this area to monitor the impact of the standards and to refine them if necessary. A fuller rationale for the position we have jointly taken is contained in the response to each of the consultation questions.

In addition, some minor adjustments to some of the language of the standards have been made. This responds to comments that suggested that a reference to 'expected to demonstrate' in standard 1.6 should read simply as 'demonstrate'. It was argued that this would strengthen the standards by making it clear that compliance is required rather than being a mere expectation. Also, in standard 1.6 it was suggested that the reference to 'may be accredited by the Professional Standards Authority for Health and Social Care' should be changed to 'should be accredited' etc. The Ministry of Justice and the Family Justice Council accept this point and the standards have been amended accordingly.<sup>3</sup>

The final recommended standards and appendices are set out on page 35 of this document. In terms of next steps, the Family Procedure Rules Committee<sup>4</sup> will be invited to consider whether it would be minded to make the changes to the experts Rules, and/or associated Practice Directions, that would be required to give effect to the standards. The Family Procedure Rules Committee is the statutory body with the rule making powers for family proceedings. The President of the Family Division chairs both the Family Justice Council and the Family Procedure Rule Committee. It is important to note that the Family Procedure Rule Committee will consider the recommendations made by the Ministry and the

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<sup>3</sup> See standard 6 of the final standards on page 35

<sup>4</sup> Under the provisions of the Courts Act, the Family Procedure Rules Committee has responsibility for making rules of court governing the practice and procedure to be followed in family proceedings in the High Court, county courts and magistrates' courts

Council in accordance with its statutory remit. When acting as chairman of the Family Procedure Rule Committee the President will be acting in a different capacity from chairing the Family Justice Council and cannot consider himself bound to accept recommendations made by the Council. In addition, the Legal Aid Agency (LAA)<sup>5</sup> will consider how it can make compliance with these standards a condition of public funding in children's proceedings. Subject to the outcome of the consideration by both the Rules Committee, and the LAA, the intention is implement these standards in April 2014. From that date, subject to any order made by the court, all experts working in children's proceedings in the Family Court will have to demonstrate that they meet these standards.

An impact assessment was produced to accompany the consultation. As the final policy does not differ significantly from the policy which was subject to the consultation an updated impact assessment has not been produced. This is because the same impacts that were identified in the earlier version still apply.

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<sup>5</sup> A new Legal Aid Agency (LAA) began administering legal aid from April 2013 following the abolition of the Legal Services Commission (LSC).

## **The standards that were set out in the consultation document<sup>6</sup>**

- 1.1 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 Curriculum Vitae (CV).
- 1.2 The expert has been active in the area of work or practice, (as a practitioner or academic and 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.
- 1.3 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.
- 1.4 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.
- 1.5 If the expert's current professional practice is regulated by a UK statutory body (See Appendix 1) and they are in possession of a current licence to practise or equivalent.
- 1.6 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 would be expected to 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 may 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.
- 1.7 The expert is compliant with any necessary safeguarding requirements, information security expectations, and carries professional indemnity.

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<sup>6</sup> The main body of this response refers to the standards which were subject to consultation and references are made accordingly. The final standards are on pages 35 and 36.

- 1.8 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'<sup>7</sup>.
- 1.9 The expert has undertaken appropriate training, updating or quality assurance activity relevant to the role of an expert in the family courts in England and Wales within the last year.
- 1.10 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**

- 1.11 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.

#### **Feedback for expert witnesses in the family justice system**

- 1.12 The expert should seek appropriate feedback from the legal representative regarding the outcome of the case, and the value and weight placed on the expert's own evidence. Where a party is not represented, the expert should seek feedback on the outcome of the case, and consider seeking other feedback bearing in mind that a litigant in person is likely to have limited experience of court processes. This is an essential part of the overall quality assurance of expert witness practice, for individual professional reflection and development.

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<sup>7</sup> December 2011. See [www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc](http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc)

## Background

This paper sets out the joint Ministry of Justice and Family Justice Council response to the consultation on standards for expert witnesses in the family courts. The paper also confirms the jointly agreed policy intention on the standards and sets out the next steps in terms of implementation.

The draft standards on which the consultation was based were drawn up by the Family Justice Council, with input from the Ministry of Justice and the Welsh Government. The draft standards took into account feedback received from Family Justice Council members and informal discussion with regulatory bodies, experts and members of the legal profession. Following this initial work it was agreed that the Ministry of Justice and the Family Justice Council should undertake a joint consultation with a view to identifying an agreed set of standards for expert witnesses. This response has, therefore, been approved by Ministry of Justice Ministers and the Family Justice Council and represents the views of both parties.

Both the Ministry of Justice and the Family Justice Council acknowledge that many of the responses to this consultation commented on the potential impact on the quality of experts of the proposal to reduce expert fees which was contained in the Ministry of Justice consultation 'Transforming Legal Aid: Delivering a more credible and efficient system'. On this issue a lawyers group commented that:

*'There is a tension between ensuring that experts are highly qualified, highly respected specialists, and the incoming cuts in experts' fees as proposed in the MoJ's Transforming Legal Aid consultation.'*

Legal Aid policy is solely the responsibility of the Ministry of Justice. It would not, therefore, be appropriate for this response - which is jointly agreed between the Ministry of Justice and the Family Justice Council - to respond formally to the issues raised regarding legal aid policy which are the responsibility of only one of the parties. Respondents who referred to matters which relate to legal aid policy in their response are directed to the Ministry of Justice's response to the transforming legal aid consultation which covers an analysis of the impact of those changes. This response can be accessed via the following link:

*Transforming legal aid: the next steps [https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult\\_view](https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult_view)*

The Family Justice Council, which is independent of Government, provided its own response to the consultation on Legal Aid Transformation. This response can be accessed via the following link.

*[[http://www.judiciary.gov.uk/Resources/JCO/Documents/FJC/consultations/FJC\\_Repsons\\_e\\_to\\_Transforming\\_legal\\_aid\\_consultation.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/FJC/consultations/FJC_Repsons_e_to_Transforming_legal_aid_consultation.pdf)]*

## **The role of experts**

Both the Ministry of Justice and the Family Justice Council have decided, following responses received as part of the consultation, to re-title the standards to better reflect that their focus will be on children's proceedings. The standards will therefore be renamed:

*'Standards for Expert Witnesses in Children's Proceedings in the family court'*

This response and the future implementation of the standards are, therefore, predicated on this change

Children's proceedings in the family courts make crucial decisions that affect the safety and future lives of children and their families. The role of the expert witness is to assist the court by providing advice on matters requiring specialist expertise outside the knowledge of the court. Regardless of who instructs or pays them, the expert has a clear primary responsibility to the court<sup>8</sup> to provide a competent<sup>9</sup> and impartial opinion, in order to enable the court to discharge its fundamental duty in its final determination of the case to regard the child's welfare as paramount<sup>10</sup>.

