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Paediatricians as expert witnesses in the Family Courts in England and Wales: Standards, competencies and expectations

Guidance from the Family Justice Council and the Royal College of Paediatrics and Child Health

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[https://www.familylaw.co.uk/system/froala_assets/documents/713/Psychologists as expert witnesses in the Family Courts.pdf](https://www.familylaw.co.uk/system/froala_assets/documents/713/Psychologists_as_expert_witnesses_in_the_Family_Courts.pdf)

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1. Introduction

1.1 The joint Family Justice Council and Ministry of Justice Standards for Expert Witnesses in the Family Courts in England and Wales² forms the basis of an agreed minimum standard for all stakeholders to be guided by, and to adhere to, whenever instructing or being instructed as expert witnesses in family proceedings.

1.2 This guidance is a companion document to the generic expert witness standards set out in Part 25 of the Family Procedure Rules (FPR)³ and focuses on a specific discipline, namely paediatricians. It has been prepared by the Family Justice Council (FJC) and the Royal College of Paediatrics and Child Health (RCPCH). The guidance provides information to all stakeholders regarding the use of paediatricians as expert witnesses and directs the reader to discipline specific information in relation to regulation, codes of conduct, competencies, supervision and quality of service.

1.3 It should be noted that throughout this document the use of the term ‘paediatrician’ relates primarily to practising and recently retired paediatricians working within the NHS or as clinical academic paediatricians. Much of what is written will have relevance to other medical specialists who can be instructed as expert witnesses in the Family Courts.

1.4 This guidance is written within the legal context of England and Wales. However, it is acknowledged that it may have some benefit to those working in other jurisdictions e.g. Scotland and Northern Ireland subject to compliance with local Practice Directions (PD) and procedural matters.

1.5 The guidance is written in relation to the Family Court. Family proceedings are civil proceedings and concern children, focusing on their welfare and ascertaining the facts as far as they are relevant in order to inform the court’s decision making, to ensure the safety of the child or children where maltreatment is suspected. By contrast criminal cases focus on the perpetrator. The two legal frameworks have different roles and require different standards of proof. Family proceedings apply the civil standard, the balance of probabilities. The criminal standard is beyond reasonable doubt or in more modern terms, the jury must be sure before they can convict.

² See annex of http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/practice-direction-25b-the-duties-of-an-expert-the-experts-report-and-arrangements-for-an-expert-to-attend-court

³ https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25

1.6 Strong case management in family proceedings is key to good outcomes for children. Expert reports are limited to expert evidence that is “necessary to resolve the proceedings justly”⁴. Expert witnesses must have a solid grasp of the framework of the legislation and the Family Procedure Rules 2010 Part 25⁵. A summary of the position is set out in Appendix 1.

1.7 The legal framework for expert evidence applies to all family cases, regardless of whether they are public law proceedings issued by a local authority or family proceedings between private individuals (private law proceedings).

1.8 It should be noted that the timetable for public law applications is 26 weeks and whilst the court has the discretion to extend time limits, the expectation is that this will be in the minority of cases and only if the extension is required *to resolve the proceedings justly* (Children Act 1989 s32(5)). This time limit does not apply to private law cases although the duty to exercise effective case management applies regardless. The court appointed expert must comply with the time limits imposed by the court and ensure that the lead solicitor is kept fully informed of any unforeseen developments that may put the filing date in jeopardy.

2. Role of paediatricians as expert witnesses in family proceedings

2.1 As set out in the Joint Ministry of Justice and the Family Justice Council’s Standards for Expert Witnesses in Children’s Proceedings in the Family Court, 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.

2.2 Regardless of who instructs or pays them, the expert has a primary responsibility to the court to provide a competent and impartial opinion to enable the court to discharge its fundamental duty in its final determination of the case with regard to the child’s welfare that is paramount. Experts are instructed in the Family Courts when their expertise is necessary to resolve the proceedings.

