



Department of
Justice

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Examining the use of Expert Witnesses appearing in the Courts in Northern Ireland

POST CONSULTATION REPORT

February 2016

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Department of
Justice
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Contents

1. INTRODUCTION	3
2. BACKGROUND	4
3. SUMMARY OF RESPONDENTS' VIEWS	7
4. GENERAL POINTS	21
5. DEPARTMENTAL RESPONSE	22
6. EQUALITY IMPACT ASSESSMENT	24
Annex A	25

1. INTRODUCTION

1.1 This document is the post consultation report following the Department of Justice public consultation to consider the deployment and remuneration arrangements for those expert witnesses in the justice system in Northern Ireland who are funded from the legal aid budget. The consultation ran from 13 November 2014 to 20 February 2015.

1.2 This report provides:

- a background to the consultation;
- a summary of the views of the respondents;
- the Department's Response; and
- the next steps.

1.3 Further copies of this report and the consultation paper can be obtained by contacting:

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1.4 A copy of this report will be placed on the DOJ website at www.dojni.gov.uk.

1.5 You may make additional copies of this report without seeking permission. If you require further printed copies of this report, we would invite you to access the document through our website and make copies yourself. If you do not have access to the internet and require us to make you further copies, please contact the Consultation Co-ordinator at the address at 1.3 above with your specific request.

1.6 This document can be made available in alternative formats, on request. Please contact the Consultation Co-ordinator and we will do our best to assist you with your request.

2. BACKGROUND

2.1 The public consultation on Expert Witnesses was one of the 38 Projects in the Departmental Action Plan (the Plan) published by the Minister of Justice on 2 July 2012 in response to the Access to Justice Review (the Review). The Plan set out three strategic objectives:

- i. Improving Access to Justice;
- ii. Bringing legal aid within budget; and
- iii. Improving governance and accountability.

2.2 The Review recommended that work be taken forward to develop and implement a strategy for securing expert witness evidence for the Courts on a basis that secured value for money, consulting with stakeholders as appropriate. The Review suggested that in addressing this recommendation consideration should be given to:

- (a) the process by which the need for added value from expert evidence is identified and by which experts are appointed – and the circumstances where one independent expert appointed by the Court would meet the requirements of justice (as opposed to experts being appointed by each party);
- (b) a framework of fixed fees to be paid for experts in publicly funded cases, taking account of market conditions and fee levels set in England and Wales;
- (c) the arrangements for remunerating experts in legally aided cases in a timely fashion;
- (d) the development of registers of suitably qualified experts – working with the Law Society and other jurisdictions;
- (e) the use of video links, IT and written reports to reduce the costs associated with securing expert evidence from outside the jurisdiction;

- (f) liaising with other jurisdictions in the United Kingdom and with the Republic of Ireland to develop complementary policies and systems on these matters; and
- (g) the recoverability of the costs of experts as between the parties and ensuring that the legal aid fund is not unduly exposed.

2.3 The consultation which issued in November 2014 sought views on the proposed options to change the remuneration of expert witnesses generally, but was particularly interested in receiving views on the following questions:

- Q1. Are there more effective means by which expert evidence can be sourced and provided which would avoid the need to appoint additional experts and how should the “diagnostic” effort be remunerated?
- Q2. Has there been any impact on experts arising from the increased development of protocols and Court directions?
- Q3. What are your views on the use of a single joint expert in criminal and other cases? In what circumstances might a single joint expert, whether appointed by the Court or chosen by agreement by the parties, be sufficient in delivering expert witness services? In what circumstances would this not be appropriate?
- Q4. Is there scope to utilise a single Court appointed expert? When would this be appropriate? In what circumstances would a single Court appointed expert not be appropriate and why?
- Q5. Presently there is little or no uniformity to fees paid to experts performing similar functions. Is it appropriate to set fixed fees for expert witness services under legal aid?

- Q6. Is it appropriate to remunerate expert witnesses at a fixed hourly rate under legal aid? Is additional flexibility required in setting appropriate fee rates?
- Q7. It has been suggested that experts can find themselves outside their area of designated competence. How can such circumstances be avoided? Are there circumstances where a diagnostic report (and specific fee) would be more appropriate than commissioning a full report in the first instance, perhaps where designated competence may become an issue?
- Q8. Would there be any additional benefits to be derived from the Department developing an additional register of experts? If not, are there ways in which the current register might be improved upon?
- Q9. Regarding the use of technology in the delivery of expert witness services, are there opportunities to improve the take up of this service and are there any ways to improve the existing system? Are there any particular challenges to increased utilisation of video link technology for the delivery of expert evidence?

