

<b>Title:</b> Standards for expert witnesses in the family courts in England and Wales <b>IA No: MoJ 167</b> <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 18/01/2013			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Other			
<b>Contact for enquiries:</b> Joe.Murphy@justice.gsi.gov.uk				
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> RPC Opinion Status	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	No	NA

**What is the problem under consideration? Why is government intervention necessary?**

The Family Justice Review recommended the development of quality standards in response to feedback about the poor quality of some expert reports in public law proceedings. One study of a small sample of psychologist reports in care proceedings has suggested reports are of variable quality and raised concerns about the qualifications of those carrying them out. Concerns have continued despite existing guidance and court rules, and market pressures appear to have only a partial effect. The Government believes that a clear statement of expectations is needed to ensure the courts receive good quality expert advice and to increase confidence in the operation of the family justice system.

**What are the policy objectives and the intended effects?**

The policy objective is to ensure experts providing evidence to the family courts in proceedings relating to children have a level of qualifications, skills and experience consistent with the provision of good quality advice to the court. This should provide greater assurance to the family courts when they are making decisions affecting a child's future upbringing, and increase confidence in the family justice system. The policy may improve efficiency in some cases by reducing the need to put supplementary questions to the expert or call them to court to clarify their evidence.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing. Do not introduce new minimum standards. Rely on existing rules and guidance and market pressures.

Option 1 (the preferred option): Introduce new minimum standards in family proceedings relating to children and make compliance a condition of funding in publicly funded cases.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 12/2017					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce new minimum standards in family proceedings relating to children and make compliance a condition of funding in all publicly funded cases (preferred option).

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	NA	NA	NA

### Description and scale of key monetised costs by 'main affected groups'

The main impact is expected to fall on experts but it has not been possible to monetise the costs as it will depend on the extent to which an individual expert already meets the standards and already has available the information needed to demonstrate that they meet the standards.

### Other key non-monetised costs by 'main affected groups'

Experts may incur one-off and/or ongoing costs to meet the standards. Parties or their legal representatives, HMCTS and the judiciary may incur some costs in checking an expert's credentials. The LAA will incur limited additional costs in checking files and might incur costs if experts sought to pass on any costs incurred to meet the standards. Familiarisation costs for experts, parties or their legal representatives, HMCTS and the judiciary, Cafcass or CAF/CASS Cymru and professional and regulatory bodies.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	NA	NA	NA

### Description and scale of key monetised benefits by 'main affected groups'

The key benefit is expected to be improvements in the quality of expert evidence and this cannot be monetised.

### Other key non-monetised benefits by 'main affected groups'

Experts may benefit from enhanced reputation. The judiciary may benefit from better quality evidence on which to reach a decision on the case. Improved expert evidence could reduce demands on Cafcass/CAF/CASS CYMRU and local authorities to provide information that might otherwise be provided by the expert. Families and children may benefit from confidence in outcomes if decisions are based on better quality evidence.

### Key assumptions/sensitivities/risks

Discount rate (%)

There is a risk that the introduction of minimum standards could have a negative impact on the supply of experts, which could then have an impact on the cost of experts in publicly and privately funded cases. We have assumed that the introduction of minimum standards will not have any overall impact on the volume of complaints made to professional bodies and regulators about experts.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits: NA	Net: NA	No	NA

# Evidence Base (for summary sheets)

## Introduction

The Family Justice Review (FJR) was commissioned in 2010 by the Secretaries of State for Justice and for Education and the Welsh Government. The FJR was invited to undertake a comprehensive review of the system of family justice in light of increasing pressures on the system and growing concerns that the system was not delivering effectively for children and families. Following a call for evidence and a subsequent consultation exercise, the FJR published its final report on 3 November 2011. This made ten recommendations for reform in relation to experts which focused on public law family cases. Public law family cases are those in which local authorities have concerns about the welfare of children, and where local authorities seek a determination from the court about whether children should be taken into local authority care.

On 6 February 2012 the Government published its formal response to the Review, setting out its programme of reform for family justice. This Impact Assessment is concerned with the recommendation that standards should be developed for expert witnesses in the family courts.

