



the british
psychological society
promoting excellence in psychology

Psychologists as expert witnesses

Best practice guidelines
for psychologists

July 2021



This guidance was prepared by the British Psychological Society's Expert Witness Advisory Group (EWAG) under the aegis of the BPS Practice Board

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Preface

This document should be treated as guidance only. Psychologists are expected to work within their own skills, knowledge and competence and to use their professional judgement to make decisions about their expertise as well as in their practice as psychologists and expert witnesses.

This guidance should be used in conjunction with more general guidance about the good practice of psychologists, notably the BPS *Practice Guidelines*¹ and the BPS *Code of Ethics and Conduct*² as well as the HCPC standards of performance³ and the HCPC standards of proficiency⁴ where relevant.

Acknowledgements

This guidance was prepared by the British Psychological Society's Expert Witness Advisory Group (EWAG) under the aegis of the BPS Practice Board. The report is part of a quinquennial review cycle and this fifth edition supersedes the previous four editions of the expert witness guidance. The Advisory Group has representation from across the profession and has attempted to capture issues of relevance for both civil, criminal and family proceedings as well as for tribunals and oral hearings. The document also has application across the four nations of the UK.

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1. What is an expert witness?

- 1.1 An expert is a person who, through specialist training, study, or experience, is able to provide a court, tribunal, or hearing with relevant scientific, technical, or professional information or opinion, based on skills, expertise, or knowledge, that is likely to be beyond the experience and knowledge of the representing lawyers, judge, jury or panel.⁵ Though the Crown Prosecution Service (CPS) have made it clear that ‘there exists no definitive legal definition of an expert’,⁶ they offer a useful working summary, in which they describe an expert witness as ‘a person whose evidence is intended to be tendered before a court[,] and who has relevant skill or knowledge achieved through research, experience[,] or professional application within a specific field[,] sufficient to entitle them to give evidence of their opinion and upon which the court may require independent, impartial assistance’.⁷
- 1.2 There have been several cases in which the courts have attempted to explain the standards and conduct that may be expected of a professional person holding themselves out as an expert, and thus the duties and responsibilities of an ‘expert’ witness^{8,9,10}. However, what may be expected of an expert, and their evidence, may differ according to the legal setting – be this civil, criminal, or family proceedings.¹¹
- 1.3 The expert’s role is to assist the court, tribunal, or hearing (proceedings usually carried out by a quasi-judicial body or panel).^a An expert witness should be independent and ‘uninfluenced by the pressures of litigation’,¹² and should not act as an ‘advocate’ for any of the parties. The most recent version of the Civil Procedure Rules¹³ notes that expert evidence is ‘restricted to that which is reasonably required to resolve the proceedings ... [and] it is the duty of experts to help the court on matters *within* their expertise’ (part 35.1 and 35.3) (emphasis added). Importantly, this ‘duty overrides any obligation to the person from whom [the expert has] received instructions or by whom they are paid.’ (part 35.3).
- 1.4 Where relevant, it is possible for an expert to act as part of an ‘expert team’ (e.g. National Health Services), though this does not replace the individual responsibilities or action arising out of any undertaking, as a recent decision by the Supreme Court of the United Kingdom has made clear.¹⁴
- 1.5 Expert witnesses in England and Wales should ensure they are familiar with the Civil Procedure Rules (CPR) (part 35)¹⁵, Criminal Procedure Rules (CrimPR) (part 33)¹⁶, and Family Procedure Rules (FPR) (part 25 especially)¹⁷, and the most recent Practice Direction updates issued by the Ministry of Justice.¹⁸ Further detail on the duties and responsibilities of expert witnesses and the role of an expert in Scotland can be found in *Kennedy v Cordia*¹⁹ and *Wilson & Anor v Her Majesty’s Advocate*.²⁰
- 1.6 The main difference between an expert witness and ordinary witness (i.e. a witness of fact) is that the former is able to give an opinion, whereas the latter may only give factual evidence. As well as acting as an expert witness, a psychologist may act as a ‘professional witness’, where the remit can cross the boundary of both fact and opinion. A professional

^a Note, while the term court, tribunal, or hearing is listed here, the term court alone refers to either body, including quasi-judicial tribunals, and ought to be read as such throughout. See the references for further sources on this usage.

witness is often a formal employee of one of the parties,^{21,22} for example, a psychologist employed by a specific hospital or Trust who gives evidence about treatment of a patient under the care of the same during a Mental Health Review Tribunal, or a psychologist employed by HM Prison Service/Scottish Prison Service/ the Northern Ireland Prison Service, giving evidence on a person detained in custody by their employing Prison Service at an oral hearing of the Parole Board. However, independent psychologists in private practice could also appear as a professional witness. While there is a subtle difference between the roles, professional witnesses are responsible to the court in the same way an independent expert witness is.

- 1.7 It is useful to understand the core distinction between the different types of courts and proceedings where psychologists may act as expert witnesses.^{23,24,25}

CIVIL PROCEEDINGS

Civil proceedings decisions are made on the ‘balance of probability’ by a single decision-maker, namely the presiding judge, or three or more judges at the higher courts (e.g. Court of Appeal or Supreme Court), who will consider all of the evidence presented by each party; as such, there is no jury. Usually the balance of probability test is interpreted as a probability of greater than 50 per cent, though expert and professional witnesses may be invited by the judge or representing lawyers to estimate the probability of a particular matter more precisely.

FAMILY PROCEEDINGS

The Family courts in England and Wales has jurisdiction over a number of matters relating to divorce, children, and some aspects of domestic violence. Family matters are dealt with by all tiers of the Judiciary. Magistrates who have undertaken specialist training sit as Tier 1 judges while District Judges and Designated Family Judges sit in family proceedings in County Courts. Family matters are also dealt with in the Family Division of the High Court.

The paramount concern in family proceedings is not guilt/innocence but the welfare of those children involved. If there is a disagreement about salient facts, a fact-finding hearing may be held to determine which account is more likely than not to be true. Evidence is considered, and decisions are made to the ‘civil standard of proof’ (balance of probabilities). Family court hearings are held in private, though they may be attended by members of the press.

CRIMINAL PROCEEDINGS

In a criminal court, proceedings normally consist of a presiding judge and jury, or sheriff and jury in Scotland, except in ‘fitness to plead’ and case management hearings, where a judge or sheriff will sit without a jury in order to make a decision on how the case ought to be conducted or proceed. In all cases, the judge or sheriff has the duty to ensure the trial is conducted fairly, and may direct the jury accordingly; however, decision-making in criminal matters, that is the verdict, is delivered by the jury alone, unless the judge or sheriff is bound on some legal basis to end proceedings, or direct the jury to reach a particular finding. In criminal proceedings a decision is made on the basis of the alleged wrongdoing having been found or proven to be ‘beyond reasonable doubt’ – a much higher bar than the ‘balance of probability’ applied in civil cases.

MAGISTRATES' COURT OR DISTRICT COURT

Magistrates' court in England and Wales or the District Court in Scotland are usually presided over by a stipendiary judge or lay magistrate, sitting in as part of a panel of three. They operate without a jury, and decisions are made on the basis of being 'beyond reasonable doubt'.