2.3 Paediatricians offer expertise to public or private family court proceedings in considering matters such as the clinical findings that the child has presented with

⁴ Children and Families Act 2014 s13(6))

⁵ https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25

and the likelihood that they are consistent with child maltreatment or child safeguarding matters and the impact that this is likely to have on key issues and decisions for the court.

2.4 Paediatric expert witnesses assist the courts by reviewing all the records of comprehensive medical assessments of children with suspected or probable maltreatment. They are able to consider all the evidence available, including statements and reports from the other parties to the proceedings, before forming and providing an opinion to the court.

2.5 Different paediatric specialists have different expertise and should only be expected to give opinion in courts that is within their specialist area of practice or competence. It is important for individual expert witnesses who are instructed to stick to their own clinical field when presenting their expert evidence in the Family Court.

2.6 Expert witness training for paediatricians is available and it is strongly recommended that all paediatric expert witnesses attend. The RCPCH has developed a two-day training course for those working in a paediatric setting who are either already acting in an expert capacity or wish to do so in the future. Expert witness training⁶ and mini pupillages⁷ are offered to paediatricians wishing to gain experience of the Family Court.

2.7 Experts instructed in family proceedings are generally working at a consultant grade within the NHS and may include but are not limited to:

- General or community paediatric consultants who have experience and expertise in the overall assessment of children with suspected physical abuse, neglect and/or sexual abuse. The latter is also the field of forensic medical examiners especially with regard to pubertal and post pubertal children or young people.
- Radiology consultants with experience in paediatric radiology who can give opinion upon skeletal X Rays (eg skeletal surveys).
- Paediatric neuroradiology consultants who have the expertise to report on neuroradiology findings from computerised tomography (CT scans) of the head or magnetic resonance imaging (MRI) of the head and spine.

⁶ <https://www.rcpch.ac.uk/resources/safeguarding-available-learning-resources>

⁷ <https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc/mini-pupillage-scheme/>

- Haematology consultants with expertise with respect to blood abnormalities and are called upon to review coagulation or blood clotting issues.
- Ophthalmology consultants who advise on eye findings most specifically related to examinations of the retina.
- Neurosurgeons who give expert opinion about brain injury or findings at surgery.
- Paediatric neurology consultants who have expertise around the presentation, immediate consequences and long-term prognosis from brain damage.
- Metabolic and bone specialists with expertise in blood biochemistry, bone fragility and congenital metabolic disorders.
- Accredited medical photographers who are not medically trained but who photo-document injuries which may be produced in the court setting.
- Paediatric pathologists or forensic pathologists with experience of paediatric cases who might be called upon to give opinion about post mortem findings.

3. The role of the paediatric team when assessing the child with suspected maltreatment

3.1 When child maltreatment is suspected, a general or community paediatrician consultant is most likely to lead the clinical assessment. The guidance and standards for assessment are set out in the RCPCH publications Child Protection Companion⁸ and The Physical Signs of Child Sexual Abuse (RCPCH, 2015)⁹.

3.2 It is a recommendation of the RCPCH that these children are assessed by senior practitioners (the treating paediatrician). This would include specialty trainees (ST-4-7), supervised and supported by a consultant, associate specialists or consultants.

⁸ <https://www.rcpch.ac.uk/resources/about-child-protection-companion>

⁹ <https://www.rcpch.ac.uk/shop-publications/physical-signs-child-sexual-abuse-evidence-based-review>

and <https://www.rcpch.ac.uk/resources/physical-signs-child-sexual-abuse-educational-resources>

3.3 The clinical assessment, medical reports and police statements will have been undertaken at the time when safeguarding issues were suspected. The clinical assessment will involve taking a history, examining the child, undertaking the required investigations, involving other clinical specialists where relevant, and communicating concerns to parents or carers.

3.4 Paediatricians are mainly involved with cases of suspected physical or sexual abuse and less involved in cases of neglect and emotional abuse. They will be required to undertake a comprehensive review of the child's well-being and be alert to the impact of abuse on the child's development both physically and emotionally.