Experts usually undertake court work as an adjunct to their main professional role, which might be in the public sector or private practice. They are instructed as an expert by virtue of the knowledge, skills and experience they have built up in their main profession, and their competence to apply those skills appropriately within a court setting.

Expert witnesses in family proceedings relating to children have expertise in a wide range of matters including child health and development, mental health problems, drug and alcohol abuse and sexual abuse. An expert may, for example, be asked to provide an opinion on whether or not an injury to a child is likely to have been caused by accident, the outcome of drug testing of a parent, or to assess a parent's capacity to meet the needs of their child. The final standards must therefore reflect this diversity and the wide range of regulatory and professional frameworks that exist across the expert community.

The Ministry of Justice and Family Justice Council recognise that expert evidence can play an important role in children's proceedings in the family court by providing an expert opinion about a question that is not within the skill and experience of the court. The final standards reflect the consultation responses

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<sup>8</sup> Cresswell J *National Justice Cia Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68, 81-82; see also FPR; Practice Direction (PD) 25B.

<sup>9</sup> RCPCH 2011 *Jones v Kaney*: Supreme Court abolishes expert immunity *Jones v Kaney* Response3; see above PD 25B.

<sup>10</sup> Children Act 1989 Paramountcy principle.

and fulfil a recommendation made by the Family Justice Review<sup>11</sup> that standards should be developed for expert witnesses in the family courts.

Feedback submitted to the Family Justice Review indicates that there are weaknesses in the current system of oversight of experts. The purpose of the final standards is to address concerns regarding the quality of some expert evidence by ensuring that all experts providing evidence in children's proceedings are able to demonstrate an acceptable level of competence and experience.

The revised standards respond to that recommendation. They have been agreed by the Ministry of Justice, the Family Justice Council and the Welsh Government. It is recommendation of all three bodies that the standards revised in the light of consultation be used with the Family Procedure Rules 2010 (as amended); Practice Directions 25A, 25B, 25C, 25E and 15B; and the Family Justice Council document '*Guidelines for the instruction of medical experts from overseas in family cases*'<sup>12</sup>.

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<sup>11</sup> Family Justice Review Final Report, November 2011. Available from [www.justice.gov.uk/publications/policy/moj/family-justice-review-response](http://www.justice.gov.uk/publications/policy/moj/family-justice-review-response).

<sup>12</sup> December 2011. See [www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc](http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc)

## Summary of responses

A total of 140 responses to the consultation paper were received. Responses were received from a range of interested parties. These included professional and regulatory bodies in medicine and social care (in both England and Wales), expert groups, individual experts, legal professionals, local authorities, charities and members of the public with an interest in family justice.

Responses were analysed to find out if respondents were in favour of a specific proposal, where this was the question asked. Where we were seeking further opinion or information, especially on the content of the standards themselves, responses were analysed on the frequency of the opinion or the information received across all responses. Where respondents gave additional responses or comments, this has been reflected in this document by either including an extract of these comments or by summarising them.

In addition to the written responses Lord McNally, the Ministry of Justice Minister with responsibility for Family Justice and Dr Heather Payne, paediatrician member of the Family Justice Council, hosted a roundtable event to discuss the consultation document. The event was attended by representatives of expert groups, the legal profession, judiciary and health and social care regulators. The content of the discussion has also been taken into account in this response.

### Overview

There was an overwhelmingly positive response to the proposal to bring in new minimum standards for expert witnesses in family proceedings relating to children. Most responses felt that current assurance processes – as they relate to the work of experts in the court environment - were inadequate and that the introduction of agreed national standards would help to improve the quality of expert witnesses.

The majority of responses were in favour of a change to the expert's statement of truth as a means of promoting an expert's compliance with the standards. The majority of responses were also in favour of developing a model template for expert CVs. Responses to the question as to whether an open question should be added to the letter of instruction – allowing the expert to provide additional information over and above the questions in the letter of instruction – were more mixed and there was no real consensus of opinion on this issue.

There were a large number of comments on the detail of the standards themselves and considerable discussion of standards that should be either removed from the list completely or that should be added. Many of these reflected the professional context in which the individual respondent worked. A more detailed overview of these comments and the joint Ministry of Justice and Family Justice Council response to each consultation question is set out in the next chapter. However, there was an overall view that the standards as presented in the consultation document were, generally, well drafted and

sensible. The following comment from a major regulator is informative in this regard:

*'We welcome the proposed introduction of standards for expert witnesses in the family courts in England and Wales. We consider the standards as currently drafted are sufficiently comprehensive and clearly drafted and will help to provide clarity about the role and duties of the expert witness, as well as those who are commissioning expert evidence and advice.'*

The majority of respondents felt that we had identified the appropriate relevant bodies with the exception of those bodies and professional associations that represent Independent Social Workers (in particular NAGALRO and BASW). These bodies should be included and have been added to the final document.

Most respondents felt we had identified the right impacts. As such we have decided not to publish a revised Impact Assessment alongside this consultation response.

## **Detail of responses to specific questions and joint Ministry of Justice/Family Justice Council response**

### **Q1. Do you think that the expert's statement of truth should be amended to include a statement that the expert believes that they meet the standards?**

Experts must provide independent advice that conforms to the best practice of their profession and confine their opinion to matters within their skills and experience. This is verified through a signed statement of truth, and may be tested through cross-examination if they are called to give oral evidence in court.