## The market for experts

The proposals will affect all experts who currently provide – or those who intend in future to provide – expert witnesses services to the family courts in proceedings relating to children in England and Wales. These experts come from many different professions and disciplines including doctors (for example paediatricians and psychiatrists), nurses, psychologists and independent social workers. They have expertise in a wide range of matters including child health and development, mental health problems, drug and alcohol abuse and sexual abuse. Experts usually undertake court work as an adjunct to their main professional role, which might be in the public sector or private practice, and we understand they often take on the work on a private commercial basis. The number of participants in the market at any one time may therefore be quite fluid.

Experts in publicly funded cases are instructed and paid by the solicitor and information on the number of experts instructed in family proceedings relating to children is not currently collected. However, evidence suggests that expert reports are commissioned frequently in public law cases. A review of a sample of approximately 400 public law case files where an order was made in 2009 found that expert reports were commissioned in 87% of cases and in 74% of cases more than one expert was commissioned<sup>1</sup>. In these cases, the most common type of reports were adult psychiatric (35% of cases), independent social workers (33%) and parent's psychological (33%). The same study indicates that expert reports are ordered less frequently in private law proceedings concerning children (37% of cases, with an average of two reports in those cases). The most commonly requested reports were drug tests (10% of all private law cases), independent social worker (8% of all cases) and adult psychiatric reports (6% of all cases).

In 2011, nearly 21,500 children were involved in applications for a care or supervision order. In 2011/12, the Legal Services Commission (LSC) funded around 35,000 public law special Children Act cases (which includes care and supervision proceedings) and around 50,000 private law Children Act cases, although it is not known how many of these cases involved one or more experts. Over the same period, about £62m was spent on disbursements in special Children Act 1989 cases by the legal aid fund. Currently data is not collected to enable this figure to be broken down further. However, a recently

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<sup>1</sup> Cassidy, D., and Davey, S. (2011). *Family Justice and Children's Proceedings – Review of Public and Private Law Case Files in England and Wales*. Ministry of Justice, London

published review<sup>2</sup> of LSC files closed in the twelve months to October 2011 (prior to the introduction of codified maximum hourly rates for experts) suggested that expert reports accounted for around 90 per cent of LSC disbursement spend in public law cases over this period, or around £52 million of legal aid spend. This suggests that a fairly substantial volume of expert reports are produced each year for use in proceedings relating to children.

## **The current framework for the commissioning of experts**

Experts currently operate within a framework under which control is exercised across three main areas:

- Court rules, procedures and practice;
- Professional standards and regulation; and
- Reputation and the operation of the market.

### **Court rules, procedure and practice**

Experts are under a duty to comply with the Family Procedure Rules 2010 (Part 25 Experts and Assessors) and the associated Practice Directions relating to expert evidence<sup>3</sup>. These make clear that the expert's over-riding duty is to the court. Experts should provide independent advice that conforms to the best practice of their profession and confine their opinion to matters within their skills and experience, and provide a signed statement of truth. Experts are commonly instructed jointly which means that each party involved in the instruction has an opportunity to input into the choice of an appropriate expert given the nature of the evidence required.

In family proceedings relating to children, a party wishing to instruct an expert should provide information to the court on the discipline, qualifications and expertise of the expert when seeking the court's permission to instruct an expert to enable the court to determine whether the proposed expert is appropriate. However, anecdotal reports suggest that time pressures and other factors mean that, in practice, parties may provide limited information to the court at the point when they seek permission and may not have identified a specific expert.

Separate work is being taken forward in response to the FJR's concern that experts are commissioned too frequently in care and supervision proceedings, and that letters of instruction are sometimes insufficiently clear or focused on the key issues for the court. Changes to the Family Procedure Rules were implemented in January 2013 which introduced a new, strengthened test for permission to instruct an expert or put expert evidence before the court, and also require the court to approve the questions that are put to the expert. The Children and Families Bill<sup>4</sup> also includes provisions relating to the court's control on expert evidence in family proceedings relating to children. Examination by the court of the expert's credentials should therefore form a complementary part of this process.

While experts should be receiving feedback from the instructing solicitor and/or the judge in the case to enable them to improve their own practice, anecdotal reports from experts indicate that this is not routine practice and that many experts would welcome such feedback in order to help them to learn and continuously improve their practice.

Although the volume of appeals in family cases is fairly small, this process provides a further check and balance in the system. In cases where disputed expert evidence is central to the case, the appeals process can help to highlight where there may be questions about the credibility of a particular expert, or where aspects of medical and scientific knowledge are uncertain or where the consensus may be changing.