2.4 The consultation closed on 20 February 2015. Responses were received from 25 individuals and organisations, two of whom asked that their names were not made public. A list is attached at Annex A.

2.5 The Department would like to thank everyone who took the time to contribute to this consultation and for the views expressed

3. SUMMARY OF RESPONDENTS' VIEWS

Question 1

Are there more effective means by which expert evidence can be sourced and provided which would avoid the need to appoint additional experts and how should the “diagnostic” effort be remunerated ?

3.1 A number of respondents noted that in their experience the use of experts seemed to be increasing and the length of reports increasing, thereby leading to increased cost and delay. They did not provide data to demonstrate this. There was widespread acknowledgement that experts were only used when necessary.

3.2 The Southern Health and Social Care Trust suggested that accountability for the social work role in Court proceedings should lie with the Trust. It was pointed out that the Northern Ireland Guardian Ad Litem Agency (NIGALA) undertook independent social work enquiries which further negated the need for independent social work expertise. NIGALA suggested that there was much added value from Independent Social Workers and stated that a second opinion was often important. A review of the current pre-proceedings format was suggested in order to reduce delay, avoid the need for expert witnesses and allow cases proceed in a timeframe that was commensurate with the needs of the child.

3.3 The Law Society agreed with the need for transparency and effective controls over the qualifications and instruction of expert witnesses but cautioned that any new arrangements should not be allowed to discourage the supply of experts to the Courts: others were of the same or similar view.

3.4 Several respondents agreed that an expert should be proportionally remunerated, at a reduced fee, for examining a request and deciding that it lay outside their competence.

3.5 A number of respondents pointed out that the use of experts was regulated by the Courts and it was not just a matter for the instructing solicitor. Several also said that with adequate instruction from the solicitor the expert should be able to confirm

whether or not he could address the issue. Occasionally experts would call for further input from another expert, for example a neurologist could require a radiologist to perform an MRI scan. The Expert Witness Institute suggested that the Court should consider whether expert evidence was necessary and if so whether a written report was sufficient or if an oral hearing was required.

3.6 In terms of personal injury claims, one respondent suggested that where a claimant was considering a personal injury claim they would obtain a medical report from a GP or hospital consultant. This report would be sent to the insurance company which would then offer a settlement. If the claimant wished to pursue a higher amount and was then unsuccessful the cost of doing so would be deducted from the original proposed settlement. This would introduce an element of choice into the proceedings rather than the perceived “fishing expedition” at the expense of legal aid. This was in line with the practical arrangements now employed by insurance companies which offered to settle claims early.

3.7 Several respondents queried the efficiency and effectiveness of the tendering process to obtain quotations from three experts. One called for a more formalised tendering process to be followed wherein all experts were provided with a proforma set of instructions and requirements as directed by Counsel/Solicitor. It was suggested that a number of forensic experts had withdrawn their services because of delays in obtaining payment, the low levels of remuneration and the bureaucracy attached to the process.

3.8 Many respondents stressed the importance of justice and fairness underpinning the system and called for equality of arms.

3.9 It was suggested that the current system of obtaining estimates did not follow the ideals of the tendering process. It was suggested that some “suppliers” submit lower quotations for work and make subsequent requests for additional funding rather than submit an inclusive price at the outset, thus incurring additional expenditure.

3.10 It was suggested that some suppliers would “load” the number of hours claimed to compensate for the “hourly rate”, pointing out that this practice was acknowledged in the consultation document.

3.11 Several respondents suggested that adequate instruction from the Solicitor should allow experts to determine whether or not they could address the issues. However, the Royal College of Psychiatrists pointed to situations where those instructing experts were not clear about the qualifications necessary to fulfil the role required.

3.12 While some felt that the diagnostic effort should be remunerated, others pointed out a formal diagnostic stage would simply add to expense and delay. It was the clear view of the judiciary, for example, that a diagnostic fee was not necessary.

3.13 Most agreed with the need for transparency and effective controls over the qualifications and instruction of expert witnesses but cautioned that any new arrangements should not discourage the supply of experts to the Court and reduce the pool of experts willing to undertake publically funded work.