3.5 Child protection is not recognised as a clinical specialty in the UK, however some paediatricians have specific training and expertise in the field. Some paediatricians (mainly community, general paediatricians or clinicians with training as forensic medical examiners) have specific expertise in the assessment of children with suspected child sexual abuse. All paediatricians should have at least 'Level 3' Child Protection competencies as stated within the inter collegiate document 'Safeguarding children and young people: roles and competencies for healthcare staff'¹⁰.

3.6 Every Hospital Trust or Hospital Board will have a 'Named Doctor' who is a consultant or senior doctor responsible to the managerial framework of the organisation to ensure that the organisation meets its responsibilities to safeguard and or protect children who come into contact with the organisation. Clinical Commissioning Groups and health communities or regions will have a 'Designated Doctor' for safeguarding children who will have a similar strategic role at a health commissioning level. These roles will have Level 4 and Level 5 competencies respectively as specified in the intercollegiate document¹⁰.

3.7 The clinical assessment is a skilled process combining scientific evidence, evidence-based guidelines with a clinical and forensic interpretation of findings. The treating paediatrician will often have worked within a multidisciplinary team of clinicians and will draw upon the clinical expertise of others, e.g. paediatric radiologists, haematologists, ophthalmologists. Paediatric practice in the UK is made up of different specialities and includes practitioners who have different fields of expertise and levels of paediatric training. Different specialists will give clinical opinions relevant to their field of expertise.

¹⁰https://www.rcpch.ac.uk/sites/default/files/Safeguarding_Children_-_Roles_and_Compences_for_Healthcare_Staff_Third_Edition_March_2014.pdf

3.8 The clinical team will draw together the results of all investigations and give an overall opinion on the likelihood of maltreatment from a medical perspective. The clinical assessment and its findings will be documented in the child's case notes and a detailed report will be written, together with statements for the police if requested.

4. The role of the professional witness¹¹

4.1 Treating paediatricians may be called as a professional witness to give evidence in relation to their role in the case. This is distinct from being instructed as an expert to provide an opinion on the medical issues. In the event that a treating doctor is called to give evidence, this is confined to the factual evidence that they can give on their role in the case, and where appropriate, the clinical opinion that they came to with the facts available to them at the time.

4.2 If the doctor is concerned that they are being drawn into a debate outside of their role they should not hesitate to raise this in court. Ultimately, the treating doctor is a witness of fact and is not called to give an expert opinion beyond an explanation of their diagnosis and treatment and generally the work they have done in the case and reasons why they have come to the diagnosis.

4.3 The treating paediatrician may receive written questions about points of clarification around the facts of the case. These questions should be provided in a timely manner and as soon as possible, to allow sufficient opportunity to consider the questions and the treating paediatrician must remain within their expertise.

5. Regulation and codes of conduct for the expert witness

5.1 Paediatricians in the UK are subject to statutory regulation, ethical principles and codes of conduct of the General Medical Council and take guidance on the clinical standards and training programmes and requirements published by RCPCH. Allied clinical specialties have their own child protection guidelines.

¹¹ <https://www.themdu.com/guidance-and-advice/guides/acting-as-a-professional-witness>

5.2 Paediatricians giving expert input into the Family Courts must adhere to Part 25 of the Family Procedure Rules¹² and be fully compliant with all standards set down regarding those providing expert opinion.

5.3 Any paediatric expert witnesses who is not subject to UK professional standards or regulation should be aware of and comply with the expert witness standards set out in Part 25 of the Family Procedure Rules¹².

5.4 The appointed expert must ensure that they understand exactly what questions they are being asked to answer and the amount of time that drawing the expert opinion together is likely to take¹³.

5.5 As with many areas of practice there will always be a tension between the requirements for quality and rigour against the time and costs allowed by the court and funding parties. Furthermore, each case is unique with differing combinations of issues with which the court needs assistance. As such they will require varying amounts of time and resources alongside different types of expertise. The issue of quality however is dependent on a suitable number of hours and resources being available in order to complete the required task in an ethically sound manner with a fit for purpose outcome.

