

ALTERNATIVE COMMISSIONING OF EXPERTS PILOT

INFORMATION FOR APPLICANTS

Commissioning Jointly Instructed
Health Expert Witnesses in
Public Law Childcare Proceedings

JUNE 2008

Contents

1	Introduction	2
2	Who do we want to pilot with?	5
3	Requirements	6
4	The Selection Process	10
5	Key Contract Terms	11
6	The Application Process and Rules	14

1. Introduction

Purpose of document

- 1.1. This document has been prepared by the Legal Services Commission (LSC) to provide information to organisations who are interested in applying to participate in the 12 month pilot project outlined below. It is accompanied by an Application Form, which applicants need to complete and return to the LSC by 23rd July 2008.

Overview of the pilot project

- 1.2. The pilot project is being undertaken to test the feasibility of new arrangements proposed by the Chief Medical Officer¹ for commissioning health expert witnesses. Under these new piloted arrangements multi-disciplinary teams of health professionals will be commissioned from NHS Trusts or other public, private or voluntary sector organisations.
- 1.3. The pilots will focus on commissioning arrangements of jointly instructed health expert witness services to family courts in Public Law childcare proceedings.
- 1.4. The new piloted arrangements are intended to address:
 - the severe shortage of health professionals prepared to give evidence in the family courts and the consequent problem that most of the health professionals currently acting as expert witnesses are so busy that they are unable to complete cases within a reasonable timescale
 - the requirement for the NHS to take a more active role in the provision of health expert witnesses in line with its duty under the Children Act 2004 to safeguard and promote the welfare of children².
- 1.5. The Chief Medical Officer identified reasons why it is currently difficult to maintain an adequate supply of health expert witnesses for childcare cases in the family courts. These are outlined below:
 - the system is not well organised and is dependent on multiple small agreements between individual doctors and solicitors
 - there is no real succession planning so, as experienced doctors retire, there are few younger doctors stepping in to replace them
 - most expert witness work is concentrated in a relatively small number of hands

¹ "Bearing good witness: proposals for reforming the delivery of medical expert evidence in family law cases" (Report published for consultation in October 2006. Summary of responses to consultation published in July 2007).

² For more information on this duty see: "Statutory guidance on making arrangements to safeguard and promote the welfare of children under section 11 of the Children Act 2004" available on www.everychildmatters.gov.uk. (Whilst private and voluntary health providers are not under a statutory duty to meet the requirements of section 11 of the Children Act 2004, it is anticipated that they would wish to do so as a matter of good practice).

- highly specialised medical input is sometimes vital to the courts (e.g. paediatric radiology) and there are few specialists nationally in such disciplines
 - individual health professionals are deterred from being expert witnesses because
 - they have not been asked or feel that they are not qualified
 - there are few good comprehensive training programmes
 - it is outside the mainstream and is often given insufficient recognition or support
 - some find courts and legal processes intimidating and stressful
 - many find court processes bureaucratic, slow and time consuming
 - some fear referral to the General Medical Council by vexatious parties in a case.
- 1.6. The Chief Medical Officer considered that health professionals would be more interested in providing health expert witness services if they could do so as part of a co-ordinated multi-disciplinary team that:
- allows them to provide the service as part of their day-to-day work rather than as an additional activity
 - provides easier access to input or peer review from colleagues in other disciplines which, in turn, helps ensure that expert witness reports are balanced, quality assured and less likely to lead to vexatious complaints
 - enables colleagues to provide support or back-up when the requirement to complete expert witness reports for the court conflicts with the healthcare workload commitments
 - allows new health expert witnesses to be trained or mentored in a supportive environment.
- 1.7. Whilst the Chief Medical Officer's report was driven primarily by concerns about the supply of health expert witnesses, it also recognised the challenge faced by the LSC in controlling the rapidly increasing cost of the legal aid. Whilst the £33 million cost of solicitors' disbursements in Public Law Children Act cases (the majority of which are for health expert witnesses) are a relatively small proportion of the £2 billion cost of legal aid, they have nonetheless increased by 50% over the 2 years to April 2007. The LSC anticipate that the new arrangements will allow them to ensure sustainable supply and quality, whilst managing these costs more closely.
- 1.8. It is a key assumption of the pilot project that commissioning multi-disciplinary teams of health expert witnesses will attempt to address and resolve these issues.

Benefits of the new commissioning arrangements

- 1.9. The LSC believe that the new arrangements for commissioning health expert witness services will deliver the benefits listed below and anticipate that the pilot

project will deliver outcomes that demonstrate that these benefits (listed below) can be realised.