The majority of responses to this question agreed that an amendment should be made to the statement of truth to include a statement that the expert believed that they meet the new standards. Most respondents felt that this would be a straightforward way of inserting some degree of self regulation and reassurance into the process. On this issue a major judicial group said the following:

*'If there is to be a requirement that experts meet certain standards there is no good reason why an expert should not certify that through a statement of truth – provided that the standards are clear and unambiguous. While it is only in a rare case that contempt proceedings would result from a false statement about meeting standards, it emphasises the importance of meeting such standards and is a form of self-regulation.'*

This was supported by a submission from a group representing solicitors:

*'All actors within the family justice system must act on good faith when putting forward their suitability for a specific task, and experts should be no different. The introduction of such a statement would also act as a disincentive for experts who put forward fraudulent claims, or misrepresent their expertise.'*

There was some discussion as to whether such an approach would be meaningful for some Doctors or health professionals who already have to make these declarations as part of their professional practice. Although even in the submissions which made this point it was acknowledged that something specifically for court based work may be required in addition.

### Joint Ministry of Justice/Family Justice Council response

If implemented, all experts will have to certify that they meet the standards and be able to provide this assurance to commissioning parties, the court and the LAA. We accept the view that the statement of truth should be amended to include a statement that the expert believes that they meet the standards and will consider how to take this forward. This change will require an amendment to Practice Direction 25(9.1) (j) and would mean that proceedings for contempt of court may be brought against an expert who makes or causes to be made a false

statement without an honest belief in its truth<sup>13</sup>. The Practice Directions and the Family Procedure Rules are the responsibility of the Family Procedure Rule Committee. The Family Procedure Rule Committee will, therefore, be invited to consider whether it would be minded to make any changes to the experts Rules, and/or Practice Directions, to give effect to the standards. In particular, the Committee will be invited to consider whether any changes should be made to the statement of truth.

**Q2. Do you think it would be helpful if a model template were developed for expert CVs?**

Experts should provide information on their qualifications and expertise, preferably in the form of a CV, at the point when a party or their solicitor is making initial enquiries about the expert's availability and suitability to provide evidence in a particular case. This information should be made available to the court.

There were a wide range of views in response to this question. Some responses expressed concern about the difficulties of drafting a generic CV that could apply to a diverse range of practitioners. They felt that the need to draft something that was relevant to all professions could produce a CV that is not flexible enough to allow the individual expert to express their expertise and/or experience. This would be of little or no benefit to either the court or commissioning parties.

However, the majority of responses took the view that a model template CV would be helpful if it was drafted appropriately. In that context we received a number of responses that agreed that a template CV would be helpful provided that it was sufficiently flexible and able to accommodate relevant information about expertise and experience, references and appraisals and could be applied to all professions, medical and otherwise. Some representative bodies felt that the CV could include a statement of truth. A number of experts and expert representative groups stated that they could see the logic of the proposals but wanted further detailed consideration and involvement in the drafting. To that end a number of groups asked to be involved in any further work to produce a model CV.

Joint Ministry of Justice/Family Justice Council response

We agree that a model template for CVs could provide an easy and transparent means by which experts can make clear that they meet the standards and provide the assurance needed by commissioning parties, the court and the LAA. The Family Justice Council will work with expert groups and other interested parties to develop a model CV.

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<sup>13</sup> PD 25B (9.1) (j) provides for there to be a statement of truth at the end of the experts report 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." Rule 17.6 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.

**Q3 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?**

Responses to this question were more mixed and showed a wide variation in views. There was general acknowledgement that the Letter of Instruction (LOI) was the key mechanism by which expert witnesses framed their work. The questions posed in the LOI should be clear, specific and relevant to the key issues to be decided in the case. The court will give directions approving the questions which the expert is required to answer.<sup>14</sup> The LOI, therefore, is vital to the effective use of an expert in court proceedings.

A large number of responses were openly hostile to this suggestion. There was significant concern that providing an open question at the end of the LOI could lead to a lack of focus in the expert's report allowing them to comment on issues that may not be relevant to the case.

The response provided by a key delivery agency took this view:

*'The letter of instruction needs to identify precisely those matters which require expert opinion as they fall outside the knowledge of the court, and the expert needs to adhere to the instruction. Provided both of these criteria are met an open question would be redundant, or possibly counter-productive if it encourages the inclusion of information which is not relevant to the application or beneficial to the court in its determination of the case.'*

A number of respondents highlighted that a standard template already existed as part of the current Practice Directions and that this was sufficient.

However, a number of other responses gave an alternative view. Many of these responses supported further exploration as to whether an open question was appropriate. We found that a number of those in favour of this suggestion were individual experts or expert groups. In summary, these responses argued that it was important to allow room for an expert to give additional information where this may have been overlooked by those drafting the LOI. It was stressed that the drafters of an LOI may not have identified all of the relevant issues, or more specifically, may not have the medical or practitioner experience or expertise to enable them to identify all the issues which needed addressing in a report. There was a concern that confining the expert strictly to answers which the legal representatives/court considered relevant risked missing important evidence which only the expert was qualified to identify.

**Joint Ministry of Justice/Family Justice Council response**

There were mixed views on this issue and a clear divergence of opinion. Given the lack of consensus we will not be making a recommendation for any immediate changes to the LOI. Instead, we will continue to work with interested parties to consider whether an additional open question would be useful, and if

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<sup>14</sup> See Rule 25.8(2)(a).

so, how this can be drafted in a way that balances the need to maintain a focus on the issues at hand while allowing the expert to include relevant material that may not have been included in the initial instruction.

**Q4 Do you agree that minimum standards are needed for experts involved in family proceedings relating to children?**

The overwhelming majority of responses agreed that expert standards were required in family proceedings relating to children. This extract from a response received from a major medical regulator reflects the general consensus:

*'Decisions made in family courts profoundly affect the course of lives of both children and their parents. The court seeks the advice of experts to assist in making these decisions. It is therefore imperative that experts are appropriately qualified and experienced.'*

The majority view was that the introduction of minimum standards would assist in improving the quality of expert reports and thereby increase their value to the court. They would also enhance standardisation of quality and consistency of reports. There was discussion on the need for the standards to be flexible enough to allow for the very different types of professions who are commissioned in court proceedings. Many of these experts will already be members of professional bodies and be subject to their own profession specific regulation and it was stressed that the standards must complement these existing frameworks.

On this issue a regulator said:

*'we know through recent consultation exercises developing our own guidance on child protection issues, that members of the profession would value more clarity on the responsibilities associated with the expert witness role. We would therefore welcome any measures which help to achieve this, including more clarity on the different roles of witnesses of fact and expert witnesses.'*

In general, respondents sought a set of standards that would enhance the quality and reputation of the evidence available to the court and, as a result increase confidence in the system.

