

Experts in the child protection system in the UK

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2. In the U.K

In England experts are contacted by the relevant solicitors/lawyers for the various parties in the case (i.e., in a criminal case by either the defence or the prosecution and in a civil case by any of the legal team representing any of the parties). AND

“...information relating to children proceedings may be communicated only to an expert whose instruction by a party has been permitted by the court because children proceedings are confidential.” (Ministry of Justice, Practice Direction 25c, 2017).

I'm not aware that “any profession is given specific priority to conduct assessments and evaluations for the court in CPS” (perhaps medical experts?).

3. Guidance for experts.

As far as I am aware there are no “...(evidence based) guidelines/protocols/interview guides that experts in the UK employ in their work with children in child protection”.

In the UK a variety of organisations have run/organised courses for becoming/being an expert in child protection and other types of cases.

(Guidance to police and social workers about how best to interview children is in the government’s guidance entitled ‘Achieving Best Evidence...’ (that we initially wrote for its first publication in 2002 – it has been updated in 2007, 2011 and 2023; doing an online search for ‘Achieving Best Evidence’ will access it).

4. A critical research study

‘Evaluating expert witness psychological reports: Exploring quality’ was a research study (2012) by a UK professor of psychology (Jane Ireland) that was requested and partly funded by the official ‘Family Justice Council’.

This research document examined 126 ‘expert’ psychologists’ written reports provided in family court proceedings. The research document’s findings were disturbing – over two thirds of the experts’ reports were evaluated by the professor’s research team as (supposedly) being ‘poor’ or ‘very poor’.

In addition, the research document asserted that some of the experts accepted instructions to provide psychological reports on topics about which they were not qualified (based on their CV that they attached to their report).

5. A critical research study (cont'd.)

Particular areas of concern regarding the quality of reports were:

- **an over-reliance on psychometric tests, use of defunct assessments, and using assessments with no validity;**
- **the under-use of recognised methods to assess risk;**
- **a proportion of experts commenting on mental health issues and yet having no indicated background in that area.**

6. A critical research study (cont'd.)

Psychologists' 'fitness to practise' is regulated by the 'Health and Care Professionals Council' (HCPC).

After receiving a number of complaints from other psychologists (some of whom might have written a number of the court reports focussed on in the research),

the 'Conduct and Competence Committee' of the HCPC instigated a disciplinary hearing regarding the professor's conduct regarding this research.

I was commissioned to be an adviser to the hearing.

7. A critical research study (cont'd.)

The allegations/complaints included

- (i) that the professor's search team examined 126 expert reports at a variety of courts without seeking the consent (a) of the authors of the reports or (b) of the persons about whom the reports were written;**
- (ii) that her research team did not redact from the reports information that identified whom the reports were about;**
- (iii) that the headline conclusion that 'one-fifth of experts are not qualified' was not supported by the data presented in the report;**
- (iv) that the professor presented alleged 'unsubstantiated conclusions' arising from her report in a national newspaper and on a national television news programme;**
- (v) that the professor failed to declare a conflict of interest;**
- (vi) that she threatened some of the psychologists with legal action if they did not withdraw their complaints.**

8. A critical research study (cont'd.)

The main allegation was that these ‘charges’/allegations constituted misconduct and/or a lack of competence, impairing her fitness to practise. Should this main allegation have been found to be supported, the professor’s registration with the national ‘Health and Care Professionals Council’ would have been cancelled. After a quasi legal hearing lasting several days, all of the charges/allegations against the professor were dismissed/deemed to be un-founded.

9. A brief history of psychologists as expert witnesses in family law, by Lisa Wolfe. *Clinical Psychology Forum* 273 – September 2015.

In England the official *Family Justice Review* (2011) transformed the way expert witnesses are perceived and instructed, meaning that child protection social work professionals were now to be the designated ‘experts’ responsible for undertaking complex parent, child and family assessments and writing court reports, with independent ‘experts’ (such as clinical psychologists) only being instructed when the case managing judge deems it to be absolutely necessary.

10 (of 21). A brief history of psychologists as expert witnesses in family law (cont'd.)

By May 2013, the Ministry of Justice, as well as some tabloid newspapers, were issuing statements referring to expert witness assessments as 'time-consuming evidence which adds little value in helping judges reach a decision',

suggesting that 'the so-called experts who provide evidence which is simply not up to scratch will be driven out' (Ministry of Justice, Lord McNally & Family Justice Council, press release, 16 May 2013) and that delays in court cases were being brought about by 'poor quality evidence'.

The 2012 report by Professor Jane Ireland could well have had an influence on this.

11. A brief history of psychologists as expert witnesses in family law (cont'd.)

Changes to the legal aid system have been taking place since 2012, resulting in total cuts in hourly rates paid to expert psychologists of around 30%.

There has also been the 'capping' of hours permitted for each expert assessment by the Legal Aid Agency. The 'capping' limits were generated not by clinicians but by civil servants. They do not reflect the hours needed to complete a complex report, but from 2014 these 'benchmarks' have been applied by many courts -

and solicitors have become unwilling to risk delay and potential wrangling with legal aid offices over higher claims.