- easier for health professionals to get engaged as health expert witnesses
- sustainable increase in the supply of quality-assured expert witnesses
- easier and quicker for solicitors and clients to access health expert witnesses
- fewer delays in the provision of expert reports for the benefit of the child
- improved quality-assurance through peer review and multi-disciplinary input
- best use of public funds

The role of the LSC on the use of experts

- 1.10. The LSC is leading the pilot project with inter-agency support from the Department of Health, HM Court Service, Ministry of Justice, the Judiciary and other stakeholders.
- 1.11. The LSC is responsible for legal aid in England and Wales. It works in partnership with solicitors, not-for-profit organisations and commercial providers to help people in need get the information, advice and legal help they need to deal with a wide range of problems. This includes the use of health expert witnesses in Public Law family cases.
- 1.12. The cost of experts' fees in legal proceedings is met by the parties to the case (in Public Law family cases these are typically the local authority, the children and the parents). However, in most public law Children Act cases parents' costs and those of the child or children are provided by legal aid.

2. Who do we want to pilot with?

- 2.1. The LSC wishes to pilot the new commissioning arrangements with five to ten providers across England.
- 2.2. Information from the pilot may be used to inform strategy in Wales, however individual pilots will not run in Wales as it was not included in the Chief Medical Officer's report Bearing Good Witness as its health service is devolved.
- 2.3. This is an open process. Any organisation interested in providing the services described may apply providing they meet the requirements outlined in this document. Applications, both from existing teams and organisations that wish to set up teams to provide multi-disciplinary health expert witnesses to public law childcare proceedings, will be welcome. Teams may be based within the NHS, or in other private, public or voluntary organisations. The new arrangements will enable the commissioning of both existing and prospective teams that meet the relevant criteria and are not intended to create a monopoly for NHS service providers.
- 2.4. To undertake a robust evaluation of the new commissioning arrangements, the LSC would ideally like the pilot to include:
 - urban and rural locations
 - different types of organisation (e.g. NHS, private organisation)
 - areas with different levels of demand for health expert witness services
 - areas with different levels of capacity of provision in the area
 - different configuration of teams (size, types of experts included)
- 2.5. The LSC aim to run at least one pilot in a Care Proceedings Initiative Area, so that the pilot's impact can be assessed in an area that has already embedded the Public Law Outline. Care Proceedings Initiative Areas were: Liverpool, Birmingham, London, Warrington/Chester, Newcastle/Sunderland, Exeter/Plymouth, Leicester, Milton Keynes/Oxford, Swansea and Portsmouth. This is not a definitive list of the areas that we will pilot in.
- 2.6. Whilst, in general, each pilot area will have a single team, the LSC would also like to test the effect of having more than one provider in a single court area, and it is likely that we will run more than one pilot in London.
- 2.7. The number of teams and the location of pilot areas will be determined in the context of applications received.
- 2.8. It is possible that we may need to stage the pilot in order to learn and develop the approach needed.

3. Requirements

- 3.1. The LSC is inviting organisations to apply to pilot and help the LSC develop and evaluate alternative commissioning arrangements for health expert witnesses. Successful applicants will be organisations that are able to provide a multi-disciplinary team of health professionals to deliver jointly instructed expert witness services in public law childcare proceedings. This will usually be cases where the local authority has issued an application for a care or supervision order in respect of a child. These services may involve carrying out assessments, writing reports and/or attending court hearings as required by individual cases.
- 3.2. The pilot is limited to the use of jointly instructed health expert witnesses in the proceedings stages and the work needs to be covered by The Funding Code.
- 3.3. Team members will be expected to be familiar with and, in undertaking work as health expert witnesses, comply with the Public Law Outline (PLO) Practice Direction for experts in Family Proceedings Relating to Children. This is published by H.M Courts Service and can be found at <http://www.hmcourts-service.gov.uk/cms/files/Experts-PD-flagB-final-version-14-01-08.pdf>. Teams will be expected to provide their expert service within a timescale that allows the case to be conducted within PLO guidelines.

Multi-disciplinary teams and experts' specialties

- 3.4. As psychologists and psychiatrists are used in the majority of public law childcare cases, ideally these experts need to be provided and, where we are selecting between similarly scoring applications, those applications with both will be scored preferably. Where an organisation is a good fit with most of the requirements but is only able to provide health experts in a limited number of disciplines, options will be explored to see if the participation of health professionals with complementary disciplines from other disciplines can be secured.
- 3.5. The pilot welcomes a wide range of multi-disciplinary teams. An ideal team would include Adult Psychiatrist, Child Psychiatrist, Adult Psychologist, Child Psychologist, Paediatricians (general), Paediatricians (specialists), Radiologists (and other diagnostic imaging), Physicians, Other Medical (drug testing experts) and have the ability to call upon the services of other health experts as required by individual cases.