There were some responses that were less supportive of the standards as presented in the consultation document. They felt that the standards were simply a bear minimum set of expectations that the vast majority of experts would already meet. As a consequence they would not help to raise standards.

Joint Ministry of Justice/Family Justice Council response

We acknowledge that the majority of responses supported the principle of introducing new standards for expert witnesses in children's proceedings. We intend to recommend the introduction of the standards subject to further consideration from the Family Procedure Rules Committee and the LAA. Further detail on our general approach to the standards, including their scope and plans for implementation, can be found elsewhere in this response.

**Q5 Do you have any comments on the advantages and disadvantages of current assurance processes?**

The general consensus in response to this question was that current assurance processes for experts working in the family courts were practically non-existent. For this reason there was comparatively little discussion on the advantages and disadvantages of the current processes.

Most responses that did focus on this question referred simply to the need to comply with the issues set out in Part 25 of the Family Procedure Rules and associated Practice Directions. A number of other responses referenced the regulatory processes that applied to the different professions and disciplines as offering some form of quality assurance. However, these responses acknowledged that this was separate to the court process.

Most responses agreed that it was difficult to produce a standardised assurance process that could apply to the diverse range of experts and that specific regulatory arrangements were variable between professions.

A key delivery agency made a significant point when it said the following:

*'The current assurance process relies heavily on word of mouth. The proposed standards will, we believe, strengthen the assurance processes by (a) promoting the instruction of the 'right' expert and (b) providing better quality feedback to the expert against a common framework. This should enable experts to develop their practice.'*

Joint Ministry of Justice/Family Justice Council response

We accept that currently there are limited assurance processes that apply to expert witnesses in children's proceedings. We believe that the standards are a starting point that will help to cover this gap working with, and complementing, the family procedure rules and the profession specific regulatory frameworks that already exist. We believe that the absence of clear, court specific, assurance processes supports the need for the introduction of new standards for expert witnesses.

**Q6 Do you agree with the proposed scope of the standards for experts (family proceedings relating to children)?**

There was a lot of discussion about the scope of the proposed standards. There were a significant number of responses which suggested that the standards should apply to all family proceedings and not just to children's proceedings. In particular a sizeable number of responses emphasised the important role that experts play in divorce and financial remedy cases – for example the role of forensic accountants. A small minority of responses concluded that the scope should be broadened to cover all expert witness evidence in justice proceedings including civil and criminal cases.

A number of responses were also concerned that, even if applied narrowly to children's proceedings in the family court, it appeared that the standards would only apply to publicly funded cases (i.e. those cases in receipt of legal aid). There

was some confusion about this issue and a concern that if this was the case it would preclude the standards being applied to many of the experts involved in private family law cases involving children.

On this issue a major body representing experts said the following:

*'The standards should be universal across all family proceedings. We believe that the scope of the proposed standards is a good starting platform which will begin a process of improving the quality of expert witness evidence which can be enhanced over time as the market adapts to the new criteria.'*

*'We do however have some concerns. It seems fundamentally wrong to suggest that the standards should only apply for cases which are either part or fully publicly funded. Standards should apply across the board irrespective of who the paymaster is.'*

As already referenced in this consultation response, a large number of responses felt that the title of the consultation referring as it did to 'expert standards in the family court' was misleading and confusing. This was because the title gave the impression that they covered all family proceedings whereas the consultation made clear that the scope was for children's proceedings only. Respondents therefore asked the Ministry of Justice and the Family Justice Council to clarify the scope of the standards and, depending on any decision, to review the title of the document in order to provide this clarification.

#### Joint Ministry of Justice/Family Justice Council response

We recognise that the scope of the standards is a very important issue and we acknowledge that a number of responses requested further clarification.

The scope of the standards is an issue which we have considered carefully both in preparing the standards and as a result of the comments made during the consultation itself. There are three points which we would like to clarify;

#### *(1) scope in relation to family proceedings*

**The Ministry of Justice and the Family Justice Council can confirm that the recommendation is for the revised standards to apply to experts used in family proceedings relating to children.** These include care and supervision proceedings, adoption and related proceedings and private law cases relating to contact and residence. This is consistent with the scope of the concerns raised in the Family Justice Review and the scope of the proposed legislative changes<sup>15</sup>.

We appreciate that experts may also be called upon in other family proceedings such as divorce and financial remedy matters - for example, accountants or property surveyors concerned with the value of assets. However, having had regard to the points raised in consultation and the need to make progress on

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<sup>15</sup> Clause 13 of the Children and Families Bill

implementation we have decided not to seek to extend the standards to these areas. In clarifying this aspect we rely on the explanation set out in the consultation paper. In particular:

- The focus of the Family Justice Review's concerns about experts was on the impact on children, and we do not currently have evidence of a problem with quality that needs to be addressed in relation to other types of proceedings;
- Evidence<sup>16</sup> suggests that experts are a common feature in proceedings relating to children, and particularly care and supervision proceedings; and
- Experts play an important role in what can be very difficult and complex proceedings relating to children in which the court must reach decisions with long-term and often irreversible effects for children. We consider, therefore, that there is a clear need to focus efforts on these proceedings. Accordingly, the standards have a focus on health, social care and related professions.

However, in all other family proceedings, the court, parties or their solicitors would have the option of using the standards (in full or in part), should they wish to do so, as a tool when they are deciding which expert to instruct or whether to seek the court's permission to put expert evidence before the court.

*(2) the scope in relation to public and private law proceedings relating to children*

The Ministry of Justice and the Family Justice Council wish to clarify that the intention is for the standards to apply to all family proceedings relating to children.

In both **publicly and privately funded cases** instructing solicitors (where the litigant is represented) have a key role in selecting a suitable expert. Under the Family Procedure Rules, the court must also approve the instruction of an expert and the questions to be put to that expert. Parties should, therefore, be ready to provide assurances to the court that the expert meets the standards so that the court can be satisfied that the proposed expert is suitable. As well as supplying a full CV, when instructing an expert they have not used before, or have not used recently, this could involve checking statutory registration, where applicable, or, alternatively, membership of a recognised professional body where statutory regulation does not exist. In the case of statutory regulators, this can often be done quickly and simply by inputting the expert's name into the relevant website.