TRIBUNALS AND PANELS (AND HEARINGS)

Quasi-judicial tribunals and panels, such as those which operate in the professional regulatory bodies, vary in their set up and practices, and are typically presided over by a judge or chairperson, alongside one or more lay member and members of that profession with an understanding of field and the alleged wrongdoing, i.e. psychology or medicine^{26,27,28} or appeals against local authority decisions about the special educational needs of children and young people or claims of disability discrimination against schools.^b

- 1.8 For expert evidence to be included in legal proceedings it has to be both relevant and admissible. Relevance is determined by the probative value or how useful the evidence is in a given case, whereas admissibility is assessed by the judge in accordance to the relevant procedure rules (see the Appendices).
- 1.9 When representing lawyers seek to introduce expert psychological evidence in to proceedings, it is the judge or panel in a given case who decides whether an individual has the requisite expertise to give evidence that will assist the court. Similarly, it is the judge or panel who decides whether, what the expert asserts, is relevant and admissible in law. There will therefore be instances where the judge accepts the expert, but ultimately decides to exclude their evidence, in full or in part.
- 1.10 Submissions and legal arguments concerning the expertise and admissibility of evidence are also heard by the judge. Typically, this happens at the outset of proceedings, but may also occur at any time during the proceedings where one of the representing lawyers seeks permission from the judge or panel to question its relevance or admissibility, as the judge may too. In civil litigation this is usually resolved, or at least aired, at the case management stage; in family proceedings the situation will be laid out in the initiating letter of instruction, supplied by the representing lawyers or litigant(s), while in criminal proceedings, the process usually takes place at trial, and is termed '*voir dire*'.

^b Special Educational Needs and Disability/Department of Justice.

2. Academic and professional competence

2.1 Recent guidance produced by the Academy of Royal Colleges stipulates:²⁹

- The healthcare professional should have the necessary clinical knowledge, training and experience to act as an expert witness. What this means in terms of role, qualification or length of experience will vary between professions. Individual professional bodies may choose to provide further guidance in respect of their profession, as the British Psychological Society does here. However, the court will need to be satisfied that the professional has the level of expertise for their evidence to be accepted.
- Healthcare professionals who act as expert witnesses should undertake specific training for being an expert witness and the expectations and responsibilities of this role. It should incorporate the principles of this guidance and be appropriate to the individual clinical profession and specialty. Training should be kept up to date with appropriate refresher courses or other professional activities. Please see the resources section for further information.
- Healthcare professionals must undertake and demonstrate appropriate activity relevant to their clinical expertise and legal aspects of the expert witness role as part of their continuing professional development (CPD), and this should form a part of their annual appraisal.

2.2 Psychologists are responsible for ensuring they are sufficiently competent to offer an expert opinion, and should ensure they are suitably trained to do so. Key indicators, highlighting the necessary competence in respect of the specialist knowledge or expertise required by the court, tribunal, or hearing may include:

- Qualifications and/or degree(s) in the areas(s) in question;
- The number of years of post-doctoral/post-qualification experience;
- Academic, professional and scientific experience and/or publications in the area;
- A specific reference to the professional practice, specialist knowledge and expertise, which may relate to the issues being considered in the case; and
- Current and applied psychological experience in the area of claimed expertise. This may include expertise and experience of risk assessment, treatment, work in the field (e.g. neuropsychology, assessing a patient's memory), and so on. These may differ with each case.

2.3 The expert's qualifications and experience would usually be summarised somewhere in a written report, but an expert witness may be asked to outline their competence in brief during oral testimony at the start of proceedings.

2.4 Psychologists acting as expert or professional witnesses should be familiar with the British Psychological Society's *Code of Ethics and Conduct* and also, where appropriate, the Health and Care Professions Council (HCPC) *Standards of Conduct, Performance and Ethics for Practitioner Psychologists*.³⁰ The importance of adhering to the requirements of statutory regulation and to the Society's codes during work as an expert or professional witness work is imperative. Failure to do so can result in disciplinary proceedings and professional sanctions, independent of any complaint made by the instructing lawyers. Expert witnesses

will find themselves working in sensitive areas as part of their role, and the need to protect clients from unsafe practice from psychological expert and professional witnesses is paramount.

- 2.5 Psychologists should be aware of equality, diversity and inclusion standards when giving evidence. Any assessments or reports should include considerations relevant to a person's culture, status, or any other characteristic which may impact their experience or behaviours, and that of any evidence the court is to rely upon.
- 2.6 Psychologists should not offer opinions outside their given area(s) of expertise. If the area(s) in question lies outside their expertise, they should make this clear and should where appropriate refer the court on to a suitably qualified and experienced colleague and/or to the Society's *Directory of Expert Witnesses*, *List of Chartered psychologists* or the *Health and Care Professions Council* (HCPC). This duty applies both to the provision of written reports, to oral evidence in court, and to the provision of opinion at any stage during the legal process (e.g. during pre-trial or case management hearings, professional meetings or counsel conferences etc).
- 2.7 When undertaking work as an expert or professional witness, psychologists should always conduct themselves in a manner that upholds the standards and competencies of the profession, and does not risk bringing the profession into disrepute. Psychologists have a duty of courtesy and cooperation with all colleagues, regardless of their profession or sector, as well as those that assist the courts in the conduct of its proceedings.
- 2.8 Psychologists acting as experts or professional witnesses have a primary duty to the court. Psychologists have a duty to give their professional opinion honestly and accurately to the court, both in their report and when questioned – whether that opinion agrees or disagrees with that of another expert psychologist. Psychologists should present their own professional opinion and do so in a respectable and competent manner, informed by a clearly identifiable evidence base. Psychologists should avoid personal attacks on colleagues, or other behaviours which serve to bring the profession into disrepute.
- 2.9 In order to provide services as expert witnesses, psychologists should ensure that they have appropriate indemnity insurance. Some companies provide this as part of general insurance and others will provide it separately. Psychologists should check their policies or liaise with their insurer.
- 2.10 Where appropriate, psychologists must also meet any necessary safeguarding standards that apply within the jurisdiction in which they are working.
- 2.11 Expert witnesses are not expected to be lawyers, however, they are expected to understand the legal processes in which they are involved, and how expert and professional witness evidence sits within such proceedings.³¹ Accordingly, they are expected to be skilled in the delivery of evidence. As such, the psychologist's *curriculum vitae* provided as part of a court or hearing instruction should reflect their experience in terms of both content and process. Evidence of the latter may include a list of previous court or hearing appearances as a witness (including as a professional witness or witness of fact). Psychologists who lack experience in report preparation and the giving of evidence should not be intimidated by this. Courts and hearings recognise that all experts have to start somewhere and gain experience through training, supervision, and cumulative practice.
- 2.12 If a psychologist is not experienced in preparing evidence for legal purposes, they are responsible for obtaining the appropriate advice, supervision, and mentoring in the

preparation of the report and for the first court appearance. It is partly in this way that expertise is developed. The individual psychologist being called to provide evidence is responsible for securing appropriate support and training necessary to ensure professional standards are met in relation to the court they are serving.