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<sup>2</sup> *Experts in Public Family Law Cases in England and Wales*, Krishnamurphy, A. and Reynolds, K., Ministry of Justice Analytical Summary, March 2013. Available from <http://www.justice.gov.uk/publications/research-and-analysis/moj>

<sup>3</sup> <http://www.justice.gov.uk/courts/procedure-rules/family>

<sup>4</sup> <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

## **Professional standards and regulation**

Many experts in family proceedings relating to children will be registered with either the General Medical Council (GMC) (the regulator for all doctors, including paediatricians and psychiatrists) or the Health and Care Professions Council (HCPC) (the regulator for many health professions including practitioner psychologists and social workers in England). The Care Council for Wales regulates the social care profession in Wales. Experts who belong to a profession to which statutory regulation applies are therefore subject to the professional standards set by these bodies whenever they undertake work for the family courts. If their work falls below these professional standards and a complaint is made to the appropriate regulator, the expert could be subject to disciplinary action including removal or suspension from the register.

Some experts are also members of professional or representative bodies, some of which may set standards, set training requirements and provide accreditation schemes. A system of voluntary accreditation has been established for organisations holding voluntary registers of people working in a range of health and social care occupations. The Accredited Voluntary Registers (AVR) scheme was launched in December 2012 and is administered by the Professional Standards Authority for Health and Social Care (PSA). Organisations can apply to the PSA for accreditation of their register and a list of accredited registers will be available on the PSA website<sup>5</sup>. An organisation accredited by the PSA will have demonstrated that it has in place effective processes for setting standards and that it is administered effectively.

The medical, nursing and midwifery Royal Colleges are also expected to have an interest, as are other organisations such as the British Medical Association. Some experts belong to membership organisations for experts, such as the Expert Witness Institute or Academy of Experts, which set their own entry requirements. Other experts receive work via an agency which may impose its own requirements or conduct checks on qualifications and credentials. However, there is no requirement for an expert to belong to an experts' organisation, and a decision on whether to join a professional network may depend on the amount of expert witness work the expert undertakes as an adjunct to their main professional activities.

## **Reputation and the operation of the market**

Experts are usually selected by solicitors who are responsible for instructing them on behalf of their client and who have an interest in trying to secure an appropriately qualified and experienced expert. This means that some pressure is also exerted by the market. We understand it is common practice for a party's solicitor to use an expert they know and trust wherever possible, or to seek a recommendation from another local solicitor. Local networks around individual courts mean that a poorly performing expert may gain a poor reputation fairly quickly due to 'word of mouth'. While this may be a reasonably effective mechanism in some areas, it depends on good local networks and may not prevent a particular expert being commissioned again in another part of the country. Feedback reported to the Family Justice Review also suggested that in some cases an expert may be instructed because they are known and trusted, when another, unfamiliar expert might have more appropriate skills and experience. This may have the effect of reducing the pool of possible experts and increase the likelihood of delays to cases if the preferred expert is not immediately available.

## **Summary of the problem**

Despite the existence of checks and balances in the system, feedback collected through the Family Justice Review indicates there are ongoing concerns about the quality of some expert witness reports. Definitive evidence is limited as there is no formal system to review the quality of expert reports, and the

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<sup>5</sup> <http://www.professionalstandards.org.uk/>

content of reports is subject to restrictions on disclosure due to the sensitivity of the issues involved. We are aware of two recent academic studies which consider the quality of expert reports and which provide a mixed picture in terms of the quality of expert evidence<sup>6</sup>. Occasional reports in the media draw attention to instances of individual experts being referred to a regulatory body following a complaint, or have highlighted cases in which expert evidence has been disputed on appeal.

An expert opinion on matters that are not within the skills and experience of the court can provide great assistance to the court to reach a decision based on sound evidence (for example, the likely cause of injuries to a child). However, poor quality evidence may mean that the court does not have the best information on which to make a decision. We believe that deficiencies may arise due to poor methodology or lack of appropriate skills and experience relevant to the particular case (i.e. weaknesses in professional knowledge). We understand they could also result from weaknesses in presentation of the evidence, or a lack of understanding of the particular role of the expert in a court situation (i.e. weaknesses in understanding of the application of professional knowledge to a specific setting).