3.14 The Health Trusts were generally supportive of reducing the number of experts in family law cases. The Health and Social Care Board opined that appointment of an expert witness should only be considered when those professionals already involved in that case did not have the expertise, competency or skill to deliver on a specific task or area in question.

Question 2

Has there been any impact on experts arising from the increased development of protocols and directions.

3.15 Responses were mixed in that some considered that there was no impact (presumably from a detrimental perspective) on experts, while others considered that

the use of guidelines like COAC¹, Scott Schedules, Practice Directions and “Hot-Tubbing” all assisted in focusing the parties involved on the issues at hand, avoiding nugatory work and increasing efficiency in the system.

3.16 The Health and Social Care Board noted that medical cases appeared to be coming before the Courts faster than in earlier years. Several of the Trusts noted a reduction in the number of experts in family law cases as a consequence of joint letters of instruction focussing on the key issues.

3.17 One expert commented that the number of approved codes of practice, guidance notes and legislation has increased exponentially and Court Protocols had resulted in significant extra work.

3.18 One expert suggested that protocols requiring additional information had associated costs and seeking a joint statement required two experts to write their own reports and then combine those into a joint statement. While this may have speeded the Court process it added to delay and the cost of experts.

3.19 It was suggested that better case management in Court would save time and expense. In particular it was suggested that earlier and fuller disclosure would improve efficiency by allowing experts to fully consider all the issues. Some experts found that first hearings were being held with insufficient disclosure on which to manage the case effectively.

3.20 The Law Society was opposed to a prescriptive approach with a blanket prohibition on the instruction of further experts and believed that the judiciary should be allowed discretion.

Question 3

What are your views on the use of a single joint expert in criminal and other cases?
In what circumstances might a single joint expert, whether appointed by the Court or

¹ Children Order Advisory Committee

chosen by agreement by the parties, be sufficient in delivering expert witness services? In what circumstances would this not be appropriate?

3.21 There was no support for the concept of single joint experts appearing for defence and prosecution in criminal cases. The Royal College of Psychiatrists pointed out that the adversarial system provided useful checks and balances and it helped avoid complacency or reduction in standards that may otherwise emerge over the passage of time. The Office of the Lord Chief Justice also referred to the adversarial nature of criminal cases and little scope for one independent expert.

3.22 It was suggested that one expert can be utilised by multiple defendants and this was often the case. However, one expert cautioned that for this approach to work the defendants' solicitors, barristers and to some extent the judiciary must accept that the expert appointed was sufficiently experienced and the quality of instruction was very relevant. Another respondent suggested that a joint expert may have difficulty in persuading both parties to provide full disclosure, making it difficult to come to the proper conclusions. The British Psychological Society saw no difficulty in the appointment of a single expert for more than one defendant provided there was no factual or legal conflict between defendants that would make it inappropriate.

3.23 There was general agreement that there should be as much clarity as possible on those specific areas which the expert was offering an opinion on and suggestions that the Court may need to be more prescriptive in this regard. It was important that experts were there to inform the Court process and to offer an opinion but not to make a decision about a case.

3.24 One respondent pointed out that a single expert would not necessarily halve the cost in a given case if the expert had to factor in taking instructions from two sides in a particular instance and then make a balanced report on the opposing views. It was further suggested that in such cases the cost would be the same as retaining a number of different experts. The British Psychological Society pointed out that the history of each defendant would need to be separately considered and that would take as much time as would the reading and writing for separate reports.

3.25 There were mixed views on the use of single experts in civil cases and many of the respondents advised caution. This was because they felt that most parties require the right to bring their own evidence; many cases involved interdisciplinary issues and use of different experts may be unavoidable; joint experts may not be appropriate in medical negligence cases where medical evidence was obtained on liability; in the absence of more than one witness some points may not be raised or tested by the Court; the risk of bias that may not be apparent to the Court; or differences of opinion between experts on the same facts and basic technical levels as well as in matters requiring professional judgement and opinion.

3.26 Single experts were used where possible in children order cases, however caution was urged to guard against experts who exhibited overly optimistic approaches in relation to dealing with family and child care proceedings.

3.27 A number of respondents did not support the use of single experts and felt that single experts could be perceived to diminish confidence in the justice system. It was noted that the attempt to use single Court appointed experts in England and Wales has caused problems with both parties often seeking to have the initial report examined by independent experts.