- 2.13 Psychologists need to remain aware that many legal proceedings are protected with respect to disclosure, family proceedings in particular, and thus supervision should be obtained in the operation of the legal *process* and *how* opinion ought to be provided on psychological matters. Experts are not expected to require supervision of their opinion; indeed, if a psychologist believes that they need this, then they should question whether they are ready for expert or professional witness work.
- 2.14 Psychologists need to be aware of the importance of performing appropriately in a court or hearing environment. Excellent work on the case, a faultless written report, and substantial preparation prior to proceedings themselves can be spoiled by poor performance at the court or hearing. This typically subsumes a lack of awareness concerning procedures and etiquette, or inappropriate behaviour when giving evidence, especially when subject to cross-examination.
- 2.15 Psychologists who are appearing for the first time as witnesses should take advantage of available training materials and events which will likely assist them in their preparation for appearance at a court, tribunal or hearing. The Society and a number of other organisations produce materials for continuing professional development (CPD), such as training events, workshops and other learning materials that will assist with this. The Family Justice Council, for example, offers a ‘mini-pupillage’ scheme to new expert witnesses, which includes shadowing barristers and judges during the conduct of a case.
- 2.16 Psychologists should ensure that they understand the distinctions in process between different legal systems, courts, tribunals, or hearings, especially if they are acting for a particular quasi-judicial tribunal, as this could influence the nature of the opinion and evidence they offer. For example, the act of finding that someone probably committed an act of violence in a civil case based on a ‘Finding of Fact’ hearing, does not equate to a conviction or even a caution, whereas this may be a different case in criminal proceedings. As such, ensuring that you know the basis on which a fact has been established is important, particularly if you are completing assessments that require a conviction or charge to have been proven.
- 2.17 Psychologists are not normally permitted to give evidence about how an ‘ordinary person’ is likely to react in a stressful situation. Expert evidence about matters directly related to the likely reliability of witnesses or defendants (in criminal proceedings), or applicants, claimants, and respondents (in civil proceedings) is allowed, but should be done by applying the best available tests and practice and is undertaken when the question has specifically been raised.
- 2.18 Experts may be asked to comment on the reliability of witnesses when presented with surveillance evidence that contradicts or supports evidence from interviews or reports, for example, or to offer a psychological opinion on the reliability of child testimony, all of which is permitted if within the psychologist’s competence and expertise.
- 2.19 The academic quality of expert or professional evidence must be informed by up-to-date and current evidence in the field. This will include the use of relevant assessments and tests, based on accepted academic and clinical opinion. Basing an ‘expert’ opinion on dated or inappropriate assessment evidence may lead to a formal complaint being made in relation to the work as an expert or professional witness.

- 2.20 When citing references in any report, psychologists are expected to ensure that any sources and references are correctly reported, and should be familiar with them. It is not acceptable professional practice to rely on second-hand or 'cited-in' research evidence. Psychologists should be prepared to provide full details of any cited references at short notice, and to elaborate on them, if asked.
- 2.21 Psychologists need to be particularly aware of the danger of straying from their areas of expertise under cross-examination. They should always be prepared to decline to give an opinion when this is appropriate, and to remind the representing lawyer or judge of their expertise and remit of instruction.
- 2.22 Psychologists are responsible for ensuring that the expert evidence they give is of the proper quality and standards expected by the court and of members of the profession and, to this end, based on the appropriate research and evidence. They should anticipate, be aware of, and prepare for potential conflicts in expert or professional witness opinion when preparing their evidence. The simplest approach is to identify counter-positions or counter-arguments to those they put forward, and to seek to accommodate these in their evidence, or be willing to address questions about this, should it arise during cross-examination. Indeed, the Civil Procedure Rules, for example, encourage experts to consider a range of reasonable professional opinions in their conclusions, and to explain to a court, tribunal, or hearing why such a range may arise in addition to their own view.³²
- 2.23 A useful way of preparing for giving oral testimony in court, and ensuring competence, is to go through the report identifying what issues are likely to arise, the established facts, and your stated psychological opinion. This ensures that you are well prepared and assists with competence in oral testimony.
- 2.24 Where the use of a test or assessment differ from commonly accepted standards, psychologists should explain this and provide an adequate justification in their evidence and any report. There are criteria in existence which can help when determining if a 'test' or 'assessment' will provide scientific or specialised knowledge. Use of psychometric assessments are widely expected to meet such criteria. If this is not the case then the value of the assessment must be justified.
- 2.25 Psychologists should not change the substantive content of their report, nor their opinion, without appropriate grounds, and based on newly submitted evidence, which could include discussions with colleagues or other experts or professionals. Psychologists can legitimately modify their opinion on this basis; any request for removal of detail, should generally be refused, except where the report has gone beyond the relevant instructions, or there is a good basis for the removal of material. Psychologists should be aware that they are required by the court to provide an independent opinion. If new evidence is provided to a psychologist which causes the expert to alter their opinion, then this should be communicated, normally in writing, to the instructing party, as soon as possible.
- 2.26 Minor errors in a report such as typographical errors, spelling of names, incorrect dates and so on should be corrected as early as possible and a corrected copy of the report issued thereafter. When entering into discussions with colleagues or other experts, psychologists are expected to recognise the fundamental purpose of expert and professional witness meetings and discussions. They are expected to balance the requirement of entering into such a process with an open mind, whilst also not allowing themselves to be pressured into surrendering their opinions in the absence of good evidence.

- 2.27 Alterations in opinion are not unusual in light of new evidence and, so, psychologists should be prepared to alter their opinion where they feel it is appropriate to do so. Caution is expressed, however, in relation to *changing* opinion. It is the duty of a psychologist acting as an expert or professional witness to communicate alterations in opinion and where appropriate the need for reassessment to those instructing them at the earliest opportunity.
- 2.28 Failing to submit a report on time can be grounds for a formal complaint. If a psychologist is unable to submit a report within an agreed timeframe, they have a responsibility to inform those instructing them at the earliest opportunity. A late report submission, depending on how central it is to the case, can result in proceedings being delayed at great expense and inconvenience, which is not to mention any impact on those involved or in custody, for example. This can also have professional implications for the psychologist, particularly if they are thought to have not informed parties of any difficulties at the earliest opportunity. Psychologists should ensure they have good record keeping practices including an email trail, particularly where there have been delays and omissions of information.
- 2.29 Psychologists acting as expert or professional witnesses are not expected to comment on some questions of fact under consideration by the judge or the jury. This lies within the remit of the appointed decision makers. For example, in criminal proceedings experts cannot reflect on the likely guilt of a defendant since this is the remit of the jury. The risk for prejudicing a trial by commenting on likely guilt is clear. If experts are asked to comment on such issues in the instruction letter, then, this should be discussed with the instructing party at the earliest opportunity. Psychologists should identify clearly any questions of fact under consideration that fall outside their role as an expert or professional witness.
- 2.30 In the case of *Jones v Kaney* [2011] UKSC 13 the Supreme Court of the United Kingdom ruled on whether expert witnesses retained by a party in litigation can be sued for professional negligence, or whether they have the benefit of immunity from suit. The case involved a psychologist instructed as an expert witness in a personal injury claim, who was said to have negligently signed a statement of matters agreed with the expert instructed by the opposing side, in which they made a number of concessions which are said to have weakened the claim considerably. As a result, according to the injured claimant, they had to settle the claim for much less than he would have obtained had his expert not acted in this manner. To succeed in the claim, they had to overturn an earlier Court of Appeal decision that had decided that preparation of a joint statement with the other side's expert was covered by immunity from suit. Following this case, it was held that expert witnesses no longer have immunity.
- 2.31 The criminal and civil legal systems in Scotland are separate and operate differently from that in England and Wales and Northern Ireland. Psychologists acting as an expert or professional witness in Scotland have a duty to familiarise themselves with the relevant principles, structures, procedures and terminology. It is recommended that advice about specific cases and the applicable rules and processes should always be sought from the relevant Solicitor or Procurator Fiscal.
- 2.32 Psychologists should be aware that in Scotland, in normal circumstances, expert and professional evidence is given only by oral testimony. Experts in Scotland are instructed to produce written reports, and these are normally lodged with the court as productions. However, these reports are regarded only as precognitions, to give notice of what the evidence of the expert is likely to be. They become evidence only when they are spoken to by the expert in oral evidence. Expert reports are rarely seen by the jury in Scotland, and those parts

of the expert report which are not spoken to in court will generally not be referred to by the prosecution and defence advocates, and will not be referred to in the 'charge' to the jury by the judge/sheriff – where this is a criminal proceeding. Prior to the court proceedings, expert reports will normally have been disclosed, and may have been evaluated in writing by the 'opposing' expert; only what each expert says in court is normally used as evidence.

