

Reforming the Delivery of Health Expert Witnesses in Public Law Childcare Proceedings

Questions and Answers

Using Teams

1. Why is the team approach recommended?

The Chief Medical Officer's report recommends the use of teams in providing expert witness services because it was believed that this would ensure that the best quality service would be provided.

The instruction of a team rather than a named individual means that the experts within the team with the right expertise can provide input to the report, reducing delay and effort in terms of finding and instructing additional experts for the solicitor.

Team members will peer review the reports, ensuring that both the content and the structure are to the required standard. As the expert witness work is to be done as part of their employment, training and supervision will also be available to monitor and maintain/improve performance.

A consensus of opinion should provide reassurance to the court that the appropriate conclusions have been reached. Discussing the case within the team means that differing views can be considered at the same time, combining knowledge of similar cases and perspectives on evidence. It ensures that the court gives even weight to the evidence of all experts involved by removing the influence of individuals.

The team approach also provides a model that addresses access and sustainability of the provision of expert witnesses. Suitably qualified professionals who have less experience of acting as an expert witness will be able to work with those who have more experience to learn about what is involved and to pick up the specific skills required of expert witnesses.

2. Isn't this going to lead to an increase in fees paid to experts?

This approach should be more cost-effective as the experts involved are able to discuss issues at the time the report is written rather than afterwards. It enables points of agreement and disagreement to be set out in one report, and reduces the number of experts potentially required to come to court.

The pilot will gather information on the use of health experts in public law childcare cases, which will feed into future strategy. It is the first step we are taking to develop a strategy for the use of experts, which will include cost, quality and access.

Pilot cases

3. How will I know if a case is suitable for the pilot?

To be included in the pilot, the need for expert witness services must meet the following criteria:

- More than one type of health professional is required to provide expert opinion
- Experts are to be jointly instructed
- A pilot team is able to take on the case.

4. What are the benefits of using a pilot team?

Although you will need to agree the amount of work with the team and include the total cost in any cost of case calculations, we will have agreed the rate of pay and we will pay the teams directly, therefore removing the possibility of having experts bills assessed down and reducing the amount of administration you will have to do.

These teams are committed to increasing the number of health professionals who act as expert witnesses, and will make themselves available wherever possible

The multi-disciplinary team approach involves regular team discussions about the cases they are working on, meaning that if it appears that another specialty from within the team is required, it can be obtained.

Reports will all be produced within court timeline.

The teams all have quality standards and assurance processes in place, meaning that you can be sure that the opinion you will be getting will be of the highest quality.

5. If I decide that I don't want to use the pilot for a case, will sanctions be applied?

The pilot is intended to collect data on this new way of commissioning expert witness services. The more feedback we receive, the more valuable the evaluation will be and consequently any future strategy will also be better informed. The current level of choice will not be removed, and the use of the pilot is not mandatory. No sanctions will be applied where pilot teams are not used.

6. How will the pilot affect solicitors?

The pilot does not intend to change the way that solicitors involved in the pilot instruct experts or the relationship you have with experts when working to ensure that the child's best interests are met. The major effect that the pilot will have on the solicitors involved is that due to the LSC paying the expert directly for the work being undertaken on behalf of your clients, you will not have to seek prior authority for the experts work, or

claim the costs through disbursements. If using a pilot organisation, you will not need to submit evidence of getting more than one quote for the work.

Although the solicitors firms who have cases involved in the pilot will not be responsible for paying the experts for their service, any cost limitations on the case, such as on a certificate, will need to be adhered to. If it is thought that costs will exceed this limit, then it will be necessary to seek an extension of the limit, as per current procedure. The steps outlined below illustrate the process that will be followed to ensure that solicitors are aware of the cost of the expert's service in a case.