3.28 One consultee raised the issue of using “shadow experts” in cases of joint instruction. The concept being that a well-resourced client would jointly instruct a single expert but then retain a second expert to inform instructions to the joint expert, which, it was claimed, put the publicly funded client at a disadvantage.

3.29 Several of the Health Trusts said that they would only appoint an expert in exceptional cases where information was not available and could not be accessed from within the Trust.

3.30 Reluctance to provide expert evidence was reported. Where joint experts were instructed, payment was made by each party’s solicitor and this had lead to a delay in paying the expert and therefore reluctance on the part of experts to provide

expert evidence. TMB Consulting pointed out that the current General Authorities did not include rates for meetings of experts to provide joint statements.

3.31 Several respondents reported that experts once supportive of being instructed as single joint experts were becoming unwilling to accept such instructions. This was attributed to the Supreme Court's 2011 decision to abolish the immunity previously enjoyed by experts from suit for breach of duty in relation to their participation in legal proceedings. They therefore warned against imposing any rules that would inhibit the availability of a wide market of experts. The conclusion was that appropriate controls on the use of experts should reside with the judge as part of the overall case management function.

Question 4

Is there scope to utilise a single Court appointed expert? When would this be appropriate? In what circumstances would a single Court appointed expert not be appropriate and why?

3.32 Respondents appeared to be less in favour of a Court appointed expert than an "agreed" expert as the former would remove the element of choice and result in less confidence in the system. Most respondents suggested that the use of multiple experts was often necessary, but where it could be avoided it should be. It was pointed out that the Courts only allowed evidence that was considered necessary to be heard and this controlled the use of unnecessary experts. The British Psychological Society believed that there had been increased competence on the part of barristers and solicitors on choice of the most appropriate applied psychological expert. However one respondent had found that in many circumstances the parties to a dispute employed further experts to analyse the report and evidence of the Court appointed expert. Others reported a perception that the Family Courts were over reliant on expert opinion rather than assessments carried out by Health Trusts.

3.33 Several respondents felt that the adversarial nature of a criminal trial required evidence submitted by the prosecution to be tested by the defence. The system

appeared to require that in order to test expert evidence another expert was required.

3.34 Several respondents suggested that a single Court appointed expert would be appropriate in instance where objective evidence was required, for example in relation to capacity, specific medical conditions or single issues such as paternity, IQ levels or psychiatric diagnosis.

3.35 It was noted that the use of a Court appointed expert required instructions from the Court which would add to the administrative burden. It was suggested that a change of culture towards the role of expert would help to reduce the use of experts. In children order cases the needs of the child were given greater priority than the other parties. Most respondents, coming from a Family Court perspective, pointed out that the system for utilising a single joint expert worked well.

Question 5

Presently there is little or no uniformity to fees paid to experts performing similar functions. Is it appropriate to set fixed fees for expert witness services under legal aid?

3.36 The response in the consultation for setting a framework of standard fees for individual cases was mixed and attention was drawn to the variety of cases and need for flexibility. A number of respondents suggest that fixed fees could prove a deterrent to accessing suitable experts in exceptional cases and even lead to an exodus of skilled and experienced practitioners available to the Courts in legal aid cases.

3.37 It was accepted that setting fixed fees may be appropriate in certain circumstances such as standardised laboratory tests, for example DNA tests and GP reports are paid at a particular rate. These reports were often associated with technician's fees, rather than the more complex reports which interpreted the significance of reports and findings. However it was noted that much of the expert's

work did not, and could not, follow a fixed pattern and so the time taken to assess one case would vary infinitely from another.

3.38 One respondent pointed out that fixed fees could have the effect of encouraging experts to accept only those cases that they could complete below the average for that type of case, or to compromise on quality or scope in order to reduce more complex cases to that level.

3.38 Most agreed that standard fees could only be used in situations of consistent predictability where the amount of work involved was not particularly variable and could be foreseen at an early stage in proceedings. Where the use of fixed fees was supported, and if they were to be adopted, they would need to reflect the scope and complexity of the work; be flexible enough to cope with non-standard cases; and have proper provision for revision.

3.40 There was a fear of inequality if one side had unlimited resources to choose the expert they wanted and the other side was limited due to restrictions on fees. Several respondents cautioned against offending the equality of arms principle.

3.41 Examples were given in which fixed fees were seen as being inappropriate including most criminal case work because the requirements of cases could be very different, even for those that appeared similar, and family cases because the amount of reading material was variable and some cases were more complex than others. It was also suggested that the lead solicitor should ensure that only a core bundle of essential and relevant documentation was provided to the expert.