- 2.33 Another feature of the judicial system in Scotland of particular relevance to psychologists is that, in criminal proceedings for alleged sexual offences, it is open to the Crown to lead expert evidence relating to any behaviour or statement of a 'complainer', subsequent to an alleged offence, to rebut any inferences adverse to his/her credibility or reliability which might otherwise be drawn. The expert's evidence is intended to give information about the 'generality' of victim behaviour (i.e. what victims often do after an offence has been committed). Frequent examples include 'delayed disclosure' that is to say, the delays which can occur before victims disclose or report their allegations, and the demeanour of the complainer after the alleged offence. The intention is to enable members of the jury better to understand any behaviour by the complainer which might have seemed to them to be counterintuitive and which might have led them to discredit the complainer's evidence. The expert does not of course offer an opinion about the truth of the allegations.
- 2.34 The judicial system in Northern Ireland is separate and operates differently from that in Scotland and England and Wales. Psychologists acting as an expert or professional witness in Northern Ireland have a duty to familiarise themselves with the relevant principles, structures, procedures and terminology. It is recommended that advice about specific cases and the applicable rules and processes should always be sought from the relevant solicitor or the Public Prosecution Service.
- 2.35 In cases where a psychologist thinks a psychologist expert witness has acted inappropriately towards them, psychologists are advised to raise this with the individual concerned in the first instance. In the event the matter is unresolved, and the circumstances warrant it, the psychologist should consider approaching the BPS or HCPC, and/or any other professional body of which they may be a member.

3. Receiving instructions

- 3.1 To receive 'instructions' is the term which describes an explicit request to assist in a case by acting as an expert or professional witness – principally the former, as will be referred to here. The identity of the instructing body may differ, and could include defence solicitors, the Procurator Fiscal in Scotland, Public Prosecution Service in Northern Ireland or Crown Prosecution Service in England and Wales, a local authority legal department, an insurance company, a claimant's solicitor, a litigant in person, or the court, tribunal, or panel itself.
- 3.2 In civil proceedings there can be an emphasis on the notion of 'single joint expert', where legal representatives will agree on a single expert to provide an opinion.³³ One solicitor will typically be appointed as the 'lead solicitor'. In cases where a party wishes to instruct another expert, then, this needs to be agreed separately by the judge or panel on the basis of a clear rationale. There are moves to utilise the same 'single joint expert' system in criminal proceedings.
- 3.3 In cases where there is a lead solicitor, all correspondence and discussion will usually be via them. If a solicitor who is not the lead contacts an expert, the expert should request that they communicate via the lead solicitor. If this is not possible or practical, details of the correspondence should immediately be forwarded to the lead solicitor. If there is no lead solicitor (but psychologists are nevertheless instructed as a single joint expert), then, all correspondence should be copied to both solicitors, unless formally agreed in writing otherwise. This is designed simply to protect the impartiality of the psychologist as an independent expert. In criminal cases correspondence should only be via the instructing solicitor.
- 3.4 It is increasingly common in family proceedings for one or more parties to be a litigant in person, representing themselves with little or no input from a legal professional. Psychologists instructed as experts will need to be mindful of this in such cases where knowledge of the law and litigation process, including instruction of an expert, may be minor.
- 3.5 Psychologists should be clear what is being requested by any instructing party. The phrase a 'Psychologist's Report' does not carry a sufficient degree of specificity. Psychologists should clarify the requirements and ask for more detail where necessary; in particular there is a need to know in which way psychology might relate to the particular case. Psychologists should clarify any specific legal issues and obtain a summary of the case, in addition to clarification of documentation, such as solicitors' *Brief to Counsel*, the schedule, and any details on 'Finding of Facts' hearings (civil proceedings). Psychologists should be clear what is being asked for, and what the established facts of the case are to date.
- 3.6 Where there is *Advice from Counsel*, then, psychologists acting as expert witnesses are entitled to see this before agreeing to take on a case. This will enable the psychologist to determine that they are, in fact, in a position to offer an opinion or provide evidence. Advice from Counsel often refers to medical and psychiatric opinion on psychological matters such as ASD, capacity, or vulnerability, and the psychologist should be free to make a prudent judgement where this is incorrectly stated.
- 3.7 On a practical front, expert witnesses may be required to visit secure forensic psychiatric services, court cells, prisons, or probation offices, when conducting expert witness assessment. Guidelines for managing safety considerations should be considered for each setting, depending on specific risks and/or constraints. Some settings may have their own policies or guidelines to which the psychologist should adhere.

4. Responding to instructions

- 4.1 Psychologists should engage in a dialogue to determine terms of engagement with the party instructing them, wherever necessary.
- 4.2 Psychologists should normally clarify the time frame for work to be undertaken. Any time frame should be agreed including a *realistic* one for the submission of reports. Courts will generally take an adverse view of psychologists acting as expert or professional witnesses whose reports arrive late and consequently cause delay to the court and all parties involved.
- 4.3 At this stage it is good practice to clarify any terms and conditions to the instructing party. Terms and conditions will differ according to the court and on a case-by-case basis but may include:
- a time frame for court appearances;
 - payment/fees.

An example terms and conditions is available from the BMA³⁴

- 4.4 The solicitor or instructing body will generally find it helpful to have an itemised breakdown of any estimate for expert witness work. This should ideally include upper and lower estimates. As a minimum this should take account of:
- Background material, for example, reading material;
 - The assessment;
 - Analysis, scoring tests;
 - Writing the report;
 - Travel time and costs (e.g. hours travelling and mileage/fares, etc.).
 - Depending on who has instructed, and the type of court, tribunal or hearing involved, psychologists may also have to estimate the likely costs associated with a potential court appearance. Typically, this can refer to full-day and half-day rates, including preparation time.
- 4.5 In responding to any instructions, psychologists may wish to clarify:
- Is the case 'listed' for trial or hearing?
 - If so, can the tasks the psychologist is being asked to do be completed satisfactorily in the time available?
 - What are the critical deadlines?
 - Is the psychologist expected to be available to give evidence at court and, if so, when?

Where psychologists are not able to keep within the court's timetable, including attendance at court, then they should not accept instructions. By accepting instructions, a psychologist is indicating that they are confident, as much as is reasonable, that they are able to comply with the court's timetable.

