

ROYAL COURT OF JERSEY

FD 25/01

RESTRICTION ON THE USE OF EXPERTS IN FAMILY PROCEEDINGS IN THE FAMILY COURT

Application

- 1.1 This Practice Direction supplements Part 4 of the Children Rules 2005 and Part 7 of the Matrimonial Causes Rules 2005 and applies to all private law family proceedings in the Family Division of the Royal Court of Jersey whether before the Family Judge or the Inferior Number (the “Court”) including proceedings under the Children (Jersey) Law 2002 and Matrimonial Causes (Jersey) Law 1949.
- 1.2 The purpose of this Practice Direction is to restrict the use of expert evidence to that which the Court considers is necessary to assist the Court in resolving proceedings justly, having regard to the welfare of any child involved, the efficient management of court resources, and the need to avoid undue delay or expense;
- 1.3 For the avoidance of doubt, any decision made by the Court in response to an application under this Practice Direction is a case management decision.

Overriding Objective

- 2.1 In applying this Practice Direction, the court and the parties must have regard to the overriding objective in Rule 4 of the Children Rules 2005 and Rules 47 of the Matrimonial Causes Rules 2005 to deal with cases justly, ensuring, inter alia, that:
 - 2.1.1 the case is dealt with expeditiously and fairly and with minimum delay;
 - 2.1.2 the welfare of any child with whose interests the Court is concerned is safeguarded;
 - 2.1.3 the case is allotted an appropriate share of the court’s resources; and
 - 2.1.4 the use of and cost of expert evidence is necessary and proportionate to the issues in dispute.

General Rule: Restriction on Expert Evidence

- 3.1 Expert evidence may not be put before the Court in family proceedings unless the Court grants permission.

- 3.2 The Court will only grant permission if it is satisfied that the expert evidence is necessary to assist the court in resolving the proceedings justly. Evidence that is merely “reasonably required” or “helpful” will not suffice.
- 3.3 In determining whether expert evidence is necessary, the Court must consider, inter alia:
- 3.3.1 the issues in the proceedings to which the evidence relates;
 - 3.3.2 whether the evidence can be provided by a non-expert witness, such as a social worker, guardian, or a party to the proceedings;
 - 3.3.3 the impact of admitting the evidence on the timetable, duration, and conduct of the proceedings;
 - 3.3.4 the cost of the evidence and whether it is proportionate to the value and complexity of the case;
 - 3.3.5 whether the evidence is likely to duplicate existing material or evidence before or available to the court; and
 - 3.3.6 any risk to the welfare of a child or vulnerable party arising from delay or the nature of the evidence being sought.

Definition of an Expert

- 4.1 For the purposes of this Practice Direction, an “expert” is a person who provides expert evidence for use in proceedings. This includes but is not limited to, individuals or teams providing opinions beyond the knowledge of the court, such as psychologists, psychiatrists, medical professionals, independent social workers, accountants, chartered surveyors, pension experts or other valuers or assessors.
- 4.2 A specific application under this practice direction is not required for:
- 4.2.1 an initial marketing evaluation by an estate agent for the purposes of an application for ancillary relief or an application made under Schedule 1 of the Children (Jersey) Law 2002 unless a party proposes to seek the court’s permission for an agent to give live evidence to the court or proposes to instruct a second estate agent. If such an application is not agreed by the other parties, an application needs to be made to the Court in accordance with this Practice Direction;
 - 4.2.2 a written valuation of chattels with individual value of less than £10,000;
- 4.3 Although these individuals are treated as experts by the court, for the avoidance of doubt, evidence provided by a Jersey Family Court Advisory Service (“JFCAS”) officer, a social worker employed by Children’s Social Care, or a

guardian appointed by the Court is not expert evidence for the purposes of this Practice Direction (requiring a separate application to be made for such evidence to be adduced, unless the Court directs otherwise).