3.42 It was pointed out that the general authority in family cases was lower than that in criminal cases and the rates should be harmonised. A termination fee was suggested in instances where experts were unable to continue with a case.

Question 6

Is it appropriate to remunerate expert witnesses at a fixed hourly rate under legal aid? Is additional flexibility required in setting appropriate fee rates?

3.43 The overwhelming view was that fixed hourly rates were preferable to fixed fees because of the differential in the number of hours required to conduct the work. While it was pointed out that in some cases it was not easy to assess the number of hours that would be needed this could be mitigated by better instructions to the expert.

3.44 Most respondents suggest that the current rates were too low and the fact that a number of experts were withdrawing from Court work meant it was becoming more difficult to obtain expert evidence. The rates paid in Northern Ireland were unfavourably compared to those paid in other UK jurisdictions. One respondent pointed out that for experts not subsidised by public bodies such as the NHS to provide their professional training, the rates were too low to maintain appropriate professional standards such as quality assurance and continuous development.

3.45 The point was also made that legally aided plaintiffs should not be disadvantaged when bringing claims against well-resourced insurance companies for example. It was important therefore that the fees should attract true experts of the right calibre.

3.46 There were mixed views on whether harmonising the fees with those paid England and Wales was acceptable. Several supported the concept of fixed hourly rates provided that they were commensurate with the amount of work undertaken; there was provision for revision; and they reflected the experience and knowledge of the expert.

Question 7

It has been suggested that experts can find themselves outside their area of designated competence. How can such circumstances be avoided? Are there circumstances where a diagnostic report (and specific fee) would be more appropriate than commissioning a full report in the first instance, perhaps where designated competence may become an issue?

3.47 Most respondents made the point that experts were generally governed by their own oversight bodies and should be aware of their duties in respect of designated competence and accordingly these situations should be rare. Practitioners on the General Medical Council register for example, had a duty to only work within their area of competence. Some respondents suggested that poor instructions from Solicitors led to experts finding themselves out of designated competence.

3.48 Much more interaction between the legal and other professions to provide each other with an adequate understanding of the different areas of expertise was suggested. The need for a diagnostic report was avoidable by rigorous pre-instruction clarification with the proposed expert.

3.49 Some respondents pointed out that it may not be clear at the start of a case whether designated competence would become an issue later in the case and it was not appropriate to penalise experts who began a case in good faith.

3.50 Some respondents felt that the diagnostic effort was useful and should be remunerated. With engineering related cases for example, one to two hours was suggested as being sufficient for an expert to determine if they could provide expert evidence. Others were not supportive and suggested that offering diagnostic fees would be wasteful and increase delay. It was also suggested that at a preliminary “diagnostic” examination it may become apparent that the expert in question was unlikely to provide a favourable report, encouraging solicitors to seek alternative experts.

3.51 The Royal College of Psychiatrists suggested that an initial discussion with a Part II approved Consultant Psychiatrist would facilitate an informed overview of the case, allowing targeted instruction and thereby facilitating prudent case management.

Question 8

Would there be any additional benefits to be derived from the Department developing an additional register of experts? If not, are there ways in which the current register might be improved upon?

3.52 There was little support for another register and some respondents pointed to existing registers, for example the register maintained by the British Psychological Society and their work with the Expert Witness Institute on the development of standards and mentoring of expert witnesses. The Society did not consider that the development of an additional register would improve standards or control costs in relation to psychology practice.

3.53 Some respondents suggested that it was almost impossible to establish a register of experts for any other purpose than providing contact information. Others suggested that in such a small jurisdiction the instructing solicitor should be aware of those experts available for the bulk of routine work and such 'contact information' registers already existed.

3.54 It was suggested that there was little value to a list of contacts although the South Eastern Health and Social Care Trust suggested that a list of experts currently outside the jurisdiction would be helpful in order to increase the pool of experts available. Several respondents pointed out that for a register to add value it would need to include feedback on expert involvement with cases and would attract a disproportionate expansion in administration, monitoring and auditing overheads in order to be meaningful.