12. A brief history of psychologists as expert witnesses in family law (cont'd.)

Dr Judith Freedman of the 'Expert Witness Consortium' undertook a survey (May 2013) which reported that a third of the membership of more than 600 expert witnesses (most being senior professionals with between 15 to 30 years family court experience) had withdrawn from family/child court work and more were expected to follow in the wake of further 20 per cent legal aid cuts in hourly rates in combination with the Legal Aid Agency guidelines on how many hours an expert assessment 'should' take.

The 'Expert Witness Consortium' noted that there had been a drastic reduction (more than 70 per cent in many areas) of expert witness assessments being allowed by the courts.

13. A study comparing England and Norway

'Social workers and independent experts in child protection decision-making: messages from an inter-country comparative study' by Jonathan Dickens, Jill Berrick, Tarja Po, and Marit Skivenes.

British Journal Of Social Work, 2017, 47(4), 1024-1042.

<https://doi.org/10.1093/bjsw/bcw064>

In this article the views of relevant social workers (especially in England and Norway) are compared regarding the use of 'experts' in child protection.

14. A study comparing England and Norway (cont'd.)

'The use of independent experts gives us an important second opinion'

	Finland	Norway	England	California
Strongly agree/ agree	57%	72%	38%	61%
Neither agree nor disagree	28%	22%	47%	21%
Strongly disagree/ disagree	15%	6%	15%	18%

Here the above data indicate low agreement in England (but high agreement in Norway).

15 (of 21). A study comparing England and Norway (cont'd.)

'The use of independent experts elicits a child focussed process'

	Finland	Norway	England	California
Strongly agree/agree	34%	26%	19%	25%
Neither agree nor disagree	40%	50%	42%	52%
Strongly disagree/disagree	26%	24%	39%	24%

Here the above data indicate low agreement in England (and in Norway).

16 (of 21). A study comparing England and Norway (cont'd.)

'The use of independent experts makes our care order case stronger'

	Finland	Norway	England	California
Strongly agree/agree	53%	60%	24%	63%
Neither agree nor disagree	37%	31%	43%	22%
Strongly disagree/disagree	10%	9%	33%	15%

Here the above data indicate low agreement in England (but higher agreement in Norway).

17. *'Psy' expert evidence in the family courts: The potential for corpus-assisted analysis*. Devine, Parker, Harrington & Makouar, Aston University, UK (2022).

"This article...analysing expert psychologists' reports used in public family law (child protection) cases."

Analysed a written corpus consisting of 25 expert psychologists' reports, being a random sample selected from a population of all psychologists' reports held in a relevant organisation's files over a 10-year period.

- **Important legal terms were used less frequently than might reasonably be expected given their prominence in the primary and secondary legislation,**
- **there was a general lack of clarity in the reports to demonstrate experts sufficiently understand how best to use legal terms to assist the court.**

18 (of 21). “This article...analysing expert psychologists’ reports used in public family law (child protection) cases” (cont’d.).

The single most significant omission in relation to the legal terms is the lack of reference to the terms denoting the legal threshold justifying the legal proceedings, ‘significant harm’, which only appeared in 2 of the 25 reports.

This is surprising as it seems a reasonable assumption that salient, threshold legal terms would feature highly in the reports.

19 (of 21). “This article...analysing expert psychologists’ reports used in public family law (child protection) cases” (cont’d.).

There was a widespread use of generally unquantified phrases/terms... we found the terms were used without specific reference to how they should be quantified, which reflects their use in general English rather than specialised expert evidence.

In only 3 of the 25 reports was risk quantified, little information was provided as to how that assessment was made...the expert evidence was unable to establish the thresholds between, for example, harm or significant harm; no risk, or some risk, or high risk. These are the very issues where the court needs most guidance...experts are...unlikely to provide the information the courts hope for.

20 (of 21). “This article...analysing expert psychologists’ reports used in public family law (child protection) cases” (cont’d.).

- **there was a high frequency of references to *psychological testing* without specific explanation to assist the court in interpreting the meaning of the tests and the results**
- **regardless of how the reports were organized, it was observed that there were frequent mentions of psychological tests, but there was *no information on how the conclusions in the reports had been drawn from the results of the tests, or discussion of the tests’ reliability***
- ***no information is provided regarding the experts’ preparation for the interview, how they carried out the interview itself and how they went about making a record of the interview (for example, synchronously or asynchronously)***

21. End

If there is time, I can briefly talk about

- (i) the child case in which the defence 'expert' was wrong about the effect of delay (plus subsequent item in Private Eye),**
- (ii) my cases involving Martin and I having to go into a room together,**
- (iii) New Zealand case defence expert's report,**
- (iv) The case I've been working on in which the (mother's) lawyer's view of the interviewing (six interviews with a young child) was that it was of a very poor quality. But my opinion is that much of the child's provision of incriminating information (about sexual abuse by his parents) was not the result of poor/unskilled interviewing.**