The recommendation is that in, **publicly funded family proceedings relating to children**<sup>17</sup> (where one or more of the parties is in receipt of legal aid either in

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<sup>16</sup> Cassidy, D., and Davey, S. (2011). *Family Justice and Children's Proceedings – Review of Public and Private Law Case Files in England and Wales*. Ministry of Justice, London. Available from [www.justice.gsi.gov.uk](http://www.justice.gsi.gov.uk).

<sup>17</sup> Changes to the legal aid scheme which took effect in April 2013 mean that legal aid funding remains available in public law proceedings, but that most private law proceedings are out of scope of the new scheme. There are exceptions, for example, where domestic violence is an

public or private law cases), solicitors should only instruct experts who meet the relevant standards. Our view is that, in future, instructing solicitors will need to confirm to the LAA when making an application that the expert meets the standards. Where an expert does not meet the standards then an application for prior authority must be made. When considering applications for prior authority, or when assessing cases, the LAA will expect to see evidence to show that the instructing solicitor has made reasonable efforts to assure themselves that the expert meets the standards. This might include, for example, the expert's CV or confirmation from the expert that they hold the relevant professional qualifications. The LAA will consider how this could be applied in practice. The LAA has confirmed that it is minded to make some changes to its current practices to give effect to the standards and it will consider introducing form and system changes to support the standards in time for April 2014. The LAA is in the process of working with stakeholders to produce guidance on this issue. This will, shortly, be shared with legal aid service providers

It is the intention to encourage the use of these standards in those children's proceedings where parties are not in receipt of public funding. These will normally be private law proceedings. The objective will be to promote a cultural shift towards using these standards as a matter of course. We anticipate that, once introduced, there will be an expectation among practitioners and the judiciary that all experts, regardless of whether they are in receipt of public funding, will meet the new standards. In addition, the Family Procedure Rules Committee will be invited to consider whether it would be minded to make changes to the experts Rules, and/or associated Practice Directions, to give effect to the standards. This consideration is likely to include the application of these standards to children's proceedings in private law cases and whether the standards should apply to experts irrespective of their source of funding

*(3) scope in relation to the provision of DNA and drug/alcohol testing*

Subject to the points made above, the Ministry of Justice and the Family Justice Council propose that the standards should apply to providers of drug and alcohol testing, wherever applicable. We understand that the analysis and interpretation of drug and alcohol concentrations in hair is not subject to UK regulation or a requirement for mandatory registration (although individuals working within those organisations will be subject to regulation, or accreditation, by virtue of their profession). However we would expect providers to be able to comply with those standards which apply to their work. Respondents representing providers of drug and alcohol testing have indicated that they support the application of the standards to them.

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issue or where the court has decided that the child should be made a party to the proceedings.

**Q7 Do you consider that there are any components that should be removed from the standards?**

**Q8 Do you consider that there are any components that are missing and should be added to the standards?**

**Q9 Do you have any comments on the way the standards have been drafted?**

**Q10 Do you have any other comments about the standards?**

In the consultation paper these questions were asked separately. However, as they all relate to the actual content of the final set of standards, we are responding to these questions together.

There was substantial debate about the content of the standards. Many respondents sought to either add or remove particular standards. Much of this was profession specific which reflects the broad range of disciplines and professions that provide expert evidence within children's proceedings. One expert witness representative group sought to rewrite the standards completely.

In general there was acceptance that the standards were a positive attempt to strike the right balance between the context in which individual professions practice and the specific needs of the family courts. Many respondents, even where they sought some changes to the standards, made the general comment that they considered the content and language of the standards to be appropriate, particularly in the light of the very broad range of experts used within family proceedings.

Turning to specific comments, there was a general point that some of the language of the standards should be changed so that references to 'expected to demonstrate' should read simply as demonstrate. It was argued that this would strengthen the standards as a must do rather than simply an expectation. We accept this comment and have made these changes to the final standards.<sup>18</sup>

Some responses were concerned that the stipulation in standard 1.5 that an expert must hold a current licence to practice or equivalent may have unintended consequences. This was an issue that was emphasised in relation to Doctors. In particular respondents felt that it may remove a cadre of experts who had recently retired from clinical practice but were still well qualified to give expert evidence or Doctors who only had a 'registration only' association with the General Medical Council (GMC).

The GMC told us that although most doctors in the UK are both registered with them and have a licence to practice there are some Doctors that choose to remain 'registration only'. Responses indicated that many Doctors do this once they have retired from clinical practice or if they decide to work overseas for a period. Maintaining 'registration only' means that these doctors are still subject to

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<sup>18</sup> These changes relate to standard 1.6 of the consultation (3<sup>rd</sup> 4<sup>th</sup> line) and line 7

the GMC's regulatory powers and must abide by the GMC's standards. The concern expressed was that we might exclude these doctors from acting as expert witnesses if it is decided that they needed to be both registered and have a licence to practise to do so.

Other comments on this standard stated that the purpose of medical accreditation and regulation was to ensure clinical competency and that this did not necessarily guarantee competency to act as an expert witness. It was suggested that we should require experts to have a working knowledge of the accepted legal principles applicable to the case and that this may include a court focussed training requirement.

A number of responses made reference to standard 1.9 and in particular the point that an expert has undertaken appropriate training. Some respondents argued that such a stipulation was a disadvantage to non NHS experts who would have to pay for any training requirement without the administrative and financial support applicable to NHS based experts. Other respondents wished to add a specific standard in relation to court training while at least one response suggested that undertaking appropriate training or updating should occur at no less than two yearly intervals and not within the last year.

A small number of responses sought clarification of the term cultural norms as set out in standard 1.3 *'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'*.

Concern was expressed that 'cultural norms' was difficult to describe and/or evidence. It was suggested that it would be difficult to know what this would mean in practice. In contrast we received some responses which saw 'cultural norms' as a positive inclusion, stressing that it was reasonable for the standards to reflect the different cultures in England and Wales and that it was right and proper to expect experts to be aware of the relevant cultural context when providing their evidence.