Skills and experience

- 3.6. Individual team members participating in the pilot will be expected to be able to demonstrate key attributes, knowledge and skills relevant to public law childcare proceedings. Evidence of this will be sought through the submission of CVs. Key attributes, knowledge and skills include:

Attributes:

- In active clinical practice or retired within the last two years
- Sees or has seen similar cases in day-to-day practice
- A member of, and in good standing with, the appropriate Royal College or professional body
- Up-to-date with the current evidence base that underpins practice
- Mastery of the current evidence base that underpins practice
- Knowledgeable of child protection issues
- Able to understand the family context of the child.

Knowledge of:

- Child protection legislation
- The role and powers of the different courts, the standard and the burden of proof
- The expert's role in key stages of the court process
- How to interpret and influence solicitors' instructions
- Possible outcomes of the court's decision and the expert's potential contribution

Skilled in:

- Information analysis and presentation
- Oral and written communication of evidence, including report writing
- Responding to cross-examination
- Honest and balanced presentation of opinions on causation
- High quality forensic practice

Training, development and quality

- 3.7. A key component of the pilot is ensuring that the services provided are of a high quality. It is expected that each team will have a quality assurance plan that they can demonstrate adherence to. This plan will include processes for ensuring quality of service given such as supervisory arrangements and use of internal peer review.
- 3.8. Throughout the pilot, teams must be committed to encouraging and developing junior professionals into becoming expert witnesses. Teams will therefore be required to submit a training plan with their application.

- 3.9. Each member of each team must be trained in report writing and presenting at court. This training should be included in the training plan for any individuals that have not yet undergone it.

Team coordination

- 3.10. Each team will need to identify a person responsible to
- be the point of contact for solicitors who wish to instruct the team
 - monitor current workload and determine whether the team has the capacity to provide the health expert witness services required for each case and, where possible, secure additional capacity to meet demand
 - ensure that the appropriate health experts contribute to the report and are ready to give oral evidence on their aspect of the report
 - arrange for members of the team to provide multi-disciplinary input and/or peer review for health expert services delivered by other members of the team
 - work with key stakeholders, healthcare organisations or networks in the pilot area (including those in the organisation from whom the team is commissioned) to communicate the role and value of the team and encourage additional health professionals to join the team
 - ensure all members of the team have access to the training required to develop and/or maintain the relevant knowledge and skills (as outlined above)
 - provide management information to the LSC for use in monitoring and evaluating the pilot
- 3.11. The person undertaking the coordinating role will need to consider, and implement, ways in which the organisation can appropriately increase the number and availability of professionals prepared to do expert witness work throughout the pilot period.

A collaborative approach to maximising best use of public funds

- 3.12. Integral to our approach is to work collaboratively together to ensure the best use of public funds. We want to work with organisations that can help us establish value for money and efficiencies within the wider justice system.
- 3.13. The LSC aims to have excellent working relationships with all the organisations with which it contracts. This means that both parties are working towards common goals, including the LSC's goal to procure best value, timely and quality services. Teams will therefore be expected to work together with the LSC, the court and the local authority, sharing ideas, suggestions and information to improve the pilot arrangements. We will work with shortlisted applicants to

develop these relationships if necessary, but ask in the application process for a description of current relationships.

Monitoring

- 3.14. Regular data on services provided by teams, and team members, will be required as part of the pilot, as the objective of the pilot is to collect sufficient data for a decision to be made as to whether or not the scheme should be rolled out nationally. It also aims to capture data on the number of team members and implementation of training plans and other factors influencing the sustainability issue. This data is a key element to the evaluation of the teams' performance and the pilot's success. Data collected will include, for each case:
- details of the certificate(s) issued by the LSC for the case – e.g. reference number, name of solicitor
 - date of initial request from lead solicitor, date of instruction, date service provided and, if relevant, reason for any delay
 - time and cost of services provided, by profession, grade and activity(e.g. report prepared by psychologist and paediatrician, appearance in court by psychologist)
 - complexity of case
 - name of experts and reasoning behind selection
 - use of additional experts from outside the core team
- 3.15. Teams will also be required to report on:
- any and all requests for expert services that they refused and the reasons why
 - the use of peer review and other quality assurance processes.
- 3.16. Other information related to the success of the pilot may be requested by the LSC. This will be within a reasonable and specified timescale.
- 3.17. The format of the management information to be provided will be agreed between the organisation and the LSC, and will aim to make use of management information systems and reports already existing within the organisation.