5.6 The range of paediatric assessments required by the Family Court is broad, with varied complexity, intensity and purpose. It is therefore not possible to offer definitive professional guidelines on required hours. It is however possible to offer a broad professional consensus on the ranges of hours that would generally apply to assessments requested by the Family Court¹³. It is suggested that these time ranges would typically facilitate an appropriately detailed and ethical assessment on the basis of a number of assumptions. It is essential for the paediatrician to inform the court of the current best practice and professional guidance regarding the case specific issues so that the court can make an informed decision regarding the permitted scope and range of data made available and any consequences therein.

5.7 High quality opinion is requested in a letter of instruction with clear judicial guidance indicating the requirement for succinct, focused and analytical reports that are evidence based¹⁴. The evidence-base is formulated from a synthesis of scientific evidence and research; with case specific multiple data sources, both current and

¹² https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25

¹³ <https://www.gov.uk/guidance/expert-witnesses-in-legal-aid-cases>

¹⁴ <http://www.lawsociety.org.uk/support-services/family-court-resources/family-law--templates-for-instructing-experts/>

historic. Paediatric opinion is not absolute but needs to be seen in context, incorporating cultural issues and from multiple perspectives.

5.8 Opinion must be objective, unbiased and the facts or assumptions on which it is based should be stated and referenced. If there is a range of opinion on an issue, this should be stated with explanation as to how opinion has been reached. If there is not enough information on which to reach a conclusion on a particular point, or if opinion is qualified as a result of conflicting evidence, this should be made clear.

5.9 In order, therefore, to provide valid evidence and opinion to the court, the report has to include sufficient detail to explain and justify the conclusions drawn, combining relevant factors and providing a coherent explanation. A failure to provide coherent evidence is likely to arise if there is an exclusion or over simplification/summarisation of often complex and multiple contributory factors or if the paediatrician is not allowed sufficient access to relevant information and data (e.g. no access to all medical records or permission withheld to undertake direct observation when required). Such circumstances are likely to require clarification, either by the provision of further written evidence or court attendance, both of which can cause additional cost and delay.

6. Issues in relation to competences

6.1 All paediatricians giving expert opinion must maintain current GMC registration which includes annual appraisals and five yearly re-validation to maintain clinical practice in their field of expertise. This requires individuals to demonstrate professional training, competence and appropriate continuing professional development (CPD) in their field of practice.

6.2 Academic paediatricians are generally practising clinicians and should be eligible to provide expert witness opinion on the basis of their research expertise in a relevant specific area of paediatrics.

6.3 The party making an application for permission to instruct the expert will establish their credentials according to FPR 2010 PD25 and the expert will ensure that s/he has the relevant competence to accept the instructions. The PD25 requires that a draft letter of instruction is provided to the court for approval¹⁵. The expert

¹⁵ <http://www.lawsociety.org.uk/support-services/family-court-resources/family-law--templates-for-instructing-experts/>

should approve this before it is submitted to the court to ensure that the expert will be agreeing to act within her/his capabilities.

6.4 Retired paediatricians should adhere to the standards set out in 6.1.

6.5 To act within one's field of expertise as a paediatric expert witness in a case requires a demonstrable basis of specialist paediatric knowledge and experience appropriate to that case. This may include expertise in specific conditions or formulations (e.g. active work in child protection, child sexual abuse assessment, paediatric radiology or neuroradiology).

6.6 There is no professional requirement to demonstrate employment in the NHS or engagement in general paediatric provision. It is acknowledged, however, that engagement in clinical practice is likely to assist in the maintenance of relevant skills, knowledge and comparators within the broad child and young person population as well as enhancing the paediatrician's ability to comply with relevant standards and practice directions set down regarding expert evidence.