A large number of responses commented on standard 1.12 regarding the issue of feedback to experts. The standard on which we consulted read as follows:

***Feedback for expert witnesses in the family justice system***

*1.12 The expert should seek appropriate feedback from the legal representative regarding the outcome of the case, and the value and weight placed on the expert's own evidence. Where a party is not represented, the expert should seek feedback on the outcome of the case, and consider seeking other feedback bearing in mind that a litigant in person is likely to have limited experience of court processes. This is an essential part of the overall quality assurance of expert witness practice, for individual professional reflection and development.*

All responses that commented on this issue were clear about the importance of feedback to experts. However, many felt that this standard was unreasonable on the basis that feedback was not within the gift of the individual expert. Many

responses argued that either the judge or the instructing party was best placed to provide feedback and that where this wasn't received it was not the fault of the expert. Responses received from expert groups or individual experts highlighted that more often than not an expert would seek constructive feedback on their evidence but that in many cases this was not forthcoming. It was also argued that the framing of this standard was inconsistent with Part 25 of the Family Procedure Rules which places the responsibility for informing the expert about the court's determination and the use made by the court of the expert's evidence on the instructing party (in most circumstances this would be the solicitor).

In addition there were comments which supported the inclusion of a standard setting out that experts must have a minimum level of clinical experience in order to undertake expert witness work in the family court. Other comments felt that it should be made explicit that the previous conduct of an expert in court (including how confidential material was handled) should be taken into account.

A small number of responses focussed on the level of professional indemnity that an expert should have. It was suggested that a reference to an expert carrying professional indemnity was meaningless unless it includes a particular level of cover.

There was a small amount of comment addressing conflict of interest. While acknowledging that this was covered in the statement of truth some felt that this was too late in the process and represented a risk to the court finding out about a conflict of interest only after an expert had delivered their opinion. It was suggested that the standards should include a requirement to disclose conflicts of interest, including an appropriate process for seeking permission to proceed where a conflict exists.

Some responses sought clarification as to whether an expert whose practice is solely providing expert reports to the court is acceptable to meet the requirement that an expert has been active in the area of work or practice or whether it is envisaged that it will be a mix of clinical and expert work.

There were also a small number of responses that suggested that the Ministry of Justice should establish an accreditation system for experts.

#### Joint Ministry of Justice/Family Justice Council response

The Ministry of Justice and the Family Justice Council welcome the general view that the standards presented in the consultation document were, generally, well drafted and sensible. We do not, at this stage, propose to make significant changes to the standards as they were set out in the original consultation paper. The main exception to this is that we have removed what was standard 1.12 in the consultation document regarding feedback for expert witnesses.

We accept the argument made by the majority of responses that this standard, as drafted, was inappropriate. We agree with the point raised by several respondents that this standard would have been contrary to the Family Procedure Rules which place the responsibility for obtaining feedback on the parties in the case. As a result, this standard has been removed from the revised

draft. Instead, a requirement to **seek** feedback has been added to the more general standards on expectations for training set out in standard 1.9.

More generally, it is important to stress that both the Ministry of Justice and the Family Justice Council view these standards as a starting point and we are conscious of the need to ensure that these can be readily applied to the full range of professions and disciplines who may be required to provide expert evidence in family proceedings involving children. We recognise that many respondents sought changes to the standards on the basis of their own experience or expertise. However, many of the changes proposed would have proved difficult to implement as an initial set of commonly applied standards. We believe that it is important to establish these standards as common practice before considering some of the more detailed and technical points raised by many respondents.

That is why we have decided to recommend the introduction of all but one of the standards which were subject to consultation. Having said this, both the Ministry of Justice and the Family Justice Council will continue to work with all groups with an interest in this area to monitor and refine the standards, and develop their use as a tool to promote quality assurance for experts.

Turning briefly to some of the specific issues raised in the consultation responses.

We believe that requiring experts to have appropriate accreditation, and/or professional registration where this is relevant (which we believe it will be in the majority of cases), represents the most effective way of seeking to ensure that experts meet the minimum standards expected by their own profession. Although it is accepted that such membership does not guarantee expertise in the court we believe that it does provide a simple, appropriate and recognisable form of assurance for the courts.

We note the concerns raised regarding the potential impact of requiring experts to be in possession of a licence to practice or equivalent. We are grateful to respondents for providing such detailed and considered responses on this issue. We have given this considerable thought and have decided to retain this standard as drafted in the consultation. It will, therefore, be a requirement for experts to hold a licence to practice or equivalent. The long term objective is to ensure that children's proceedings benefit from high quality expert evidence. We firmly believe that it is important to ensure that there is an agreed, and easily understood, minimum standard. We are concerned that seeking to make this standard more generic to catch experts who do not have a licence to practice may lower the threshold and allow substandard experts to give evidence in these proceedings. However, we acknowledge that this may have unintended consequences and we will keep this part of the standards under close review.

Both the Ministry of Justice and the Family Justice Council believe that it is reasonable to expect experts to have undertaken appropriate training. It is not accepted that this puts any particular group of experts at a disadvantage and to remove this standard would, in our view, remove an important safeguard. We are minded to retain the reference to cultural norms and interpret this as the need for experts to be aware of the cultural context in which an expert's evidence must be

delivered. This may be in regard to the detail of the case as a whole or an individual.

We do not agree that a minimum level of clinical experience should be stipulated in the standards. This could exclude some experts from this work and would require significant succession planning.

We note the comments regarding levels of indemnity. We do not propose to make any changes as part of the standards and will leave the level of cover to the expert.

Our preference has always been that experts should have a mix of clinical and expert witness work. This seems to us to be the most appropriate mix of experience and is the best way for an expert to ensure they are up to date with current techniques and professional development. However, we do not think it is appropriate for the Ministry of Justice, or the Family Justice Council, to seek to stipulate an expert's working arrangements. Instead, we rely on an expert to have the appropriate level of competence, sufficient knowledge and be up to date with continuing professional development – as set out in the standards - as the means by which we can ensure that an expert has been active in their area of work or practice.

The revised standards are set out on page 35 of this document and we will be recommending the implementation of these standards as a requirement in all children's proceedings from April 2014.

**Q11 Are there other relevant bodies or professions which you consider should be added to those set out in Appendix 1 and Appendix 2 to the standards?**

The great majority of responses indicated that we had identified the relevant bodies or professions that should be annexed to the standards. We acknowledge that the annex did not include the professional and representative associations which worked on behalf of Independent Social Workers. This was an unintended omission which has been rectified and we are grateful to those respondents who raised this. Elsewhere, we were informed of some errors in the title of some bodies and these have been rectified accordingly.