- 4.6 Psychologists should clarify whether the role which they are being asked to undertake is as:
- a. a professional witness, employed by an organisation and as part of their contract of employment; or
 - b. a single or jointly instructed expert witness.

- 4.7 Psychologists should negotiate a change to an instruction if it is ethically appropriate to do so. Sometimes the instruction may be such that legal and clinical issues do not necessarily meet, or where the wrong clinical terms are used in the instructions.
- 4.8 Experts can also note a fee for late cancellation of attendance to court, which they may detail in their terms and conditions (see too section eight). In some instances, experts will need to seek acceptance of their fee and expenses for court appearance directly with the court itself, rather than with the instructing party. This will usually be made clear at the outset.
- 4.9 Psychologists should seek to obtain any materials that they feel are relevant and necessary. If the psychologist thinks that they require certain documentation, this should be requested in writing. If a solicitor forwards only excerpts from records or reports, these should be requested in full. If requested material is not supplied, psychologists should be prepared to indicate this clearly in their report, and note where they have been unable to provide an opinion, because relevant documentation was not available or forwarded on, especially if requests were made. Psychologists should also state where an opinion is provisional due to missing information. Psychologists should list any information that they feel is relevant but has not been seen (e.g. health or educational records), particularly where these have been requested but not disclosed.
- 4.10 In family proceedings, involving children in England and Wales it is commonplace to be instructed as a single joint expert. Instructions are usually communicated through, and agreed with, the lead solicitor, generally the solicitor representing the child through their guardian, where the child is party to proceedings. Ongoing communication is usually conducted through the lead solicitor. In some cases, where all parties are litigants in person, there will be no lead solicitor. Psychologists need to be mindful of an enhanced need in such cases to ensure clarity of instruction and ongoing communication with the litigant requesting such services.
- 4.11 Psychologists instructed as experts need to ensure that they can provide an independent and impartial opinion, and that their independence is clear to all. Any potential conflicts of interest should be made explicit and should be reported as soon as they arise. See the conflict of interest section below for more information.
- 4.12 The Criminal Procedure Rules, Part 19, makes it clear that the code of practice or conduct to be followed by experts when signing a declaration on a report made available for the court, should be the code of practice or conduct relevant to that individual expert. For psychologists this would be The HCPC *Standards of Conduct, Performance and Ethics*; The HCPC *Standards of Proficiency* for practitioner psychologists; the BPS *Code of Ethics and Conduct* and the BPS *Practice Guidelines* and BPS *Guidelines for psychologist acting as expert witnesses*. Psychologists could quote all or any of these as relevant.
- 4.13 In England, Wales and Northern Ireland expert witnesses are expected to make a declaration, an example of an expert witness declaration is given in Appendix 2. In Northern Ireland, experts should make contact with their instructing solicitor who can advise on the appropriate declaration to use. In Scotland, it is helpful for experts to reference the HCPC and BPS membership and adherence to guidance but a declaration is not compulsory.
- 4.14 Psychologists acting as expert or professional witnesses should be aware that they can write to the court to ask for clarification of any points raised during the process of instruction.

There is clear provision within practice directions for experts to contact the court where the case is being heard directly. This is often done where clarification from those instructing you has not been forthcoming and/or has been unsatisfactory, though there may be other reasons. If a psychologist does choose to contact the court direct, they should notify the parties of the nature of the guidance sought.

- 4.15 Often a court will direct discussions between experts in an attempt to narrow issues, and to identify areas of agreement and disagreement, leading to a joint statement. Such discussions may be helped by the provision of an agenda, detailing the focus of discussion and the contested or settled issues for discussion. It is expected that psychologists will comply fully with such directions, in order to assist the court.
- 4.16 There are accepted forums of discussion between experts. These include 'experts meetings', 'professional meetings' or 'counsel conferences'. All of these are sanctioned by the courts. Expert meetings are used when there is a range of differing opinion and it is hoped that a meeting between experts can clarify: opinions, areas of agreement and areas of disagreement.
- 4.17 Experts meetings should not have legal representatives present and are a meeting between experts only, undertaken on a 'without prejudice' basis. This means that anything discussed at the meeting by either party is 'without prejudice' to their respective legal positions. Such discussions are entered into with the hope of resolving or minimising any potential disputes between the parties. The parties will not be able to refer to such proceedings in any subsequent court or tribunal proceedings relating to the disputed matters. Psychologists should restate the point at the meeting.
- 4.18 Professional meetings and counsel conferences are generally found in civil and family proceedings and are those where the legal representative and other professionals involved (including experts) meet. Each party provides an update on the case progress, and questions can be put to experts in attendance. Legal representatives keep minutes which are then agreed by all attendees. The minutes are bound by the same level of confidentiality as other court documents and are submitted to court as evidence.
- 4.19 There may sometimes be last minute discussions ordered by the court, these can mean that agreed statements between experts may be submitted to court as handwritten documents. Psychologists should ensure that they obtain a copy of anything submitted to court for their records.
- 4.20 At any stage in the proceedings the court may direct that some or all of the experts from like disciplines shall give their evidence concurrently. This arose out of The Jackson Reforms (conducted by Sir Rupert Jackson, a former Lord Justice of the Court of Appeal), and is sometimes referred to as 'hot-tubbing'.³⁵ Again, it is expected that psychologists will fully comply with the directions of the court.

5. Conflict of interests

- 5.1 Psychologists should spell out their independent or professional position whenever instructed, and should not accept being pressured (explicitly or implicitly) into producing a biased or compromised report or evidence by and in favour of any party. This requirement is enshrined within the relevant procedure rules.
- 5.2 Requests to complete an expert assessment of someone employed as a colleague or someone known to the psychologist should be declined. Requests to complete an assessment of an individual who has connections with the psychologist's current employer should also be declined, and documented with their employer.
- 5.3 Conflict would also arise where a psychologist is asked to provide an expert report on an applicant, claimant, or complainant who is also someone they are providing treatment to. Psychologists working in such a capacity should be mindful that it is not appropriate to act as an expert witness, as this would involve a dual relationship. However, in such cases it may be appropriate to act as a professional witness, where it is made clear to the instructing party your role, with the permission of your patient. Witnesses acting independently will generally be required to sign a statement declaring their independence. There is no such requirement in Scotland, though expert witnesses may choose to indicate that they act in accordance with the relevant code and standards of conduct and ethical practice within the discipline.
- 5.4 The specific wording of any conflicts may be outlined in the instruction letter. In civil cases, experts acting as independent witnesses must submit a report that is structurally compliant with the Civil Procedure Rules and the most recent Practice Directions, Part 35 especially, or it may be deemed inadmissible at court. The psychologist is likely to be asked to sign a statement of compliance and a statement of truth outlined at the end of their report too. Specific forms of wording may vary between jurisdictions and change over time and psychologists have a duty to check the correct form of statement.
- 5.5 Psychologists should resist any pressure to change their evidence in a way that may mislead the court or compromise their integrity (e.g. deleting relevant but unfavourable findings from their report): see section two to four. Psychologists may feel the need in certain situations to add a statement that 'this expert report should not be redacted in any way without the author's permission' as some parties may sometimes seek to do this perhaps to shift the emphasis of the expert's opinion. Psychologists should seek supervision and support if they are placed under such unreasonable pressure.
- 5.6 Psychologists should be clear that they are acting as an independent expert, or an independent professional, and not as an advocate for a particular party in the proceedings. With regards to cases involving children, this may be particularly relevant. Experts in such cases are not acting for the parents, guardian or carers, or for the children, but for the court, who are themselves acting in the best interests of the child.
- 5.7 Psychologists should negotiate a change to an instruction if it is ethically appropriate to do so, such as where the psychologist becomes aware of a dual relationship or other conflict of interest (e.g. providing expert testimony against a current employer), this may involve ending the contract and renegotiating or reducing payment. In essence, where a conflict of interest of this or any comparable nature arises, the psychologist ought to inform the instructing party and take steps to change or terminate the instruction, as noted above.