4. The Selection Process

Assessment of applications

- 4.1. The applications will be assessed for their compliance with each of the requirements set out earlier in this document. The score for each requirement will be weighted as shown below and a total weighted score calculated for each applicant. The total weighted scores for all applicants will be ranked and the highest ranked applicants will be shortlisted for participation in the pilot subject to the maximum number of pilot areas available and to the geographical location of applicants. This means that high ranking applicants may not be shortlisted or selected for participation if, for instance, they are in the same geographical location as another higher ranked applicant.

Weighting of requirements

Requirements	Weightings
Multi disciplinary teams: types and range of experts	3
Skills and experience: professional	3
Expert Witness experience	3
Training, Development and Quality	2
Organisational structure and coordination approach	2
Cost and Collaborative Approach to Maximising Best Use of Public Funds	2
References and Links with other Key Players in the Justice System (courts, solicitors and local authorities)	2
Capacity	1

5. Key Contract Terms

The nature of the contract

- 5.1. The full details of the pilot contract will be developed through the application process and in discussions with selected applicants.
- 5.2. The contract will not guarantee any work but will operate as a service concession contract, allowing the team of experts to undertake health expert work, at agreed rates, and with direct payment from the LSC.

Limitations

- 5.3. Work carried out under the pilot is limited to jointly instructed health expert evidence in public law childcare proceedings and needs to fall within the scope of the LSC Funding Code.
- 5.4. Further, applicants should be aware that the LSC cannot compel any of our contracted solicitors to use the successful teams though we will take steps to encourage them to do so and to publicise the existence and work of the team. However, the current shortage of supply of health expert witnesses suggests that there is likely to be a viable level of demand for services provided by each team.

Payment

- 5.5. Payment will be made directly by the LSC within a period of time to be confirmed (likely to be 28 days) on receipt of the invoice and verification from the instructing party that the work was completed and of the appropriate quality. As with all legal costs the experts' fees will be subject to after the case assessment either by the courts or LSC and any over-payments will be reclaimed or offset against future payments on either the same or other cases

Pilot length

- 5.6. It is intended that the cases will be commissioned during the first 12 months of the pilot. The average length of Public Law Childcare cases is 52 weeks with a target length of 40 weeks. We are aware that some cases may not be completed within this period. Work that has been commissioned under the pilot scheme and during the pilot period will be allowed to continue after the pilot comes to an end and it is recognised that evaluation after the initial pilot period may need to be supplemented by later analysis.

Working relationships and reporting

- 5.7. The LSC aims to have excellent working relationships with all the organisations with which it contracts. This means that both parties are working towards

common goals, including the LSC's goal to procure best value, timely and quality services. Teams will therefore be expected to work together with the LSC, the court and the local authority, sharing ideas, suggestions and information to improve the pilot arrangements.

- 5.8. Details of the pilot and its effectiveness will be published to provide transparency and equality for potential commissioning arrangements in the future. This will include all information and data gathered within the context of the pilot, including pricing information and team data. Provision for commercially sensitive and personal data to remain confidential will be built into the contracting arrangements. Organisations must indicate in their applications if information is deemed to be commercially sensitive.
- 5.9. The contract will provide for regular reporting, not only of "invoicing" information but also of other data relevant to the ongoing evaluation of the effectiveness of the pilot.

Required service provisions and standards

- 5.10. The pilot contract will be built primarily around the requirements detailed in this document and the application received, and will contain the following key provisions:
- the team will provide health expert witness services to the court in public law childcare proceedings. The services may include conducting assessments, writing reports and appearing in court as required by each individual case
 - the team will be multi-disciplinary and contain as a minimum psychiatrists and psychologists
 - only cases in which the team has the appropriate level of skills and experience may be undertaken
 - the team will provide all services in accordance with the Public Law Outline's Experts Practice Direction and within the timescales agreed with the solicitor and the court
 - the team will have quality assurance policies and procedures in place and will report on these if required by the LSC
 - payment will be made directly by the LSC following receipt of the invoice and verification from the instructing solicitor that the work was completed and of the appropriate quality. As with all legal costs the expert's fees will be subject to after the case assessment either by the courts or LSC and any over-payments will be reclaimed or offset against future payments on either the same or other cases
 - any work carried out by sub-contractors must comply with the terms of principal contract.

Equality and diversity

5.11. Teams will be required to meet the standards equivalent to the LSC's Single Equalities Scheme which will be published at the end of June/early July. It is anticipated that these standards will be consistent with those in place in the NHS, and they will be available prior to contracts being formed.

