

The Chief Medical Officer's report on medical expert witnesses: Public consultation on proposals for change

*Bearing Good Witness: Proposals for reforming
the delivery of medical expert evidence in family
law cases – Consultation*

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Title	Bearing Good Witness: Proposals for reforming the delivery of medical expert evidence in family law cases – consultation
Author	The Chief Medical Officer
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Target audience	PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Medical Directors, Directors of PH, Local Authority CEs, PCT PEC Chairs, NHS Trust Board Chairs, Special HA CEs, Directors of HR, Directors of Finance, Allied Health Professionals, GPs, Communications Leads, Directors of Children's SSs, Departments of Health for the devolved administrations, Legal Professions and their Bodies, Health Professional Bodies
Circulation list	Voluntary Organisations/NDPBs, local Family Justice Councils, consumer interest organisations
Description	This consultation document calls for responses to CMO's report "Bearing Good Witness" which reviews the use of medical expert witnesses within the family courts, identifies problems with the current system, and makes proposals both to resolve them, and to secure a sustainable supply of competent, quality-assured medical expert witnesses in future.
Cross-reference	N/A
Superseded documents	N/A
Action required	N/A
Timing	Response to consultation by 28 February 2007
Contact details	Noel Durkin Partnerships for Children, Families and Maternity Department of Health Rm 211, Wellington House 133–155 Waterloo Road London SE1 8UG medical.expert.witnesses@dh.gsi.gov.uk
For recipient use	

The Chief Medical Officer's report on medical expert witnesses – *Bearing Good Witness*

The Department of Health has today published *Bearing Good Witness: Proposals for reforming the delivery of medical expert evidence in family law cases*, the report of the Chief Medical Officer for England's review of the arrangements in place for commissioning medical expert witnesses for the family courts.

Background

Ministers asked Sir Liam Donaldson, Chief Medical Officer, to consider the role of medical expert witnesses in relation to family law cases, in particular to:

- examine the experts' participation through the process and the competencies needed;
- examine evidence of the best practice for expert witnesses;
- identify a template and portfolio of medical skills by which a practitioner may be regarded as 'competent' to offer evidence;
- advise on a sustainable supply of competent, quality-assured expert medical witnesses;
- report and make recommendations to Government Ministers in early 2005.

Status of the report

Bearing Good Witness is a report submitted to Ministers by Sir Liam Donaldson in his independent capacity as Chief Medical Officer for England and Chief Medical Adviser to the UK Government. It does not necessarily represent current government policy. Sir Liam's report forms the basis for this consultation document, which outlines a number of options for future arrangements for providing medical expert evidence for the family courts.

Use of medical expert witnesses in the family court

Bearing Good Witness recognises that the bulk of medical expert witness activity is undertaken by doctors and others in the employ of the NHS, occasionally within their NHS terms of contract but often in a private capacity.

Proposals arising from the report

There are 16 proposals arising from the report, which set out the means to provide a well-organised system to ensure a sustainable supply of competent medical expert witnesses in the future and provide mechanisms to quality assure and continuously improve their work. The proposals apply to England only.

Consultation: medical expert witnesses

Bearing Good Witness is open to consultation until 28 February 2007, for the consideration especially, but not exclusively of, the medical Royal Colleges, the Family Justice Council, those directly involved in the legal system, all levels of the judiciary, legal professionals, other professionals and voluntary sector organisations, as well as those with a specific interest in children's welfare, voluntary organisations and others involved with looked-after children. The consultation is aimed at all family court users. In particular, we would welcome the views of families and court users who have had experience in this area, to hear their views about the proposals. This list is not intended to be exhaustive or exclusive and responses are welcome from anyone with an interest in or views on the subject.

How to respond to this consultation

Please complete the questionnaire at Annex A and return preferably electronically, by 28 February 2007, to:

medical.expert.witnesses@dh.gsi.gov.uk

Responses in writing or enquiries to:

Noel Durkin

Department of Health

Room 211

Wellington House

133–155 Waterloo Road

London SE1 8UG

Telephone 020 7972 4152

Copies of report

All documents are available online at:

www.dh.gov.uk/Consultations/LiveConsultations/fs/en

Family court proceedings: disclosure of information

There are restrictions imposed by the court on the disclosure of information relating to family proceedings. The Department cannot receive any information that is prohibited from disclosure by the court, in particular it cannot receive any court documents or other documents prepared for family proceedings, nor can the Department receive summaries of cases or judgments of the court.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.