6.7 Paediatricians are responsible for ensuring that they are sufficiently competent and expert in offering an opinion. Indications of competence in respect of the knowledge required by the Court, and expertise within a specialised field, may include:

- Qualifications and/or degrees in the areas in question;
- Number of years of relevant post-qualification experience;
- Academic, professional and scientific publications in relevant areas;
- Demonstrations of professional practice, competence, specialist knowledge and expertise with a bearing upon the issues in the case;
- Current experience in paediatric practice;
- Attendance at recognised Paediatric Expert Witness training.¹⁶

6.8 It is incumbent on the instructing party to be conversant with paediatric specialities in terms of typical areas of activity, proficiencies and expertise that they can offer. There are often overlaps in competencies between paediatricians. In addition to their core competencies, the details of their particular experience and additional training post-qualification will be important. This principle remains valid when the Family Court considers instructing other paediatricians with relevant specialisms, such as those working in academia in relevant areas of research.

6.9 As well as professional knowledge and skills, expert witnesses in Family Courts must develop and maintain skills specific to court work. The CPD in relation to work

¹⁶ <https://www.rcpch.ac.uk/resources/safeguarding-available-learning-resources>

in the Family Court will be consistent with the FJC/MoJ Standards for Expert Witnesses.

6.10 The paediatricians' evidence must be informed by the latest high-quality evidence in the field¹⁷. This includes the use of the most up to date and relevant assessments and tests based on accepted professional and/or academic opinion. The paediatrician should also anticipate, be aware of, and prepare for potential conflicts in expert opinions when preparing evidence.

6.11 Individuals who are not qualified or eligible for paediatrician status or membership of the RCPCH but who may have relevant child health knowledge may still be appointed at the Court's discretion but it should be made clear that these individuals are not being appointed as paediatricians but under the auspices of other professional frameworks, such as health visitors, school nurses, nurse practitioners and family nurse practitioners with additional child health or child development expertise and training.

7. Supervision/peer review

7.1 The RCPCH states that it is best practice for paediatricians working in the child protection field to engage in regular supervision and/or peer review in relation to all aspects of their professional activities. Seeking regular supervision/peer review is the responsibility of the paediatrician to ensure practice is current, reflective and of an appropriate and consistent standard, and to obtain regular support, especially in relation to complex matters or new areas of application. Further details in relation to supervision and peer review are described by Thomas et al¹⁸.

8. Quality of service

8.1 The court's expectations from a paediatrician as expert witness are set out below.

8.2 The legal framework and duties for all expert witnesses is a matter of law¹⁹ and is

¹⁷ <https://www.rcpch.ac.uk/key-topics/child-protection/evidence>

¹⁸ Reference: Thomas A, Mott A. (2012) 'Child protection peer review for paediatricians'. Child Abuse Review; 22:60–66. <http://onlinelibrary.wiley.com/doi/10.1002/car.2201/pdf>

¹⁹ The general rule that a witness may only give evidence as to fact observed by them is overridden in the case of expert evidence given by a person whose expert evidence justifies the court receiving such evidence; Civil Evidence Act 1973, s3.

set out in the relevant Family Procedure Rules and Practice Directions and is governed by The Children and Family Act 2014, s13. Opinion evidence given by experts such as paediatricians can only be given with the court's permission when such evidence is 'necessary'²⁰. The Rules are the legal foundation for expert witnesses and compliance is mandatory.

8.3 The expert witness's overriding duty is to the court and to be impartial in his/her evidence; the impartiality of expert witnesses is essential²¹ to his/her evidence; if the paediatrician has a view that is controversial between experts or that might be derived from partiality he/she must declare the extent of that interest.

8.4 The paediatrician expert witness's CV will clearly state under which code(s) of conduct he/she is governed, and any/all regulatory or professional bodies (e.g. GMC, RCPCH) to which he/she belongs, including his/her current registration details and the process by which such details can be verified, such as the employer's website address.