- 5.8 Psychologists should be clear about their relationships, roles, and responsibilities, and fully consider all relevant professional, regulatory and ethical issues which affect their instruction. In this, they need to remain mindful that although their core responsibility as an expert or professional witness is to the court, they also have overarching professional responsibilities to any individual(s) they engage with, as a psychologist, as well as their regulatory and/or professional body (e.g. the HCPC and the Society's *Code of Ethics and Conduct*).

6. Confidentiality

- 6.1 It is best practice to gain informed consent from individuals regarding their consent to participate in the psychological assessment. Psychologists acting as expert and professional witnesses may wish to consider the use of a standard information sheet/guide to aid with obtaining this. Information provided should make clear the differences from normal clinical consent. Specifically, it should be made explicit that the results of any assessment may be used for legal purposes in a report or oral evidence during proceedings. It should also be made explicit that any assessment is conducted on an independent professional basis and may be favourable or unfavourable to the person being assessed. Psychologists should be prepared for the possibility of being questioned on the process of consent, especially if there are any concerns raised about this. Psychologists should be mindful, in particular, of the likely pressures on individuals to engage in assessments, if instructed by a court, panel, or as a detained person, where consent may not be straightforward.
- 6.2 No information relating to an assessment or report should be disclosed outside the relevant proceedings without agreement. Psychologists should normally seek permission to disclose any information to another health care professional with the instructing party. Any information contained in evidence in a report can potentially be disclosed. Psychologists acting as expert or professional witnesses have a duty to disclose all of the evidence used to reach their opinion where directed to do so by the court. This would normally include the sharing of details of any tests and assessments administered with professional colleagues. In reporting the results of assessment psychologists should act in accordance with the current Society Statement on the Conduct of Psychologists providing Expert Psychometric Evidence to Courts and Lawyers³⁶.
- 6.3 Any peripheral discussion (for example, with colleagues concerning finer points of cases) should only take place in circumstances where confidentiality can be ensured.
- 6.4 Discussion with other experts concerning the specifics of the case, and particularly with colleagues instructed by other parties, should only take place with the consent of the instructing party. Other expert witnesses will not necessarily be psychologists but may include physicians, social workers and other professions.
- 6.5 Where a psychologist has been instructed directly by the court, the Crown Prosecution Service, Procurator Fiscal, Public Prosecution Service, or solicitor, the psychologist is required to report or comment on any or all aspects of the case that appear to the psychologist as an expert in a field to be relevant or pertinent. In such circumstances where the psychologist is not in a position to offer confidentiality to any person, they should make this position clear to any party with whom they have contact during psychological investigations or assessment.
- 6.6 Where court bundles and other materials are received in electronic format, psychologists should ensure that these are stored securely with password protection. This may require the addition of security to documents that arrive in an unsecured form.
- 6.7 Where psychologists submit reports in an electronic format they should ensure that these are in a secure password protected format too, and that such data is transferred between encrypted networks, where possible.

- 6.8 While protecting individual's confidentiality, the safety of the client and interviewer must also be protected. This may be achieved by drawing up an agreement with a client during the first meeting. Further information regarding confidentiality and agreements can be found in the British Psychological Society *Practice Guidelines*.
- 6.7 The length of time notes may be stored, processed or used will vary depending on the type of legislation. Data protection guidance suggests data should only be kept for as long as it is necessary for the purposes for which it was collected, however, this may differ depending on how other laws are applied (e.g. health and medical records). Psychologists should use their professional judgement, and take full account of up-to-date data protection legislation and guidance and their local organisational policies, where applicable.
- 6.8 Only a judge can order access to notes via a court order. Psychologists should use their professional judgement as to whether formal requests to share their notes outside of this is appropriate, paying attention to whether there may be abbreviations or shorthand that is unclear and requires explanation, and whether information contained in the notes is relevant to the case. Only other psychologists should be able to comment on any psychometric data. Psychologists may wish to offer to prepare a short report to precis relevant points from therapy notes if they have not already provided a court report.
- 6.9 An individual who is the subject of a report may be able to request access to notes under access of health records or data protection legislation. Such requests should make clear the legislation under which the applicant's request is made, and must be compliant with the legislation requirements. Guidance on how to apply, and any costs involved, is usually available from the organisation or health body concerned. An outline on such schemes, and rights and responsibilities of either party, is available from the Information Commissioner's Office.

7. Appearance at court

- 7.1 Psychologists should always act in a way that maintains the reputation and standards of the profession when working as an expert or professional witness. This includes being punctual; arranging to arrive at the court in good time and suitably dressed, and conducting themselves in their role and towards others appropriately while assisting the court and others they interact with during this process. Expert and professional witnesses are generally permitted to sit in court whilst other experts are giving evidence. Psychologists should, wherever possible and with the permission of the court, sit in to listen to what is being said by the representing lawyers or litigant in person, and to prepare themselves to give evidence and for cross-examination on issues raised by preceding witnesses.
- 7.2 Psychologists are always expected to provide truthful testimony. Where relevant, psychologists should decide in advance if they will take an oath – swearing on the holy book of their religion or affirmation – promising to tell the truth.
- 7.3 In family proceedings, it is increasingly likely that expert witnesses will be cross examined by litigants in person. In these circumstances, heightened emotions may be a feature. Psychologists will need to exercise appropriate care in responding to any such cross examination. Awareness of a perceived hierarchy of power and the potential vulnerability of litigants, who may also be the subjects of the report before the court, is beneficial.
- 7.4 Psychologists acting as expert or professional witness may be asked to attend court on a ‘just in case’ basis, i.e. well ahead of the expected time that the expert actually gives evidence. It is also not unusual for *ad-hoc* professional meetings or meetings between counsel to be arranged immediately prior to the delivery of evidence, or for new documentation to be submitted for consideration. Arriving early may assist with this. Psychologists ought to liaise with their lead solicitor for directions on this. Experts may also be asked to attend court at a particular time but then not be required to give evidence. The psychologist should be mindful of their role, which is to assist the court and should, where possible, be accommodating and helpful.
- 7.5 In court proceedings the clerk will keep a note of the progress of the trial, logging the time each witness goes into and leaves the witness box. Only the court clerk is able to endorse a later explanation by an expert that an extended period of waiting to give evidence was incurred by, say, an unanticipated prolongation of *voir dire* submissions, or evidence by a preceding witness taking up much more time in cross-examination and re-examination than was expected. It is important that psychologists make a point of liaising with the court clerk to ensure that the clerk is in a position to provide the necessary evidence to justify a claim for a prolonged period of waiting, where required.
- 7.6 Psychologists should make reasonable efforts to plan ahead concerning court attendance. Where appropriate witness summons may be issued with a broad time frame covering multiple dates. The instructing party should be asked on what day exactly it is anticipated the psychologist will start giving evidence, and how long proceedings will likely take. Often a psychologist will be asked about availability in advance and requested to reserve dates in their diary. Courts can be very accommodating to experts and will often build a witness timetable around the expert’s availability. As noted in earlier sections, psychologists are expected to prepare adequately for their court appearance and the provision of oral evidence.