Weaknesses in expert evidence can increase delays and costs and represent poor value for money. For example, it might be necessary to ask further written questions of the expert, ask them to clarify their report, or ask them to attend court to explain or expand upon their evidence, all of which could potentially delay the proceedings. If the expert report is unsuitable and fails to adequately address the issues identified by the court, the court may not have sufficient evidence to resolve the case. In these circumstances, the court might even consider it necessary to commission another expert to repeat some of the work in order to provide sufficient assurance that decisions are being made on the basis of sound evidence. As well as representing poor value for money for public funds, this could potentially lead to further delays.

There are a large number of organisations who have some interest in the role and quality of experts in the family courts, each with different roles and responsibilities. In many cases their interest will be confined to a particular profession, of which expert witness work may only be a peripheral activity for many of their members. While there are a plethora of interests, there is no single umbrella body or network that could take a clear lead on developing and monitoring minimum standards across a very diverse range of professions. The Government therefore intends, working with the courts and judiciary, to introduce standards for experts to ensure action is taken to address the issues identified in the Family Justice Review. The aim of the standards is to ensure that experts who are instructed in family proceedings relating to children have the necessary professional knowledge and experience, and the skills to apply these appropriately to meet the needs of the family courts.

## **Scope of the draft standards**

The draft standards which are the subject of this Impact Assessment have been developed as a response to the Family Justice Review's concerns about the quality of some expert evidence, particularly in public law proceedings. The Government considers that the standards are also highly relevant to private law cases relating to children such as the making of arrangements for the future care of children (e.g. contact and residence), which similarly involve the court in important decisions about a child's welfare and upbringing, and often involve similar types of expert.

However, we do not consider that the standards translate well to the position of experts in other private law family proceedings concerning divorce and dividing finances. These were not the focus of the Family Justice Review's concerns relating to experts and therefore we do not currently have evidence on

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<sup>6</sup> *The Contribution of Experts in Care Proceedings. Evaluation of Independent Social Work Reports in Care Proceedings* (April 2012). Available from [www.cisw-uk.org](http://www.cisw-uk.org). Also *Evaluating Expert Witness Psychological Reports: Exploring Quality*, Summary Report (February 2012). Available from [www.uclan.ac.uk](http://www.uclan.ac.uk)

which to determine whether Government intervention is needed. In these proceedings, the permission of the court is not required to instruct an expert and therefore the court would not be in a position to control which expert was selected or to assess their suitability prior to instruction.

The preferred option is therefore to apply the standards, at least initially, to family proceedings relating to children only. Parties in other proceedings could, if they wished, use the standards as a guide when deciding which expert to instruct.

The main impact of these proposals will be on experts who provide evidence in family proceedings relating to children. These experts come from a wide range of professions including social workers, psychiatrists, psychologists and other medical professionals. There will also be an impact on solicitors responsible for instructing experts.

The proposals may also affect others involved in family justice, specifically the following groups:

- Parties involved in family proceedings including families and children.
- HM Courts and Tribunals Service (HMCTS).
- The Judiciary.
- Local authorities.
- Cafcass (Children and Family Court Advisory and Support Service) and CAF/CASS Cymru.
- The Legal Aid Agency (LAA), which administers the legal aid fund.
- Other legal professionals working in family justice.
- Charities and other voluntary groups working in family justice.
- Other court users.
- Professional and regulatory bodies for experts.

## **How will the standards work?**

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

The court's permission is already required before an expert can be instructed in family proceedings relating to children. It is proposed that the court would only give permission if it is satisfied that the proposed expert meets the standards, on the basis of information supplied by the party wishing to instruct the expert, or by their solicitor if they are represented. In publicly funded cases<sup>7</sup> (where one or more of the parties is in receipt of legal aid), it is proposed that solicitors may only instruct experts who meet the relevant standards. Instructing solicitors will need to confirm to the LAA<sup>8</sup>, when making an application for payment and/or prior authority, that the expert meets the standards or why exceptionally they do not. Before agreeing payment, the LAA will expect to see evidence to show that the instructing solicitor has made reasonable efforts to assure themselves that the expert meets the standards, and it

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<sup>7</sup> Changes to the legal aid scheme took effect in April 2013 which mean that legal aid funding remains available in public law proceedings, but that most private law proceedings are out of scope of the new scheme. There are important exceptions, for example, where domestic violence is an issue or where the court has decided that the child should be made a party to the proceedings.

