



The Bar Council

## **Bar Council response to the Family Procedure Rule Committee consultation on the standards required for expert witnesses: proposed Practice Direction changes**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Family Procedure Rule Committee consultation on the standards required for expert witnesses: proposed Practice Direction changes.<sup>1</sup>
2. The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that is strong, inclusive, independent and influential. We lead, represent and support the Bar in the public interest, championing the rule of law and access to justice by:
  - Providing advice, guidance, services, training and events for our members
  - Inspiring and supporting the next generation of barristers
  - Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
  - Promoting the Bar of England and Wales to develop career and business opportunities for barristers at home and abroad
3. As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

### **Overview**

4. We note that The British Psychological Society (BPS) and the Family Justice Council (FJC) issued guidance on the 1 September 2023<sup>2</sup>, following the case of *Re C*

---

<sup>1</sup> <https://www.gov.uk/government/consultations/family-procedure-rules-new-draft-255a-changes-to-252-and-practice-directions-25b-and-25c>

<sup>2</sup> <https://explore.bps.org.uk/content/report-guideline/bpsrep.2023.inf248c>

*“Parental Alienation”* [2023] EWHC (Fam) 345, on the use of psychologists as expert witnesses in the family courts in England and Wales (‘BPS guidance’).

5. If the BPS guidance is followed by judges when considering a Part 25 application for instruction, it is difficult to understand why the rule changes are necessary, given that the primary aim is to address the same issue.

6. As will be seen from the specific responses to the questions the proposed rule changes lack clarity and are likely to be confusing, rather than helpful. In addition, they are unlikely to solve the problem they are designed to solve and impose further burdens on barristers in navigating matters with their tribunal.

7. We suggest that the Committee reconsider the approach and potentially look to a new cost regime for an “expert” regulated or not who purports to advise the court on matters not within their specific expertise whether regulated or not.

**Question 1: Are there any experts not accounted for in the current draft of the amendments who you feel should be considered? If yes, why do you think they should be considered?**

8. Does UK statutory body mean a UK regulated body, for example, the United Kingdom Accreditation Service (UKAS)? UKAS accredited experts report on a wide range of issues in the family courts including, but not limited to, digital analysis, hair and alcohol testing, and DNA testing. UKAS was established under the UK Accreditation Regulations 2009 and operates under a memorandum of understanding with the government through the Secretary of State for Business and Trade. If it does, it should be clear.

9. The Professional Standards Authority (PSA) for Health and Social Care is a regulatory oversight body overseeing the 10 UK health and care regulators required by law to register professionals and the accredited registers programme for health and care practitioners not regulated by law. Shouldn’t the bodies be set out, such as, The General Medical Council, one of the most important bodies in relation to the provision of expert reporting and to whom adverse reporting of a medical expert is made (not the PSA)?

10. Our understanding is that the Health and Care Professions Council (HCPC) regulates (in alphabetical order), arts therapists, biomedical scientists,

chiroprodists/podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers, social workers in England and speech and language therapists. Only the practitioner psychologist is relevant to the issue driving the practice direction rule changes.

**Question 2: Do you have any feedback on Rule 25.5A and the amendments to PD's relating to the standards of experts, as currently drafted?**

11. We refer to the BPS guidance which provides clarity on what a proposed expert psychologist would need to set out to meet the standard for instruction.

12. Other than on the issue of psychologists, the BPS guidance was already fit for purpose for the myriad of other experts and we have no doubt that for some of the medical experts regularly used, the change will seem an impertinence.

**Question 3: Are there any other comments you would wish to make regarding the instruction of unregulated experts?**

13. We repeat that the changes do not appear to solve the problem they are supposed to address. At the very least if this is the right approach then the rules should be changed to follow the BPS guidance.

14. There is always a shortage of experts, and we do not see how the rule changes will assist given the additional requirements envisaged, which will need to be navigated by all "experts" who currently provide assistance to the court.

15. We repeat that we do not see these proposed changes as solving the problem and are disappointed that parliament declined to consider legislation.

**Bar Council**  
**June 2025**

For further information please contact:  
The General Council of the Bar of England and Wales,  
289-293 High Holborn, London, WC1V 7HZ