8. Practical and financial considerations

- 8.1 Psychologists are instructed either directly (by lawyers or litigants), or by intermediary agencies. The agencies are basically of two types – put simply – large and small. The latter have often been set up by psychologists and both types may be found on the internet. Establishing a good working relationship with agencies can result in higher volumes of work, if so desired, but terms and conditions need very careful negotiation and agreement.
- 8.2 If a psychologist takes on ‘occasional’ pieces of expert work they will, by default, be a sole trader. They will need to declare fees that they earn on their Income Tax Return and this will be treated as taxable income. Some expenses can be set against this income and many psychologists start out this way. As work expands, they will need to have indemnity insurance if they do not already, and may need to engage an accountant, who will also advise on the benefits of setting up as a limited company, as well as other commercial matters such as registering for VAT – therapeutic work is exempt, medicolegal work is not, and the difference is not always immediately clear.
- 8.3 With anything other than an occasional piece of work, psychologists will be running a business. They may need to register with the Information Commissioner’s Office (ICO). In practice there may be a need to think about keeping employment and self-employment separate in terms of facilities, materials, secretarial support etc.
- 8.4 Within each of the legal jurisdictions, there is a range of fees that expert witnesses can charge. Sometimes this is clearly and explicitly stated, and sometimes this is a matter of individual, case-by-case negotiation. In the former case, you have the choice as to whether to provide the service requested at the stated fee. Fees for assessments within the criminal justice framework are set by the Legal Aid Agency (referred to as the LAA rates or legal aid funded cases) and are not usually negotiable. In the latter, you have the choice to negotiate. In such negotiations, the probability of a repeated flow of instructions may affect the level of fee you request.
- 8.5 If the work is commissioned by an agency their terms and conditions will have information on when payment can be expected. Discussion with an agency will often involve matters such as cost and volume, while instructions direct from solicitors can be less precise and experts may well be expected to wait until the case is settled which can be several months. Often in medico-legal cases involving clinical negligence or personal injury the final hearing can be longer.
- 8.6 Psychologists should be sure that they understand the terms of the negotiated payment and, where appropriate, the processes of Legal Aid, where a case is funded by this means. Any negotiated fee may also be affected by taxation. Here, this refers to a system of controlling costs operated in some courts, whereby agreed fees that are felt to be excessive may be reduced by the court. The Legal Aid Agency and Ministry of Justice publish a schedule of fees and normal time requirements for a range of Legal Aid funded work³⁷. The Scottish Legal Aid Board are responsible for Legal Aid in Scotland, and [The Legal Services Agency](#) are responsible for Legal Aid work in Northern Ireland.

- 8.7 Direct payment by the client (individual or group) should be considered to be part of the contract. However, in civil cases there is an increasing practice for invoices to be shared by the parties involved. This may result in partial payments being received. This can cause the expert difficulty in gaining payment. There are two solutions to this; either the lead solicitor agrees to obtain the funds from all parties and makes a payment, or, experts submit apportioned invoices to each party, as necessary.
- 8.8 Psychologists should clarify who is resourcing their time, which includes time writing the report along with other costs, such as materials, staff costs, giving evidence, and waiting time. In cases where an expert is jointly instructed, the administration of costs is completed by the lead solicitor, although fees may be equally split between the parties.
- 8.9 If the cost of the work is likely to increase beyond the original estimate, then the psychologist should inform those instructing them as early as possible by liaising with the instructing party or the lead solicitor in joint cases. This should be done *prior* to conducting the work. Costs can only be agreed at the outset of the case and not at its conclusion. Civil proceedings in particular are managed under very strict case management processes and a psychologist will not assist the court where the fee structure is unclear. In such cases, psychologists risk not being reimbursed.
- 8.10 Psychologists should make themselves familiar with any financial or cost limits and keep copies of all receipts with a bearing on the production of expert evidence and attendance at court. They should also be aware that the application of court service rules for remuneration of expert witnesses varies from court to court. It is particularly important to note that some courts apply a stricter upper limit on accommodation costs and reimbursement of travelling time than others. To avoid being left out of pocket in respect of expenditure, guidance should be sought from the court on this matter at the outset, before booking accommodation, where it is apparent the costs are not covered by the instructing party.
- 8.11 In those instances where reimbursement of travelling time is refused or reduced, psychologists should insist on remuneration at least commensurate with that permitted within the LAA rates with respect to psychological services, other than for the giving of evidence at court, which cannot be applied for retrospectively. If the representing lawyers are adamant about the psychologist being in attendance well in advance of giving evidence, then they should ask the solicitor for details of the firm's position concerning the settlement of expert costs for attendance at court. It is essential for the psychologist to demonstrate awareness and clarity at this stage, or else there is a risk of the psychologist, or his or her employer, being faced with a protracted period of absence from their usual base and work, and any associated costs involved with this, with little prospect of recovering these later on.
- 8.12 Where a psychologist is unable to commit to an unspecified or extended period of time at court, some solicitors will consult with the court and subsequently amend the period which the psychologist is requested to attend. Others will continue with the requested attendance dates but indicate they will cover the costs incurred. If the solicitor does not indicate this, the firm should be reminded that the court service does not remunerate excessive waiting periods. The firm should be:
- Asked to give an undertaking that the solicitor will settle the total invoice immediately in respect of attendance at court; and
 - Informed that the psychologist will make a claim in due course to the court and any sums awarded by the court will be forwarded to the solicitor.

- 8.13 Psychologists should invoice promptly for any work undertaken. This is particularly important in civil proceedings where the timetable for solicitors to regain costs is tightly controlled. If an invoice is submitted after the final records have been submitted by the instructing party, there is a risk of non-payment. In cases where court attendance is to be paid for by the instructing party, or where there is a sequence of other work extending beyond submission of a report, then, psychologists should liaise with the instructing solicitor or other party, particularly if court attendance is scheduled soon after a report is submitted, or supplementary work is anticipated, to get an undertaking from the firm on the payment of costs later on.
- 8.14 Following appearances in court the court clerk may provide a claim form for all fees and expenses incurred on the day.
- 8.15 Psychologists should be aware that payment for work as an expert may be significantly delayed and may involve deferment of fees until settlement of the case. Waiting six months or longer for payment is not unusual. Psychologists can request in advance that payment is settled within a fixed period of receipt of their report and also indicate that standard interest will be added onto the invoice for each day that it is overdue. This should be agreed in writing with the instructing party as part of the terms and conditions when accepting instructions. If payment is not forthcoming after a time considered unreasonable (e.g. after a final hearing in a civil hearing) then psychologists should advise of the steps they will have to take to obtain payment where payment is not forthcoming.
- 8.16 Psychologists may make use of the legal advice helpline attached to their indemnity insurer who may be able to aid with legal queries.