<sup>8</sup> The Legal Aid Agency (LAA) began administering legal aid from April 2013 following the abolition of the Legal Services Commission (LSC).

will produce guidance on this issue. The expectation is also that experts should certify that they meet the standards and that a certificate of this kind could form part of the expert's report, the contents of which are verified by a 'statement of truth'.

Following consultation, the President of the Family Division, Sir James Munby, has indicated that he will draw on the standards when considering issuing to the judiciary further practice guidance on the use of experts. Professional and regulatory bodies will also be able to take the standards into account when dealing with any complaints about experts that relate to the quality of their evidence. More detail on the approach is provided in the accompanying consultation paper.

## **Economic Rationale**

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

In this case we believe that government intervention is justified on efficiency grounds. Expert reports play an important role in assisting the court to resolve family proceedings relating to children and, without reports from experts that meet the appropriate standard, inefficiencies are introduced into the process, including case progression. The introduction of standards for experts would introduce some cost in complying with and monitoring these standards including for experts, solicitors, the courts and LAA however overall we feel these additional costs are necessary for the improved efficiency in the provision of expert reports to support family law court decisions in proceedings relating to children.

## **Cost and Benefits**

This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

## **Base Case / Option 0**

This is the do-nothing option.

Under this option, it is assumed that the existing controls discussed above would continue to operate in the same way as they do at present, and that concerns remain about the quality of some expert evidence.



Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV)<sup>9</sup>.

## Option 1

- Introduce new minimum standards in family proceedings relating to children and make compliance a condition of funding in all publicly funded cases (preferred option).

Under this option, the standards would be monitored and enforced through existing mechanisms combined with enhanced court scrutiny of applications to instruct an expert using information supplied by parties or their solicitor and self-certification by the expert that they meet the standards. There would be a contractual obligation on solicitors with legal aid contracts to apply the standards when instructing an expert.

The expected benefits of option 1 are greater consistency in the quality of expert reports provided in family proceedings relating to children; in turn this is expected to have benefits for these cases including greater assurance for decision makers and potentially reduced case durations. No change to case outcomes is expected. There may be transitional costs for experts and solicitors as they familiarise themselves with the standards and experts ensure they meet those standards. There will be ongoing costs for solicitors in checking that the expert they wish to instruct meets the required standard and for courts and the LAA in monitoring this.

## Costs of Option 1

### *Familiarisation costs*

There will be some familiarisation costs for experts, parties and their legal representatives, HMCTS staff, the judiciary, Cafcass/CAFCASS CYMRU, local authorities and professional and regulatory bodies for the professions from which experts are drawn. Familiarisation costs will include time spent understanding what the standards are, and how they are to be applied and monitored. We are not able to estimate these familiarisation costs due to the range of individuals involved and the different approaches taken. However this is expected to be limited and confined to reading through a standards guidance document.

### Experts

Experts may incur some one-off and/or ongoing costs associated with updating their curriculum vitae (CV), or in providing information to parties wishing to instruct them, to demonstrate that they meet the standards. Some experts may also incur some costs arising from additional training or Continuing Professional Development (CPD) activities or to register with a professional body if this is necessary to enable them to meet the standards. The amount of time and/or cost will vary depending on the individual and profession concerned and as such we are not able to provide an estimate. We believe that for many experts the impact will be fairly minimal as they are likely to have sufficient experience and qualifications, as well as familiarity with the requirements set out in the Family Procedure Rules and experts Practice Directions, to be able to demonstrate that they meet the standards without requiring any additional training or development. Where an expert does not meet the required standard and chooses not to update their skills to meet the standards then they would no longer be commissioned to provide reports and solicitors would switch to alternative experts who do meet the standards. This may lead to a slightly reduced pool of experts for solicitors to draw on.

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<sup>9</sup> The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

It is possible that there may be some redistribution of work as some experts might no longer be instructed as a result of these proposed changes, and the available work might transfer to other experts instead. This may include some doctors (for example recently retired doctors) who are registered with the General Medical Council as a medical practitioner, but do not hold a licence to practise. Doctors who are not undertaking clinical work may choose to retain registration but not participate in the revalidation process which is necessary to retain a licence to practise. It is proposed that doctors would need to maintain a licence to practise in order to meet the standards.

Experts should not incur any additional cost associated with undertaking their assessment and producing a report for the court. The fees that experts receive will not therefore change as a consequence of the standards.