Procedure for Seeking Permission

- 5.1 A party seeking to adduce expert evidence must apply to the Court for permission to admit expert evidence on notice as soon as possible and no later than the first hearing at which the issue requiring expert evidence is identified, unless the Court directs otherwise.
- 5.2 The application must be made in writing and on not less than five days' notice to the Court, and to all other parties, supported by written evidence sworn by the advocate with conduct of the application (or by the party seeking the order if not represented), clearly setting out:
 - 5.2.1 the name and field of expertise of the proposed expert including their curriculum vitae which identifies how their expertise is relevant to the issue which the court needs to determine;
 - 5.2.2 a concise statement of the issues the expert is intended to address;
 - 5.2.3 a draft letter of instruction including the proposed specific questions which the expert is expected to answer, which must be within their expertise and relevant to the proceedings;
 - 5.2.4 an explanation of why the evidence is necessary and cannot be provided by existing evidence or a non-expert witness;
 - 5.2.5 a draft timetable for the preparation and filing of the expert's report;
 - 5.2.6 an estimate of the costs and confirmation of funding arrangements; and
 - 5.2.7 a draft order for the court's consideration.
- 5.3 Where proceedings have been issued under the Children (Jersey) Law 2002 and the application for expert evidence is asserted to be necessary to enable the Court to make that determination, the application must also delineate in specific terms how obtaining the requested expert evidence is in the best interest of, and meets the welfare of, the child as required by article 2 of the Children (Jersey) Law 2002.
- 5.4 An application to the Court is required in all cases under this Practice Direction if a party proposes calling an expert to give evidence to the court at a substantive hearing.

Preference for Single Joint Experts

- 6.1 Where expert evidence is deemed necessary, the Court will ordinarily direct that it be provided by a single joint expert (SJE) instructed by all parties, unless there are exceptional circumstances justifying separate experts.
- 6.2 Exceptional circumstances may include a significant conflict of interest, the complexity of the issues requiring distinct expertise, or evidence that a party's case would be unfairly prejudiced without separate representation.
- 6.3 The court may direct discussions between experts to narrow areas of disagreement before permission for separate experts is granted.

Restrictions on Unregulated Experts

- 7.1 Expert evidence will only be permitted from individuals regulated by a recognised statutory or professional body unless the court directs otherwise.
- 7.2 The court may only permit evidence from an unregulated expert in exceptional circumstances and only if:
 - 7.2.1 no regulated expert is reasonably available in the relevant field;
 - 7.2.2 the unregulated expert demonstrates exceptional qualifications, experience, and adherence to standards equivalent to those of a regulated professional; and
 - 7.2.3 the evidence is critical to the just resolution of the proceedings; and
 - 7.2.4 the unregulated expert confirms in advance that they are otherwise willing to comply with the requirements and expectations placed by the Court on experts as set out in this Practice Direction and Schedule thereto.

Duties of Experts

- 8.1 Experts permitted under this Practice Direction must comply with the duties set out in the Schedule to this Practice Direction, including the overriding duty to assist the Court impartially on matters within their expertise, irrespective of the identity of the party providing instructions or payment for their services.
- 8.2 The expert's report must be addressed to the Court, comply with the content requirements set out in Schedule to this Practice Direction, and include a statement of truth verifying the report's accuracy and independence.

Review and Control by the Court

- 9.1 The Court retains the power to limit the scope of expert evidence, exclude unnecessary evidence, or revoke permission if circumstances change or the evidence no longer meets the necessity threshold.
- 9.2 At any stage, the Court may direct that alternative means, such as an article 29 report ordered under Children (Jersey) Law 2002 or a review of existing records, be used instead of expert evidence.

Costs

- 10.1 The Court will have regard to the costs of expert evidence when granting permission and may impose conditions, such as cost-sharing between parties or caps on fees, to ensure proportionality.
- 10.2 Publicly funded parties must comply with any requirements of Legal Aid regarding prior approval of expert costs.

Commencement

- 11.1 This Practice Direction comes into force with immediate effect and applies to all proceedings commenced on or after that date, as well as existing proceedings where an application for expert evidence is made after that date.

SCHEDULE A

General duties on experts instructed in private law family proceedings

1. Court Permission

- 1.1 Experts must have the Court's permission to provide evidence, and the court must have satisfied itself that the expert's evidence input is necessary for just resolution of the dispute or issue to be determined by the court.
- 1.2 Experts should satisfy themselves before accepting instructions that those instructing them have obtained the necessary act of court or court order to adduce expert evidence, particularly if payment for their services is to be made from the Legal Aid Vote.
- 1.3 No payment for expert services from the Legal Aid Vote will be made unless the Court has given permission in advance for the expert to be instructed.