3.55 The pitfalls in providing a register were highlighted by several respondents who referred to a recent UK Government led initiative, the Council for the Registration of Forensic Practitioners. One of the proponents of the Register was Professor Sir Roy Meadows, a paediatrician who appeared as an expert witness for the prosecution in several trials. In at least one of those trials his testimony played a crucial part in a conviction for murder. Subsequently his reputation was severely damaged after he was found to have offered "erroneous" and "misleading" evidence and the defendants were acquitted. Several of the responses to the consultation pointed out that Professor Meadows would have been qualified to be included on a

register of experts. Another example was provided, this time of a fraudulent forensic detective in England who operated over three decades tricking members of the public, many judges, lawyers and the police themselves, into believing he was a genuine expert in forensic science.

3.56 Several respondents supported the development of a register of experts and Women's Aid said they would like a mechanism whereby expert statutory and non-statutory organisations could nominate individuals as recognised experts in a particular field.

3.57 The Law Society said it would be constitutionally inappropriate for the Department to maintain a register of experts, particularly in relation to criminal cases in which the State was a party to proceedings, as the expert must be seen to be independent. The Law Society advocated the use of Court guidelines and protocols to govern the quality of expert witnesses, thereby ensuring that decisions on competence would rest with the independent judiciary.

3.58 The Judiciary suggested accreditation of experts so that they could demonstrate adequate training on their role as expert witness. The Academy of Experts and the Expert Witness Institute already provide such training. However some types of experts, for example medical consultants, were already heavily regulated.

Question 9

Regarding the use of technology in the delivery of expert witness services, are there opportunities to improve the take up of this service and are there any ways to improve the existing system? Are there any particular challenges to increased utilisation of video link technology for the delivery of expert evidence?

3.59 Most respondents were in favour of increasing the use of technology in expert witness service provision in limited circumstances. Examples included engaging an expert witness through video link; video-conferencing to avoid face to face meetings; more use of specialist medical technology that allowed distance or 'virtual' diagnoses

to be made; telephone consultation between prosecution and defence in order to produce joint statements detailing points of agreement and disagreement prior to trial; and in uncontested cases in order to give the oral evidence that is required to make a Hospital Order.

3.60 Some experts in the psychiatry and psychology fields pointed out that it was important to be able to assess “body language” during in person interviews. This would be more difficult if remote access via IT was the only way to conduct such interviews. The suitability of video link was also questioned for witnesses in Court who were crucial and who would be cross-questioned for a protracted period. Several respondents advised that face to face contact was important in Court because nonverbal communications and nuances are not readily noted via telecommunications.

3.61 Some reservations were also expressed in relation to security, confidentiality, reliability of the technology and access to the technology. One suggestion was that the Forensic Sciences Northern Ireland (FSNI) could transfer case notes and data securely via IT rather than having experts required to collect same.

4. GENERAL POINTS

4.1 A number of respondents pointed out that the lack of detailed information on the use of experts is surprising and makes it difficult to identify particular cost drivers. It was suggested that the Department must begin to collect more detailed information on the costs associated with the use of expert witnesses.

4.2 A number of respondents made the point that because expert witness expenditure makes up such a small proportion of overall legal aid expenditure that there would appear to be limited value to spending a disproportionate amount of Departmental time investigating such issues.

4.3 Several respondents made suggestions about scope for training, for example, joint training and updating for legal professionals and expert witnesses to improve their understanding of the issues and to enhance their capacities to work together efficiently; and training in Court work to help to improve the value of Court reports. A suggestion was made that expert witnesses can become an advocate for the party that has instructed them and Courts might more readily examine not only the expertise of the expert witness but also their training to act as an expert witness.

4.4 Respondents referred to various sources of advice on how experts should be engaged, the responsibilities of expert witness; and the content of reports. Pointers were given on how to avoid experts giving evidence outside their area of expertise.

5. DEPARTMENTAL RESPONSE

5.1 Since the consultation closed the Access to Justice Review Part II has also reported, recommending setting fixed hourly rates based on the non-London rates for experts. Some of the responses to the consultation were conflicting but taking on board these views together with post consultation engagement with organisations that utilise or fund expert witness services and organisations that accredit and represent experts, the Department is proposing the following steps be taken forward through a joint Department of Justice / Legal Services Agency project:

Approach to Remuneration

5.2 The Department broadly agrees with the general thrust of the consultation responses that there should be fixed hourly rates. Our main drivers are to make sure the expert witnesses system is fairly remunerated, administratively efficient, and an effective part of the court system. Our objectives therefore are to:

- set fees at a rate that will provide fair remuneration for experts;
- increase transparency for expert selection and remuneration; and
- reduce time on seeking quotations and negotiating fees.