### Parties or their legal representatives

Practice Direction 25A already includes an expectation that enquiries are made of the expert before permission is sought to instruct and that CVs or other similar information are available to the court. However, parties responsible for instructing an expert or their legal representative may need to spend some additional time checking that the proposed expert has provided information to demonstrate that they meet the standards, and in ensuring that information is available to satisfy the court of the expert's credentials. We think this is likely to be fairly limited and may include, for example, accessing an on-line database on the website of the appropriate regulatory body to check that an expert they have not used before, or have not used for some time, is registered. The instructing solicitor would also need to ensure the information collected was retained on file for the purposes of assessment of bills by the LAA or the court at the end of the case. This could affect local authority solicitors in publicly funded cases, and Cafcass/CAFCASS CYMRU in publicly funded cases or privately funded cases where the child is a party to the proceedings.

Any additional costs incurred as part of ensuring that an expert meets the standards and maintaining records to demonstrate this to the court or LAA are expected to be small and this is not expected to result in any increased costs in publicly funded cases.

### HMCTS and the judiciary

While the court is already expected to approve the instruction of an expert in proceedings relating to children, the judge in charge of the case might in future decide to spend more time scrutinising the CVs of experts or other documents to satisfy themselves that the party or their solicitor has proposed an expert who meets the standards. We expect the additional time commitment involved to be fairly small. We expect that any additional time commitment will be offset by court rule changes that we expect to result in fewer expert reports being commissioned.

We do not expect there to be a change in the overall cost of a case and therefore no change in court fees is anticipated.

### Legal Aid Agency

There may be limited additional administrative costs for the LAA associated with time spent checking files when bills are assessed at the end of the case to ensure information is on file to show that the expert has met the standards. The LAA currently monitors bills and therefore processes are already in place to raise queries around data submitted and therefore any additional impact is expected to be small.

Where evidence has not been provided that an expert meets the required standard, the LAA would not pay this aspect of the solicitor's bill. In publicly funded cases experts are instructed directly by solicitors and the contract between these two parties will determine who bears the cost of non payment.

## Families and Children

There should not be any costs for families or children in publicly funded cases (i.e. all public law proceedings).

In private law proceedings relating to children in which the parties are not publicly funded, as well as the costs noted above in relation to parties instructing an expert, it is possible that experts might seek to pass on any additional costs associated with compliance with the standards in the form of higher fees.

## **Benefits of Option 1**

### Experts

Experts as a whole are not expected to benefit financially as a result of the policy. The distribution of work may change, which might mean that some experts no longer receive an income from this work while others experience an increased income. Experts may experience a non-monetary benefit in terms of enhanced reputation and status and increased public confidence in their contribution.

### Parties or their legal representatives

Parties or their legal representatives could incur time savings arising from instructing experts who are more experienced and better prepared to understand and meet the needs of the court. As a result they could spend less time dealing with queries from the expert or in having to clarify the expert's evidence. They could also benefit from time (and cost) savings if improved expert evidence reduces the number of contested issues in the case.

This analysis assumes there is no change in case outcomes however there may be improvements to the level of assurance and certainty that the outcome has been informed by good quality evidence.

### HMCTS and the judiciary

There may be time savings for HMCTS and the judiciary if the policy results in better quality expert evidence (for example less time needed to probe or clarify the evidence). It is expected that any reduction in HMCTS staff resources would generate an efficiency benefit but not a financial saving, and would be used to reduce delay in other cases. The judiciary may benefit from improved expert evidence that better supports them to reach a decision on the outcome of the case.

We do not expect there to be a change in the overall cost of a case and therefore no change in court fees is anticipated.

### Cafcass/CAFCASS Cymru and local authorities

Cafcass/ CAFCASS Cymru and local authorities could benefit if there are improvements in expert evidence which mean that fewer demands are placed on local authority social workers or guardians to provide information that might otherwise be provided by the expert. They could also benefit if improved expert evidence reduces the number of contested issues in the case. It is expected that any reduction in staff resources would generate an efficiency benefit but not a financial saving, and would be used to reduce delay in other cases.

In addition, local authorities usually pay a proportion of the costs of expert reports in care and supervision proceedings, so the benefits described below in relation to the LAA would also apply.

No change in case outcomes is expected but Cafcass/CAFCASS Cymru will benefit from the increased assurance relating to case outcomes.