8.5 The paediatrician's CV will provide relevant and verifiable details of qualifications, experience, other professional memberships, academic publications and post qualification specialisations and clinical fields in which he/she is competent.

8.6 The paediatrician will respond to questions on all aspects of his/her CV to ensure clarification with regard to regulation and professional competence in the relevant matter.

8.7 The paediatrician will take part in or, when necessary, initiate a dialogue with the court to ensure the best quality and most relevant questions are asked and any apparently superfluous aspects of the instruction are challenged.

8.8 The paediatrician will work within the relevant code(s) of conduct as well as the Practice Direction and Family Procedure Rules. This may include raising concerns regarding ethical considerations, including where the guidance or instruction indicates too few hours to complete the requested expert assessment.

²⁰ The court will only order such expert evidence when it is 'necessary' as defined by the President of the Family Division in *Re H-L (A Child)* [2013] EWCA Civ 665; 'having "the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable.' [3]

²¹ See for example *Re C (Welfare of Child: Immunisation)* [2003] 2 FLR 1095.

8.9 The general rule that a witness may only give evidence as to fact observed by them is overridden in the case of expert evidence given by a person whose expert evidence justifies the court receiving such evidence; Civil Evidence Act 1973, s3.

8.10 The paediatrician will have an appropriate enhanced Disclosure and Barring Service check and professional indemnity insurance.

8.11 All paediatricians will be registered with the Information Commissioner's Office through the organisations that they work for regarding information security and must comply with data protection legislation.

8.12 The paediatrician will transparently and clearly set out fees, hours of work and timeframe, and communicate any variation without delay over the duration of the assessment process.

8.13 The paediatrician will present and deliver his or her evidence as directed by the court and comply with all relevant court orders and directions.

[The Legal Framework:](#)

[A summary of the role and duties of a court appointed expert](#)

An expert may give his opinion on any relevant matter on which he is qualified to give evidence (the Civil Evidence Act 1972, s 3). The term ‘relevant matter’ includes an issue in the proceedings in question and includes what may be the ultimate issue in a particular case. The Civil Evidence Act 1972 applies to family proceedings in the Family Court as it does in the High Court.

A court may only permit expert evidence to be adduced if it is of the opinion that the evidence is ‘*necessary to assist the court to resolve the proceedings justly*’ see s13(6) Children and Families Act 2014 ²².

An expert instructed in children proceedings has ‘an overriding duty to the court that takes precedence over any obligation to the person from whom the expert takes instructions or by whom the expert is paid.

The duties of an expert are set out in FPR 2010, Part 25 ²³ supplemented by PD25B which sets out eleven national standards expected of experts within family proceedings. The contents of the expert’s report are prescribed by PD25B, para 9.1 as follows:

The expert's report shall be addressed to the court and prepared and filed **in accordance with the court's timetable** and must –

- (a) give details of the expert's qualifications and experience;
- (b) include a statement identifying the document(s) containing the material instructions and the substance of any oral instructions and, as far as necessary to explain any opinions or conclusions expressed in the report, summarising the facts and instructions which are material to the conclusions and opinions expressed;

²² <http://www.legislation.gov.uk/ukpga/2014/6/section/13/enacted>

²³ https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25

(c) state who carried out any test, examination or interview which the expert has used for the report and whether or not the test, examination or interview has been carried out under the expert's supervision;

(d) give details of the qualifications of any person who carried out the test, examination or interview;

(e) answer the questions about which the expert is to give an opinion and which relate to the issues in the case;

(f) in expressing an opinion to the court –

(i) take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed, identifying the facts, literature and any other material, including research material, that the expert has relied upon in forming an opinion;

(ii) describe the expert's own professional risk assessment process and process of differential diagnosis, highlighting factual assumptions, deductions from the factual assumptions, and any unusual, contradictory or inconsistent features of the case;

(iii) indicate whether any proposition in the report is an hypothesis (in particular a controversial hypothesis), or an opinion deduced in accordance with peer-reviewed and tested technique, research and experience accepted as a consensus in the scientific community;