**Q12A Have the right impacts been identified in the Impact Assessment?<sup>19</sup>**

**Q12B Do you have evidence of other impacts which have not been considered?**

**Q13 Are you aware of any potential equality impacts that may result from the proposals?**

These questions have been grouped together as they all cover similar themes. They relate to the impacts identified in the Impact Assessment that was published alongside the consultation document.

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<sup>19</sup> We acknowledge that a number of responses to these questions referred to the impact of reductions in expert fees as a result of the transforming legal aid consultation. The points made at page 13 regarding our approach to this issue are relevant here

The majority of responses agreed that the Impact Assessment covered the main impacts that would result from the introduction of the new standards. There was some speculation that the new standards may increase costs for individual experts in order to meet the new standards and/or for solicitors who may have to validate an experts compliance with the standards or bear the risk of non payment if an expert was found not to meet the standards and as a result their fees were withheld by the LAA.

Some individual experts and representative groups felt there was a risk that the standards could act as a disincentive to experts to work in this area and thus reduce the pool of suitably qualified experts and causing delays. In many cases this point was aligned with broader changes that are affecting the work of experts. Some commented that the consultation added further weight to the perception that expert evidence was being completely removed from the family courts.

A number of responses warned that the pool of experts could reduce if retired clinicians or professionals were either dissuaded from doing this work or were excluded by virtue of not having the right accreditation.

A major experts' body made the following point:

*'Some clinicians are drawn to expert witness work because of its flexibility and autonomy, which allows them to work around other commitments, both clinical and personal, such as caring for children and dependents in their own families. Because of the seniority required for this work, many experts are close to or already retired. This means that older age and having caring responsibilities may be more present in the expert population than that of clinicians in general.'*

A small number of responses highlighted the need to make sure that expert witness work remained accessible for more junior experts. Pitching the standards too high, or introducing a standard that focussed on levels of experience, could discourage the next generation of expert witnesses.

#### Joint Ministry of Justice/Family Justice Council response

We are grateful for the responses and for the confirmation that, broadly, we have identified the right impacts.

We recognise that the introduction of new standards for experts represents a change for many parts of the family justice system. However, we are clear that this change is necessary and we do not consider that it will lead to additional or inappropriate burdens. They are the minimum that we should expect from experts who are giving evidence in such important and sensitive proceedings.

The standards are, essentially, gatekeeping standards, which clarify which people should be able to provide expert witness services to the courts in family proceedings relating to children. They are a set of high level statements of expectations which can be applied to the different professions from which experts are drawn. This approach also allows the standards to sit alongside – and not conflict with – other profession-specific standards.

Our objective is to ensure that experts providing evidence to the family courts in proceedings relating to children have a level of qualifications, skills and experience consistent with the provision of good quality advice to the court. This should provide greater assurance to the family courts when they are making decisions affecting a child's future upbringing, and increase confidence in the family justice system.

## **Conclusion and next steps**

The recommended standards are set out on pages 35 and 36.

The Ministry of Justice and the Family Justice Council are grateful for all of the comments and views received during this consultation. Expert evidence is a very specialist area and covers a broad range of professions and disciplines each of whom have their own regulatory and assurance framework as well as their own specific standards and ways of working. In addition the work of experts within children's proceedings has an impact on a wide range of interests, from the court itself, through solicitors and guardians, local authorities and for those people who have experience of the family justice system itself. The development of standards in such a context is therefore not something that the Ministry of Justice, or the Family Justice Council, could have proceeded with in isolation.

We have paid careful attention to all of the responses received and they have helped us refine our proposed next steps for these standards.

We recognise that the final recommended standards have not changed significantly from those which were subject to consultation. We appreciate that this will be a disappointment to some respondents who suggested changes. However, these standards are the start of a process which we hope to continue and refine as we move forward. Many of the responses sought to change the standards in a way that would have been difficult to justify as a first step, for example the wholesale regulation of expert witnesses by the Ministry of Justice. Or sought to make changes that would have been difficult to apply or monitor across the broad spectrum of professions that provide expert witness evidence.

We must be clear that these standards have been developed with the aim of improving outcomes for children in family proceedings by reducing delay and improving the quality of expert evidence. We firmly believe that they can and should be enhanced over time as the system adapts to the new criteria. As a starting point, however, we believe that they are appropriate in promoting a shared understanding among all practitioners in the family justice system about what they should expect from an expert witness.

We are pleased to note the constructive responses we have received. This has helped to stimulate debate within individual professions and we are confident that this has raised the profile of expert witness work and encouraged representative bodies and others such as expert witness agencies to develop or enhance their own systems for offering assurance and quality control to those responsible for commissioning experts.

### *Implementation timings*

The Ministry of Justice and the Family Justice Council are recommending the early consideration of the standards by the Family Procedure Rules Committee and the LAA.

The Family Procedure Rules Committee will be invited to consider changes to the Rules, and/or Practice Direction, on experts designed to give effect to the standards. The Rules Committee makes every effort to accommodate urgent work but, ultimately, it is responsible for timetabling its workload. In addition the LAA will consider how it can make compliance with these standards a condition of public funding in children's proceedings through changes to current practices, as well as considering what form and system changes might be needed to support the standards in time for April 2014. The LAA is in the process of working with stakeholders to produce guidance on this issue. This will, shortly, be shared with legal aid service providers.

The Ministry of Justice and Family Justice Council recommend that it would be desirable to make compliance with the standards a requirement in all children's proceedings from April 2014. This would tie in with the establishment of the new single Family Court and the likely date for the implementation of legislative changes to the timetable for public law cases currently before Parliament. More information on implementation will be provided once the Family Procedure Rules Committee and the LAA have had an opportunity to consider the changes required to give effect to the standards. Information on implementation will be disseminated to all interested parties by the Ministry of Justice and supported by the Family Justice Council.

We do, however, believe that in many cases these standards can be used prior to April. We would, therefore, encourage all parts of the system to prepare for these standards immediately and start to use them well before the April date of formal implementation. For experts this will mean ensuring that they comply with the standards themselves and for other parts of the system, especially those commissioning experts, this will mean ensuring that proper processes are in place through which you can be reassured that an expert complies with these standards.

The Impact Assessment accompanying the consultation has not been updated as the policy remains broadly the same as that on which we consulted.