Termination

5.12. The contract may be ended by either party on 3 months' notice and will contain provisions in relation immediate termination in other circumstances. The contract will contain a full dispute resolution procedure.

Liabilities and indemnities

5.13. Organisations will have to provide indemnities to the Commission and will have to hold appropriate professional indemnity insurance and assure the Commission that such insurance is held. The Commission will not be liable for the advice, acts or omissions of the Organisations or the individual experts.

Data protection and personal information confidentiality

5.14. Data Protection and confidentiality of Personal Information is seen as important by the LSC. Organisations will need to comply with the Data Protection Act and may be asked to provide evidence of the systems they have in place to manage and monitor this requirement.

Freedom of Information Act 2000

5.15. Applicants should note that under the Freedom of Information Act 2000 ("the Act"), the LSC may be required to disclose details of your application (including price information) to third parties. If you have concerns in this area, you should identify which parts of your application would fall within the Section 43 "commercial interests" exemption explain why you believe that the exemption should be applied. You should however be aware that the final decision rests with the LSC and that we generally seek to ensure openness and transparency as we are accountable for our expenditure of public funds.

6. The Application Process

Making an application

- 6.1. Before applying to take part in the pilot you should ensure that you have read this document (“Information for Applicants”) and have a copy of the Application Form. If you do not have an Application Form, it can be downloaded from <http://www.legalservices.gov.uk/aboutus/7210.asp>.
- 6.2. If your organisation intends to make an application, please could you notify the LSC by email to emily.paddy@legalservices.gov.uk so that the LSC can advise you of any further information or clarification that it might post on its website during the application period.
- 6.3. To apply to take part in this pilot scheme you must submit the following documents to the Commission (as set out below):
 - Signed and completed Application Form
 - Supporting Documents

Closing date for applications

- 6.4. The closing date and time for applications is **17.00** on **23 July 2008**.
- 6.5. Completed applications must be received at the address (postal or e-mail) detailed below before 17.00 on the closing day. The Legal Services Commission (LSC) may at its absolute discretion refrain from considering any applications that: are received after this date, are incorrectly completed or incomplete, or fail to comply with these instructions.

How to submit applications

- 6.6. Applications should be sent by recorded delivery / guaranteed post, DX, email or in person, but **not** by fax, to:

Emily Paddy
Legal Services Commission
85 Gray’s Inn Road
London
WC1X 8TX
emily.paddy@legalservices.gov.uk
DX 328 Chancery Lane
- 6.7. It is your responsibility to ensure that your application is received by the deadline. The LSC is not responsible for any failure of delivery.

Opportunities for applicants to ask questions

- 6.8. For clarification on the application process or the pilot objectives please contact Emily Paddy (emily.paddy@legalservices.gov.uk). Information will be shared through email notifications, briefings and updates on our website.

The Rules of this application process

1. The rules of the process for application and selection contained in this Information for Applicants are not legally binding and no contract is formed between applicants and the LSC. However, this Information for Applicants, the application form and documents submitted as part of the application, will form part of the contract for the successful applicant.
2. The LSC reserves the right to cancel the process and/or amend the rules, including the requirements, at any time by giving notice in writing on its website www.legalservices.gov.uk before the date for submission of applications, or by giving notice in writing to all applicants who have submitted applications, and who are still being considered in the process, where the date for submission of applications has passed.
3. The LSC may ask applicants to give additional information or to provide clarification at any time during the process.
4. Applicants must complete all sections of the Application Form and answer all questions. They must also use the Application Form to demonstrate to the reasonable satisfaction of the LSC that they are able to meet the LSC's requirements. It is the responsibility of the applicant to ensure that any claims made in their application or in any supporting documents are true to the best of their knowledge and are supported by evidence.
5. The LSC reserves the right to take into account any knowledge of an applicant (or in the case of a joint application, of any of its members) it may have, but applicants should not assume that any such information will be taken into account and should restate it on their application form if they consider it relevant.
6. Where an application is made on behalf of multiple organisations proposing to work together to provide the service, the organisations must select a lead organisation to represent their views and enter in to a contract with the LSC on their behalf. In the case of joint applications, all statements made in an application by any joint application will be deemed to be made jointly and severally by all applicants involved in that application.
7. The LSC reserve the right not to award a contract.
8. There will be no right of appeal for unsuccessful applicants.

9. Applicants will not be entitled to claim from the LSC any costs or expenses incurred in preparing their application, participating in the selection process or undertaking any associated work.