5.3 As recommended by the Access to Justice Review Part II we will use the non-London rates as a starting point and potential model for implementation here and we propose a two limbed approach:

- to establish fixed hourly rates for different types of experts; and
- a system of fixed fees for certain types of cases of consistent predictability where the amount of work required is foreseeable and not particularly variable

Speeding up payments

5.4 The delay experienced by some expert in being paid has been noted however there is provision for interim payments to be made on application. The Department is aware that there are limitations in the current case management system. A project has been initiated by the Agency to develop a new system to digitally transform the delivery and management of legal aid. The system will be information rich and provide management data on all aspects of legal aid including expert witnesses.

Appointment and instruction of experts

5.5 The Department and the Agency are working jointly with other organisations in the justice system to improve appointment and instruction of experts through comprehensive guidance. The Agency will also work with the Courts and legal profession in order to encourage early and full disclosure, so that experts can fully consider all the issues, and facilitate better instructions for experts.

Single Joint Experts

5.6 Where experts are required to meet the interests of justice, it is important to ensure that their use is proportionate. The potential for the Department to influence the use of single, joint experts is limited because in the family courts and the commercial court for example, experts are approved by the court and in criminal cases the view was that separate experts for the prosecution and defence provided an important safeguard. However in cases with multiple defendants, and where an expert witness is needed, the position of the Agency remains that only one expert will be funded and the solicitor has to make a case if that expert cannot be utilised by all the defendants. The Department does not propose to change the current arrangements.

Register of Experts

5.7 It is unlikely that the Department could add value to the registers of experts already in existence, for example the Law Society has already undertaken significant work in this area in recent years and maintains its own register of experts. Additionally there are a number of UK wide registers held by the National Crime Agency, the Expert Witness Institute, the Academy of Experts and the Legal Hub amongst others. The Department is not in a position to quality assure or endorse individuals or organisations who provide expert witness services and we therefore have concluded that it is not appropriate to establish a register.

5.8 There have been suggestions that that experts should be accredited by one of the existing professional bodies such as The Academy of Experts or the Expert Witness Institute and the Agency is investigating further how that could work in practice.

Video Link Technology

5.9 The Department supports the use of technology in delivering expert witness services and, for example, video evidence is now explored by the Agency as the first option when out of jurisdiction experts are required. When section 53 of the Justice Act (Northern Ireland) 2015 is commenced in September it will allow Magistrates' and County Courts to hear evidence from witnesses outside the UK by live link. There are also plans to commence Section 52 before the end of the year so that where certain expert witnesses are to give evidence, the court's starting assumption should be that the expert's evidence will be given by live link. Although these changes will only apply to criminal proceedings they may help drive a change in attitudes towards video evidence across the courts which the Agency will continue to encourage.

6. EQUALITY IMPACT ASSESSMENT

6.1 Prior to launching the consultation the Department undertook an initial equality screening exercise which did not identify any significant or adverse impacts on any of the equality categories. In the absence of data in relation to religious belief, political opinion, marital status, sexual orientation, disability or dependants, the consultation sought to gather views on any potential impacts on any of these groups particularly with regard to the following questions:

- Is there any evidence of higher or lower participation or uptake by different groups in delivering expert witness services within any of the nine categories?
- Is there evidence or indication that different groups have different needs, experiences, issues and priorities?
- Is there an opportunity better to promote equality of opportunity or better relations by altering the policy or working with others in Government or the larger community?

6.2 The Department will ensure that as the proposals are developed any specific needs or requirements of any Section 75 categories will be considered.

List of Respondents

Association of Personal Injury Lawyers
Belfast Solicitors Association
British Psychological Society
Declan P Cosgrove
Expert Witness Institute
Fleurets
Forensic Engineering Solutions
Health & Social Care Board
J W Rodney Peyton
Keith Borer Consultants
Law Society of Northern Ireland
Lord Chief Justice's Office
Michael Walker Consulting Ltd
NI Guardian ad Litem Agency
Northern Health and Social Care Trust
Professor D. T. Burns
PSNI
Public Prosecution Service
Royal College of Psychiatrists in Northern Ireland
South Eastern Health & Social Care Trust
Southern Health & Social Care Trust
TBM Consultants
Women's Aid Federation Northern Ireland