Finally, the Ministry of Justice and the Family Justice Council recognise that expert evidence will continue to play an important role in family court proceedings by providing expert opinion on issues outside the knowledge, skill and experience of the court. There can be no doubt that where a judge considers that it is necessary to have expert evidence to resolve a case that evidence will still be commissioned. On this point a group representing lawyers said the following:

*'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.'*

The Ministry of Justice and the Family Justice Council agree with these points entirely and we look forward to working with expert groups and others on the implementation and future development of the standards.

## The Final Recommended Standards

### 'Standards for Expert Witnesses in Children's 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'<sup>20</sup>.
9. The expert has undertaken appropriate training, updating or quality assurance activity – **including actively seeking feedback from cases in which they have provided evidence**<sup>21</sup> - relevant to the role of expert in the family courts in England and Wales within the last year.
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.

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<sup>20</sup> December 2011. See [www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc](http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc)

<sup>21</sup> The words and sentences in bold have changed as a result of the consultation.

## 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)**<sup>22</sup> (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 Council**<sup>23</sup> (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 Council**<sup>24</sup> 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 Council**<sup>25</sup> 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 Council**<sup>26</sup> 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.

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<sup>22</sup> [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

<sup>23</sup> [www.gmc-uk.org](http://www.gmc-uk.org)

<sup>24</sup> [www.gdc-uk.org](http://www.gdc-uk.org)

<sup>25</sup> [www.nmc-uk.org](http://www.nmc-uk.org)

**The General Pharmacy Council<sup>27</sup>** 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 Council<sup>28</sup>** is a UK-wide statutory body with regulatory powers established by the Chiropractors Act 1994. Its duties are to protect the public 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 Council<sup>29</sup>** 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.

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<sup>26</sup> [www.optical.org](http://www.optical.org)

<sup>27</sup> [www.pharmacyregulation.org/about-us](http://www.pharmacyregulation.org/about-us)

<sup>28</sup> [www.gcc-uk.org/page.cfm](http://www.gcc-uk.org/page.cfm)

<sup>29</sup> [www.osteopathy.org.uk](http://www.osteopathy.org.uk)

The **Health and Care Professions Council** regulates health and social care professionals with protected titles<sup>30</sup>. Further information is set out in the table below.

<b>Profession</b>	<b>Protected title(s)</b>
<p><b>Arts therapist</b> An art, music or drama therapist encourages people to express their feelings and emotions through art, such as painting and drawing, music or drama.</p>	<ul style="list-style-type: none"> <li>• Art psychotherapist</li> <li>• Art therapist</li> <li>• Dramatherapist</li> <li>• Music therapist</li> </ul>
<p><b>Biomedical scientist</b> A biomedical scientist analyses specimens from patients to provide data to help doctors diagnose and treat disease.</p>	<ul style="list-style-type: none"> <li>• Biomedical scientist</li> </ul>
<p><b>Chiropodist/Podiatrist</b> A chiropodist / podiatrist diagnoses and treats disorders, diseases and deformities of the feet.</p>	<ul style="list-style-type: none"> <li>• Chiropodist</li> <li>• Podiatrist</li> </ul>
<p><b>Clinical scientist</b> 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.</p>	<ul style="list-style-type: none"> <li>• Clinical scientist</li> </ul>
<p><b>Dietician</b> A dietician uses the science of nutrition to devise eating plans for patients to treat medical conditions, and to promote good health.</p>	<ul style="list-style-type: none"> <li>• Dietician</li> </ul>
<p><b>Hearing aid dispenser</b> Hearing aid dispensers assess, fit and provide aftercare for hearing aids.</p>	<ul style="list-style-type: none"> <li>• Hearing aid dispenser</li> </ul>
<p><b>Occupational therapist</b> An occupational therapist uses specific activities to limit the effects of disability and promote independence in all aspects of daily life.</p>	<ul style="list-style-type: none"> <li>• Occupational therapist</li> </ul>
<p><b>Operating department practitioner</b> Operating department practitioners participate in the assessment of the patient prior to surgery and provide individualised care.</p>	<ul style="list-style-type: none"> <li>• Operating department practitioner</li> </ul>
<p><b>Orthoptist</b> Orthoptists specialise in diagnosing and treating visual problems involving eye movement and alignment.</p>	<ul style="list-style-type: none"> <li>• Orthoptist</li> </ul>

<sup>30</sup> [www.hpc-uk.org/aboutregistration/protectedtitles](http://www.hpc-uk.org/aboutregistration/protectedtitles)

<p><b>Paramedic</b> 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"> <li>• Paramedic</li> </ul>
<p><b>Physiotherapist</b> 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"> <li>• Physiotherapist</li> <li>• Physical therapist</li> </ul>
<p><b>Practitioner psychologist</b> 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"> <li>• Practitioner psychologist</li> <li>• Registered psychologist</li> <li>• Clinical psychologist</li> <li>• Counselling psychologist</li> <li>• Educational psychologist</li> <li>• Forensic psychologist</li> <li>• Health psychologist</li> <li>• Occupational psychologist</li> <li>• Sport and exercise psychologist</li> </ul>
<p><b>Prosthetist/Orthotist</b> Prosthetists and orthotists are responsible for all 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>	<ul style="list-style-type: none"> <li>• Prosthetist</li> <li>• Orthotist</li> </ul>
<p><b>Radiographer</b> 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"> <li>• Radiographer</li> <li>• Diagnostic radiographer</li> <li>• Therapeutic radiographer</li> </ul>
<p><b>Social workers in England</b></p>	<ul style="list-style-type: none"> <li>• Social worker</li> </ul>
<p><b>Speech and language therapist</b> Speech and language therapists assess, treat and help to prevent speech, language and swallowing difficulties.</p>	<ul style="list-style-type: none"> <li>• Speech and language therapist</li> <li>• Speech therapist</li> </ul>

## **Appendix 2 to the standards**

### **Examples of professional bodies / associations relating to non- statutorily regulated work**

#### **Resolution UK**

**[www.resolution.org.uk/](http://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](http://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](http://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](http://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](http://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.psychoanalytic-council.org](http://www.psychoanalytic-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](http://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](http://www.basw.co.uk)**

UK professional association of social workers.

**Confederation of Independent Social Work Agencies UK (CISWA)**

**[www.ciswauk.org](http://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.

## The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees 'buy-in' to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.





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