## Legal Aid Agency

If the quality of expert evidence is improved, this could help to ensure value for money for public funds and therefore benefit the LAA. It is not possible to quantify any effect and we assume this will not translate into financial savings. Improved evidence could translate into shorter, more focused work by the expert, or a more thorough analysis and identification of additional issues that increases the amount of work involved. The LAA could also benefit if better quality evidence increases the efficiency in which the case is dealt with, for example by reducing the number of contested issues in the case, the likelihood of the expert being called to give oral evidence, or the need to commission a further expert.

## Families and Children

Families and children may benefit from increased confidence in the court's decision making if the standards result in improvements in expert evidence. They could also benefit if improved expert evidence reduces the number of contested issues in the case. This could reduce uncertainty and stress for families and children.

## **Risks and Assumptions**

While improved expert evidence may provide better support to the courts in reaching a decision, we have assumed that there will be no overall impact on case outcomes. Expert evidence is only one of many factors that the court must weigh up in deciding the outcome of cases and we have assumed that overall, any improvement in the quality of expert evidence is no more or less likely to lead to the court making (or not making) a particular court order in future.

Information on the supply of experts is limited. As experts are instructed and paid by solicitors, the LAA does not currently collect information on the volume of experts who are instructed in publicly funded cases. Feedback reported to the Family Justice Review indicates there may be difficulties with supply in some areas, although it is not clear whether this is a consequence of solicitors preferring to instruct an expert from the pool of those already known to them or due to an overall lack of supply.

There is a risk that the introduction of minimum standards will have an impact on the supply of experts if some experts are unable to meet the standards, or are only able to meet them following further training.

Where expert reports are currently of an inadequate standard we have assumed that this impacts on case duration as further clarification is sought from the expert. However if alternative experts are commissioned in this scenario then in addition to case delay this is also adding additional demand for expert reports and cost to the system. If new standards were introduced and our assumption was correct we would expect additional savings from fewer experts being commissioned. However experts may see a decline in demand for reports. Even if this is the case we expect this impact to be small.

There is a risk that new standards for experts could reduce the number of experts available to undertake reports in family proceedings relating to children. We have assumed that most experts who do not currently meet the standard will upgrade their skills or memberships to meet the new standard, however, if this does not happen it could limit the pool of available resources. If a reduction were to impact the number of experts available for cases it could impact case duration.

Separate legislative measures designed to reduce the overall use of experts in family proceedings relating to children should reduce the risk that any fall in supply arising from the standards will have an adverse impact on the conduct of court proceedings.

If the pool of suitable experts is reduced, parties wishing to instruct an expert could incur additional costs arising from time spent trying to find a suitable expert. It is possible also that there could be pressure to pay higher rates to the remaining experts active in the market. This could affect legal aid and local authority costs in publicly funded cases. In private law proceedings relating to children, non legally-aided parties might also be affected. If the pool of experts reduced and it became more difficult for parties to

instruct a suitable expert (for example, in a particular specialised field or within a particular part of the country) there could be an adverse impact on children and families if cases were delayed.

In addition there is a risk that experts might try and pass on any additional costs associated with compliance with the standards. If that were to happen then the LAA might incur additional costs, although maximum hourly rates are set down in regulations for many types of expert which can only be exceeded in exceptional cases. This could also impact privately funded individuals if experts increased their hourly rates in general.

The analysis assumes that benefits to LAA will be limited to any savings from the instruction of experts. However if these changes result in fewer contested cases that can be resolved quicker or in some cases without an additional hearing then there may also be a benefit in lower solicitor legal aid costs.

If the quality of expert evidence improves and the confidence of parties involved in cases increases as a result of the standards, there could be fewer appeals linked to expert evidence. On the other hand, it is possible that awareness of the standards might encourage more appeals on the basis that an expert's evidence was flawed because they had not demonstrated fully that they met the standards. It is assumed that existing judicial controls on which experts are instructed will mean that such cases are limited and that the standards will not have an impact on the overall number of appeals linked to expert evidence.

Existing professional and regulatory bodies could experience an increase in complaints if individuals involved in proceedings, as a result of their awareness of the standards, feel more inclined to make a complaint about an expert. On the other hand, if the standards lead to better quality expert reports, this could decrease the likelihood that individuals involved in proceedings would wish to make a complaint.

### **One In, One Out Impact**

The proposals are out of scope of a One In One Out assessment as they only relate to public spending and public procurement.