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USEFUL WEBSITES

- Bond Solon expert witness training: <https://www.bondsolon.com>
- British Psychological Society: <https://www.bps.org.uk>
- British and Irish Legal Information Institute (BAILII): <https://www.bailii.org/>
- BPS CPD approved events: <https://www.bps.org.uk/events>
- Courts and Tribunals Judiciary <https://www.judiciary.uk>
- Courts Service of Northern Ireland: <https://www.courtsni.gov.uk/en-GB/pages/default.aspx>
- Crown Prosecution Service for England & Wales: <https://www.cps.gov.uk/>
- Crown Office and Procurator Fiscal: <https://www.copfs.gov.uk>
- European Court of Human Rights: <https://www.echr.coe.int>
- Health & Care Professions Council: <https://www.hcpc-uk.co.uk>
- Law centres network: <https://www.lawcentres.org>

Ministry of Justice: <https://www.justice.gov.uk>

The Supreme Court: <https://www.supremecourt.uk>

The Academy of Expert Witnesses: <https://www.academyofexperts.org>

The Expert Witness Institute: <https://www.ewi.org.uk>

The Law Society: <https://www.lawsociety.org.uk/>

The Legal Services Agency: <https://www.justice-ni.gov.uk/topics/legal-aid>

The Law Society of Northern Ireland: <https://www.lawsoc-ni.org>

The Law Society of Scotland: <https://www.lawscot.org.uk/>

The Public Prosecution Service for Northern Ireland: <http://www.ppsni.gov.uk>

The Scottish Courts: <https://www.scotcourts.gov.uk>

Appendix 1: Procedure rules

CIVIL, CRIMINAL AND FAMILY PROCEDURE RULES AND THEIR APPLICATION TO THE EXPERT ROLE

In April 1999 a new set of rules were set in place to control the process by which civil disputes were managed and run. The Woolf Reforms, as they were known, have far reaching consequences for the work of psychologists as expert witnesses. These procedure rules provide practice directions for expert witnesses and have undergone a number of updates and amendments. The over-riding objective of the new rules is to enable the court to deal with cases justly by ensuring that parties are on an equal footing, that expenses are saved, and that cases are dealt with proportionately, fairly and expeditiously.

It has been instrumental in the notion of the ‘single joint expert’ and in avoiding ‘trials by ambush’.

It focuses on all parties having equal footings in proceedings in terms of being able to instruct the same expert and having access to all submitted evidence.

The Woolf Reforms and the updated procedure rules say quite precisely what is to be expected of expert witnesses, particularly in terms of their duty to the court. It is the purpose of this section to summarise the rules of civil procedure as they apply to expert witnesses with comments and interpretation as appropriate.

The application of many aspects of CPR Part 35 Experts and Assessors, Practice Direction 35 to criminal proceedings has now also been achieved. Criminal courts have adopted the majority of the rules relevant to experts in civil proceedings. The Criminal Procedure Rules Practice Directions are referred to as Part 19, Expert Evidence. Similarly, the Family Procedure Rules are referred to as Part 25, Practice Directions 25, Experts and Assessors (Practice Directions 25A to 25F).

The rules have been modified on a number of occasions subsequently, but the latest versions may be found on the Ministry of Justice website: <https://www.justice.gov.uk/courts/procedure-rules>

The most relevant section for the psychological expert will be CPR Part 35, the section encompassing the role of experts.

The rules seem, and are, complex and sometimes difficult to comprehend. Thankfully, most of the legal legwork will be undertaken by the solicitors instructing the expert. However, psychologists should read the Procedure Rules and Practice Directions relevant to the court within which they are working (CPR, CrimPR or FPR) carefully, paying particular attention to:

- Expert evidence, general requirements (CPR; Practice Directions 35).
- The expert’s declaration (CrimPR, Part 19B).
- Expert’s duty to the court (CrimPR; Part 19 Expert Evidence, para 19.2).
- Content of expert’s report (CrimPR; Part 19 Expert Evidence, para 19.4).
- Duties of an expert (FPR; Practice Directions 25B).
- Use of single joint experts (FPR; Practice Directions 25C).
- Discussions between experts in family proceedings (FPR; Practice Directions 25E, Rule 25.16).
- Written questions to experts (FPR; Practice Directions 25E, Rule 25.10).

Appendix 2: The declaration

This is correct at the time of writing and is given only for illustrative purposes. Psychologists should delete sections as appropriate to the court setting – Criminal (CrimPR); Family (FPR) or Civil (CPR) or amend as appropriate to their own situation.

I (Insert Full Name) DECLARE THAT:

1. I understand that my duty is to help the court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
6. I have shown the sources of all information I have used.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.
10. I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification.
11. I understand that:
 - a. my report will form the evidence to be given under oath or affirmation;
 - b. questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;
 - c. the court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties (CPR; FPR);

- d. the court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing (CPR; FPR);
- e. I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
- f. I am likely to be the subject of public adverse criticism by the judge if the court concludes that I have not taken reasonable care in trying to meet the standards set out above.
- g. I have read Part 19 of the Criminal Procedure Rules [Part 35 of the Civil Procedure Rules; or Part 25 of the Family Procedure Rules] and I have complied with its requirements.
- h. I confirm that I have acted in accordance with the code of practice or conduct for experts of my discipline, namely: The HCPC standards of conduct, performance and ethics; The HCPC standards of proficiency for practitioner psychologists; the BPS Code of Ethics and Conduct and BPS guidelines and procedures for psychologist acting as expert witnesses
- i. [For Experts instructed by the Prosecution only] I confirm that I have read guidance contained in a booklet known as Disclosure: Experts' Evidence and Unused Material which details my role and documents my responsibilities, in relation to disclosure as an expert witness. I have followed the guidance and recognise the continuing nature of my responsibilities of revelation. In accordance with my duties of disclosure, as documented in the guidance booklet, I confirm that:
- j. I have complied with my duties to record, retain and reveal material in accordance with the Criminal Procedure and Investigations Act 1996, as amended;
- k. I have compiled an Index of all material. I will ensure that the Index is updated in the event I am provided with or generate additional material;
- l. In the event my opinion changes on any material issue, I will inform the investigating officer, as soon as reasonably practicable and give reasons.

Statement of Truth:

The Civil Procedure Rules makes the new wording of the Statement of Truth a mandatory requirement for all Civil Expert Witness Reports in England and Wales.

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. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Appendix 3: The practice direction for experts in family proceedings relating to children

Readers should be aware that this guidance covers England and Wales. Further guidance is available from the Ministry of Justice website and psychologists undertaking work in relation to family proceedings have a professional duty to make themselves aware of current guidance.

In particular psychologists acting as experts in Family Proceedings are required to be aware of Family Procedure Rule 25 relating to Experts and Assessors, alongside the associated guidance in Practice Directions 25A-25F. Family Procedure Rules and Practice Directions can be accessed on the Ministry of Justice website https://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu

Family Procedure Rules can be subject to frequent amendments. The Ministry of Justice publishes a record of amendments on its website <https://www.justice.gov.uk/courts/procedure-rules/family> .

The BPS and the Family Justice Council have published a guidance document designed to serve as a companion to this publication³⁸. This guidance focuses specifically on the role of psychologists in Family Proceedings, outlining the relevant regulations and code of conduct with which members are expected to comply. It further defines issues related to competence, and the court's expectations of psychologists acting as expert witnesses in this particular setting.



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