We expect that this approach will benefit all concerned:

- Although you will need to agree the amount of work with the team and include the total cost in any cost of case calculations, we will have agreed the rate of pay and we will pay the teams directly, therefore removing the possibility of having experts bills assessed down and reducing the amount of administration you will have to do.
- These teams are committed to increasing the number of health professionals who act as expert witnesses, and will make themselves available wherever possible
- The multi-disciplinary team approach involves regular team discussions about the cases they are working on, meaning that if it appears that another specialty from within the team is required, it can be obtained without additional time and effort from the solicitor
- Reports will all be produced within court timeline
- The teams all have quality standards and assurance processes in place, meaning that you can be sure that the opinion you will be getting will be of the highest quality
- In order to ensure that we obtain the best value for money from these services, we would encourage the use of video-conference for the experts to give evidence at court wherever possible. A list of courts that are set up to do this can be found on the HMCS website.
- You can find further detail of how the pilot will work in practice in the documents attached to this page.

7. How will the pilot affect local authorities?

The pilot does not intend to alter the relationship between the experts' organisation, solicitors and the Local Authorities involved.

Although the experts' will be paid directly by the LSC for the proportion of their work that is Legal Aid funded, it will still be the responsibility of the Local Authority and solicitors involved in the case to ensure that the work is progressed satisfactorily.

All experts' organisations and instructing solicitors, who are likely to be involved in the pilot, have been provided with full details on the process that will be used during the pilot.

8. How will the pilot affect the judiciary?

We hope that you will support the use of these teams where appropriate; however the current level of choice will not be removed, and the use of the pilot is not mandatory. No sanctions will be applied where pilot teams are not used.

The NHS Teams all have video-conferencing facilities, and so further efficiencies through the use of video-conferencing are expected to be made wherever possible.

The pilot does not intend to alter the relationship between the Court and the expert; in fact the project will have no impact on the way the Court works.

Although we will be paying the experts directly for their service, it will remain the solicitor's responsibility to ensure that work is done to the agreed deadlines and that the work is of an appropriate quality. The LSC will be seeking confirmation from the instructing solicitor that work has been done to an appropriate quality and timescale before it pays any costs claimed by the expert.

Cost Assessment by the Court

The ACE pilot will not affect the process Courts currently follow if they decide to assess the bill. The solicitor will submit the file as they currently do, including any costs claims arising from the expert's work. If the court decides to assess the costs down, it will be the amended costs that the experts' organisation submits to the LSC for payment.

Evaluation

9. What will the evaluation look at?

The pilot will test the effectiveness of multi-disciplinary teams of health professionals in providing expert witness services and the effectiveness of directly commissioning from NHS Trusts and other organisations. This will be measured on the teams' ability to deliver high quality, timely and cost effective expert advice.

We are in the process of tendering for an independent organisation to conduct the evaluation, on which our recommendations as to the extent that this approach is included in future strategy will be based. The evaluation report will look into whether these arrangements achieve the goals set out in the CMO's report and meet the requirements of the LSC as prospective commissioner.

The evaluation will be based on data provided by the teams, and feedback received from solicitors, judiciary and local authorities. We hope that the

pilot teams will be utilised where appropriate to ensure that we have a sound evidence base for conclusions reached.

After the pilot

10. What is the length of the pilot?

The initial pilot period is for a year, as we believe this will provide us with sufficient data for evaluation purposes. Ongoing monitoring is intended to allow us to consider making changes as lessons are learned or extending the pilot arrangements if appropriate. A decision on the future of this method for commissioning will be made after the evaluation.

11. Are there any plans to implement a similar scheme in other categories of law?

We will use the findings from the pilot to determine whether this type of arrangement might be suitable in other categories of law.

Definitions

12. Why does the Information for Applicants refer to health expert witnesses rather than to medical expert witnesses?

The pilot project refers to “health expert witnesses” and “health professionals” rather than to “medical expert witnesses” and “doctors” to ensure the inclusion – where relevant and appropriate - of clinical staff who are not doctors (e.g. nurses) and of other healthcare staff who are not clinicians.

13. What does ‘jointly instructed’ mean?

Jointly instructed health expert witnesses represent all the parties in the case and typically take their instructions from the solicitor for one of the parties whom all parties have agreed should act as lead solicitor for this purpose.

14. What are public law childcare proceedings?

Public Law childcare proceedings in the family courts will usually involve cases where the local authority has issued an application for a care or supervision order in respect of a child.