2. Qualifications

- 2.1 Experts appointed must satisfy themselves before accepting instructions to undertake an assessment, prepare a report or appear in Court to give expert evidence that they have the requisite professional qualifications, good standing with their professional or regulatory body and relevant and up to date experience to give the expert evidence which they are instructed to provide.
- 2.2 Experts must be up to date with relevant continuing professional development in the field on which their opinion is sought.

3. Report and Duties

- 3.1 Before accepting instructions, an expert must satisfy themselves that they can provide the opinion in good time for any timetable or listed hearing identified in an act of court.

- 3.2 If an expert is unavailable to attend any hearing at which the Court has given permission for them to give oral evidence, they should alert instructing parties to non-availability before accepting instructions.
- 3.3 The expert shall provide a written estimate of the likely costs of their report and any court attendance authorised by reference to their hourly rate.
- 3.4 In any written report, the expert must detail their qualifications, instructions, and opinions, ending with a statement of compliance with their duty to the Court.
- 3.5 The expert must remain impartial, and must acknowledge in their report that their overriding duty, in preparing a report or giving an opinion or evidence, is to the Court and that this duty and their duty to remain impartial at all times is their primary duty and this takes precedence over the interest of the party or parties who instruct them or who may be responsible for their fees.
- 3.6 The expert shall confine their opinion to the matters material to the issue in dispute and which are within the expert's skill and expertise. Where an expert is asked a question to the answer to which falls outside that expert's skill or expertise, they shall say so at the earliest opportunity.
- 3.7 Where an expert expresses an opinion, they shall take into account and record in their evidence the extent to which their opinion takes into account any particular factors including ethnicity, cultural, societal or religious diversities of parties, or, if relevant, a party's neurodiverse traits, differing abilities or language difficulties or other limitations.
- 3.8 The expert must be prepared to accept written questions about their report or opinion and to produce written responses to such questions within the timetable ordered by the Court.
- 3.9 The expert must be prepared to engage in round table discussions or hot tubbing, if ordered by the Court.

3.10 The expert must notify the parties and the Court in writing if anything causes them to change their opinion or alter their conclusion as soon as is reasonably possible or practicable.

4. Children's Proceedings – additional considerations of confidentiality

4.1 Before permission is obtained from the Court to instruct an expert in children proceedings, the party seeking permission needs to make the enquiries of the proposed expert referred to above in order to provide the Court with information to enable it to decide whether to give permission. In practice, enquiries may need to be made of more than one expert for this purpose. This will, in turn, require each expert to be given sufficient information about the case to decide whether they are in a position to accept instructions. Such preliminary enquiries, and the disclosure of information about the case, which is a necessary part of such enquiries, will not require the Court's permission and will not amount to a contempt of court.

4.2 However, experts whether instructed or in receipt of inquiries about instruction, are expected to acknowledge and understand the confidential nature of all family proceedings and should be particularly aware of the obligations placed on the parties and them by Rule 25 of the Children Rules 2005.

5. **Conflicts of interest and professional indemnity insurance**

Before accepting instructions, an expert must take steps to satisfy themselves that they have no conflict of interest and that they have adequate and sufficient professional indemnity insurance.

6. **Contents of written reports**

The expert must include in their written report:

- 6.1 the expert's name, address, and qualifications;
- 6.2 a summary of the instructions received, and documentation or evidence considered including a recital of any issues or questions they have been asked to address or answer;

- 6.3 an executive summary of their conclusions, opinion or findings;
- 6.4 a description of any tests or examinations conducted, including dates and who was present;
- 6.5 the facts and assumptions upon which their opinions or conclusions are based;
- 6.6 the expert's opinion, with reasons, including any risk assessments relevant to the case;
- 6.7 a summary of any reasonable range of opinions in their field of expertise identifying any opinion which falls outside consensus in a given field, any factual assumptions made, unusual or contradictory or inconsistent features of the case, or whether any opinion is provisional, and why the expert has reached their view;
- 6.8 a statement that the expert understands and has complied with their duty to the court;
- 6.9 the expert's signature and date of their signature.

This Practice Direction will come into force with immediate effect.