



BASW Response to the Ministry of Justice Consultation on Standards for Expert Witnesses in the Family Courts in England and Wales

BASW
16 Kent Street
Birmingham B5 6RD
Tel: 0121-622 8411
Fax: 0121-622 4860:
england@basw.co.uk

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BASW response to Standards for Expert Witnesses in the Family Courts in England and Wales

BASW is the UK professional association for social work, led by and accountable to a growing population of approximately 14,500 social worker members of which 2,000 are independent social workers. Our members work in frontline, management, research and academic positions in all social work settings across the UK. BASW members share a collective commitment to those values and principles that will secure the best possible outcomes for children and young people, adults, families and communities.

Question 1: Do you think that the expert's statement of truth should be amended to include a statement that the expert believes that they meet the standards?

Please indicate yes or no. If you do not agree, please give reasons.

We agree that by amending the statement in this way would make it clearer that the expert is both conversant with the standards and obliged to adhere to them.

Question 2: Do you think it would be helpful if a model template were developed for expert CVs?

We would not object to a model template being made available outlining the main data that needs to be provided by experts about themselves although we do think that this is a matter of course for our members acting in this capacity as expert witnesses.

Please indicate yes or no. Please give reasons.

Question 3: Do you think there should be an open question in the letter of instruction asking the expert to add any additional information which they consider relevant?

Please indicate yes or no. Please give reasons.

Yes, we think this could be a reasonable additional question provided experts are clear about the parameters. It is not unusual for ISWs undertaking this work to unearth information that is not necessarily known by the other agencies which can be highly relevant to the proceedings and therefore, pertinent to the decision-making process.

Question 4: Do you agree that minimum standards are needed for experts involved in family proceedings relating to children?

BASW has always been an advocate for the need for greater standardisation in this work to ensure consistency and quality but we do not think these proposals alone will achieve this; they do not provide an effective means for testing the quality of expert assessments but rather tend to reinforce the qualifying criteria individuals need to meet in order to call themselves experts.

Please indicate yes or no. If you do not agree, please give reasons.

Question 5: Do you have any comments on the advantages and disadvantages of current assurance processes?

The consultation makes a lot of the criticisms that have been levelled at expert witnesses some of which were highlighted in the Family Justice Review. This is

problematic as some of the allegations are not well evidenced and have relied on a 'broadbrush' approach. It is vital that work of such importance is subject to effective scrutiny and analysis. ISWs for example, were singled out unfairly as being superfluous to proceedings, duplicating the work of local authority social workers and Cafcass officers as well as contributing to delays. Thankfully, these 'damning' judgements have been shown to be inaccurate as a result of research conducted by Dr Julia Brophy and her associates from the University of Oxford (**The contribution of experts in care proceedings: evaluation of the work of independent social work assessments Dr Julia Brophy , Charlie Owen, Judith Sidaway, Dr Jagbir Jhutti Johal University of Oxford 2012**). We look forward to the publication of the second stage of this research examining the perspective of the judiciary in relation to independent social work assessments on 5 September 2013 which will add to the evidence base. It is critical that policy development in this area is evidence based and well researched otherwise this could lead to poorer decision making in family courts in respect of the welfare of children.

Please give details.

Question 6: Do you agree with the proposed scope of the standards for experts (family proceedings relating to children)?

We accept that it might not be appropriate to have a wider remit in relation to for example, children affected by divorce proceedings. However, ISWs also operate as expert witnesses in other settings concerning vulnerable adults such as mental health tribunals so perhaps it would be worthwhile looking at synergies between different settings where experts operate as this could be helpful in setting appropriate standards and learning how best to achieve this.

Please indicate yes or no. If you do not agree, please give reasons.

Question 7: Do you consider that there are any components that should be removed from the standards? Please indicate yes or no. Please give details.

Question 8: Do you consider that there are any components that are missing and should be added to the standards? Please indicate yes or no. Please give details.

As we have already stated, these standards are limited in their use and at best formalise what is already in existence in practice.

Question 9: Do you have any comments on the way the standards have been drafted? Please provide alternative drafting suggestions.

Question 10: Do you have any other comments about the standards?

Question 11: Are there other relevant bodies or professions which you consider should be added to those set out in Appendix 1 and Appendix 2 to the standards? Please indicate yes or no. Please give details.

We would like BASW to be included in Appendix 2 of the document given that we are the largest professional association representing social workers in the UK with over 14,500 members. Included in that total are over 2,000 ISWs. All our members are expected to abide by BASW's Code of Ethics for Social Work and accompanying Addendum: Additional guidance for Independent Social Workers we also provide a number of CPD opportunities for our members.

Question 12(a): Have the right impacts been identified in the Impact Assessment? (b) Do you have evidence of other impacts which have not been considered? Please indicate yes or no. Please give details.

Question 13: Are you aware of any potential equality impacts that may result from the proposals? Please indicate yes or no. Please give details.

Whilst we are pleased that ISWs are recognised in this consultation as experts in family proceedings there is still a major anomaly with regards to expert fees and how they have been set for ISWs in comparison with other groups of experts from different disciplines. ISWs had their fees capped to the hourly rate of £30 per hour (equivalent to Cafcass hourly rates of pay) and we understand that this was done on the basis of market forces i.e. the assumption being that Cafcass was the largest contractor of ISWs. This is patently not the case as Cafcass commissions very few ISWs and in any event, the work of a guardian is very different to an independent expert. Most ISWs are contracted by local authorities and are paid substantially more than £30 per hour. We are therefore, extremely concerned that there is a risk of ISWs increasingly withdrawing from this work as they can no longer afford to practice in this arena. Many of our members have already confirmed to us that is the case and a recent piece of research from Cafcass noted that the number of ISWs deployed by family courts had fallen quite significantly. We know that after psychiatrists and psychologists, ISWs are the third most called upon group of experts. Given the valuable and distinct expertise ISWs provide to family courts we very much hope that the Ministry of Justice will appraise the situation with regards to a 'lack of supply' and how this situation can be remedied.

Nushra Mansuri

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