(iv) indicate whether the opinion is provisional (or qualified, as the case may be), stating the qualification and the reason for it, and identifying what further information is required to give an opinion without qualification;

(g) where there is a range of opinion on any question to be answered by the expert –

(i) summarise the range of opinion;

(ii) identify and explain, within the range of opinions, any 'unknown cause', whether arising from the facts of the case (for example, because there is too little information to form a scientific opinion) or from limited experience or lack of research, peer review or support in the relevant field of expertise;

(iii) give reasons for any opinion expressed: the use of a balance sheet approach to the factors that support or undermine an opinion can be of great assistance to the court;

(h) contain a summary of the expert's conclusions and opinions;

(i) contain a statement that the expert–

(i) has no conflict of interest of any kind, other than any conflict disclosed in his or her report;

(ii) does not consider that any interest disclosed affects his or her suitability as an expert witness on any issue on which he or she has given evidence;

(iii) will advise the instructing party if, between the date of the expert's report and the final hearing, there is any change in circumstances which affects the expert's answers to (i) or (ii) above;

(iv) understands their duty to the court and has complied with that duty; and

(v) is aware of the requirements of FPR Part 25 and this practice direction;

(vi) in children proceedings, has complied with the Standards for Expert Witnesses in Children Proceedings in the Family Court which are set out in the Annex to this Practice Direction;

(j) be verified by a statement of truth 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.”

Where the report relates to children proceedings the form of statement of truth must include -

“I also confirm that I have complied with the Standards for Expert Witnesses in Children Proceedings in the Family Court which are set out in the Annex to Practice Direction 25B- The Duties of an Expert, the Expert’s Report and Arrangements for an Expert to Attend Court”

(FPR Part 17 deals with statements of truth. Rule 17.6 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

An expert's evidence will normally be made up of one or more of the following components:

- admissible evidence of facts observed by the expert (e.g. a paediatrician describing the physical injuries observed on a child);
- interpretation of evidence of fact adduced by another witness or the expert himself (e.g. a paediatrician explaining the possible causes of the physical signs which have been described);
- opinion evidence (e.g. a paediatrician's opinion as to the cause of the signs or the prognosis for the future).

Among any other duties an expert may have, an expert shall have regard to the following duties:

- to assist the court in accordance with the overriding duty;
- to comply with the Standards for Expert Witnesses in Children Proceedings in the Family Court, which are set out in the Annex to PD25B;
- to provide advice to the court that conforms to the best practice of the expert's profession;
- to answer the questions about which the expert is required to give an opinion (in children proceedings, those questions will be set out in the order of the court giving permission for an expert to be instructed, a child to be examined or otherwise assessed or expert evidence to be put before the court);
- to provide an opinion that is independent of the party or parties instructing the expert;
- to confine the opinion to matters material to the issues in the case and in relation only to questions that are within the expert's expertise (skill and experience);
- where a question has been put which falls outside the expert's expertise, to state this at the earliest opportunity and to volunteer an opinion as to whether another expert is required to bring expertise not possessed by those already involved or, in the rare case, as to whether a second opinion is required on a key issue and, if possible, what questions should be asked of the second expert;

- in expressing an opinion, to take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed;
- to inform those instructing the expert without delay of any change in the opinion and of the reason for the change.

Notes from case law:

- The report should describe the expert's own professional process and highlight factual assumptions, deductions from factual assumptions, and any unusual features of the case. It should highlight whether the opinion is a hypothesis (particularly a controversial one) or whether it is based on research accepted as a consensus within the scientific community. Where there is a range of expert opinion, the report should summarise the range, using a 'balance sheet' approach to the factors for and against an opinion if appropriate.
- An expert should not mislead by omissions. He should consider all the material facts in reaching his conclusions and must not omit to consider the material facts which could detract from his concluded opinion. He should consider all the available evidence, and not just that which he has directly observed, and must base his appraisal upon any findings of fact that have previously been made in the case.
- Doctors who have clinical experience of the child outside the ambit of the litigation should review their notes before writing a court report, and ensure that all their clinical material is available for inspection by the court and other experts.
- In any event, the expert must make all his material available to the other experts in the case.
- The expert's opinion should be wholly objective. It should be an opinion and not an argument; the expert should never assume the role of advocate.
- Where an expert advances a hypothesis to explain a given set of facts, he owes a very heavy duty to explain to the court that what he is advancing is a hypothesis, that it is controversial (if it is), and to place before the court all the material which contradicts the hypothesis.
- Where the medical evidence points overwhelmingly to non-accidental injury, any expert who advises the parents and the court that the injury has an innocent explanation has a heavy duty to ensure that he has considered carefully the available material and is expressing an opinion that can be objectively justified.
- It is not normally helpful for experts to cite or to rely on:
 - unpublished international research material;
 - irrelevant examples;

- published research when the explanations advanced for clinical findings have not been tested in evidence.
- It is not helpful for experts to express opinions when they have limited knowledge of the type of case in issue.
- An expert should volunteer an opinion whether another expert is required to bring a skill or expertise not possessed by those already involved or, rarely, a second opinion.

In family proceedings, it is wholly inappropriate for one side to instruct an expert witness without the knowledge of the court or the other side's advisers, and contrary to good practice to seek to avoid obtaining the court's permission by providing information anonymously.

Experts should not accept instructions unless explicitly informed that the court has given permission for them to be instructed and of what the terms of the court order relating to their instructions are.

Feedback:

Within 10 business days after the final hearing, the party responsible for instructing the expert must inform the expert in writing of the outcome of the hearing and the use made of the expert's evidence, and must provide the expert, within 10 business days of that party receiving it, with the order and any transcript of the court's decision or lay justices' reasons for the decision.

Case instructions and appropriate time ranges

Examples can be found at:

[http://www.lawsociety.org.uk/support-services/family-court-resources/family-law--
templates-for-instructing-experts/](http://www.lawsociety.org.uk/support-services/family-court-resources/family-law--templates-for-instructing-experts/)

Checklist for instructing solicitors (see sections 5 and 6)

A: Regulation/ accountability	Is the paediatrician currently practising and has registered with the GMC and reported their registration number and date of registration?	If not, ask which code of conduct they operate within and to whom they are professionally accountable to.
	Is the academic paediatrician currently registered with the GMC and practising clinically?	
	Has the paediatrician attended RCPCH Expert Witness training in Paediatrics: Developing Excellence ²⁴ ?	
B: Competence as an expert	Does the paediatrician have clinical requirement of Level 3 Child Protection competencies ²⁵ , demonstrate recent CPD specific to working as an expert witness in the Family Court in England and Wales and acknowledge the requirement for compliance with relevant FPR and PDs?	If not, ask for more details.

²⁴<https://www.rcpch.ac.uk/resources/safeguarding-available-learning-resources>

²⁵https://www.rcpch.ac.uk/sites/default/files/Safeguarding_Children_-_Roles_and_Compences_for_Healthcare_Staff_Third_Edition_March_2014.pdf

	Does the paediatrician demonstrate broad experience and exposure to the matter of relevance to the Family Court?	If not ask for more details.
C: Use of data gatherers	Does the paediatrician state their intention to undertake all aspects of the work themselves?	If not, ask for details of data gatherers used, their qualifications and status.
D: Letter of instruction	Has the paediatrician's view been sought regarding the appropriateness of the questions posed in the Letter of Instruction?	If not, initiate a dialogue regarding how to best achieve quality, sufficient and relevant questions.
	Have they confirmed their competence to answer them and agreed a sufficient time estimate?	
E: Compliance with legal requirements	Has the paediatrician confirmed compliance with all relevant aspects of professional practice? (e.g. enhanced DBS, professional indemnity insurance, ICO registration).	If not, ask for details.