If we receive a request for disclosure of the information, we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Publication of responses

A paper summarising the responses to this consultation will be published within three months of the closing date of the consultation. The response paper will be available online at: www.dh.gov.uk/Consultations/fs/en

Cabinet Office code of practice on consultations and Public Services Threshold Test

This consultation follows the revised Cabinet Office code of practice (see Annex B). A partial regulatory impact assessment is appended at Annex C.

Annex A: Consultation questionnaire

About you: please use this section to tell us about yourself.

Full name

Capacity in which you are responding to this consultation
(eg member of the public, expert witness)

Do you have personal experience of the workings
of the Family Court? (Please circle answer.)

Yes	No
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If so, in which capacity?

Are you under 18?

Yes	No
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Date

If you are representing a group or organisation, please tell us the name of the organisation and
provide a summary of the people or organisation that you represent

Postal address

E-mail

1. General

1.1 Do you think that these proposals, taken together, will tackle the issues of quality
and supply of medical expert witnesses in the family courts?

Yes No

1.2 If so, what are the main ways in which they will help?

1.3 If not, why not? Can you suggest other ways of tackling the issues of quality
and supply?

2. Supply of medical expert witnesses (teams) by the NHS

(See proposals 1–6 of *Bearing Good Witness*.)

2.1 Do you perceive any practical problems with the proposals for providing medical witness expertise from within teams in the NHS?

Yes No

2.2 If so, what?

2.3 Do you have personal experience of working in or with teams of this sort and, if so, what is your relationship with the team, eg social worker, lawyer, doctor or other medical specialty?

Yes No Relationship with team

2.4 If so, what do you perceive as the advantages and disadvantages of providing medical evidence for the courts in this way?

2.5 If you agree that the NHS should provide teams, how do you think this might best be managed?

3. Commissioning the service

(See proposals 7–9 of *Bearing Good Witness*.)

3.1 Should the current system move from multiple, ad-hoc, case-by-case arrangements to a service commissioned from the NHS by a commissioning organisation?

Yes No

3.2 Of the possible public-sector organisations that could hold a contract with the NHS at local or regional level to provide medical witness expertise, which do you consider to be the most appropriate out of those listed at paragraph 4.22 of the report?

3.3 If you do not think any of these possibilities would work, how might these arrangements be managed in future?

3.4 Do you foresee any practical problems with the proposals for change in the way the service is commissioned?

Yes No

3.5 If so, please specify what, and how they might be overcome?

3.6 How do you think these proposals might best be implemented?

3.7 Do you think there is scope for improving the way that instructions are issued or budgets are managed (proposal ten) and, if so, how?

4. Education and training

(See proposals 11, 13 and 16 of *Bearing Good Witness*.)

4.1 How and when should doctors be equipped with the knowledge and skills necessary for work as medical expert witnesses in the family courts?

4.2 Do we need a different training scheme for new doctors than for existing doctors?

Yes No

4.3 If so, how might the different schemes work?

4.4 If you have received training to be a medical expert witness, what training was this and would you recommend it to others?

4.5 Would a National Knowledge Service support medical expert witnesses in their work? (See proposal 16 in the report.)

Yes No

4.6 If so, how should it operate and who should be responsible for it?

5. Quality assurance and regulation

(See proposals 11–16 of *Bearing Good Witness*.)

5.1 Is accreditation the best way of ensuring the future quality of the medical expert witness service?

Yes No

5.2 If so, how might accreditation work in practice?

5.3 If not, what alternative system would you suggest?

5.4 How could an accreditation system be established and by whom?

Annex B:

Consultation process: Cabinet Office code of practice

This consultation follows the revised Cabinet Office code of practice, which is available from the Cabinet Office website at: www.cabinetoffice.gov.uk. This requires government departments to:

- consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of policy;
- be clear about what proposals are, who may be affected, what questions are being asked and the timescale for responses;
- ensure that consultations are clear, concise and widely accessible;
- give feedback regarding the responses received and how the consultation process influenced the policy;
- monitor their effectiveness at consultation, including through the use of a designated consultation co-ordinator;
- ensure consultations follow better regulation best practice, including carrying out a regulatory impact assessment if appropriate.

The code also invites respondents to 'comment on the extent to which the criteria have been adhered to and to suggest ways of further improving the consultation process'. For Department of Health consultations, comments or complaints (but not your response to this consultation) should be sent to:

Consultations Co-ordinator
Department of Health
Skipton House
80 London Road
London SE1 6LD
E-mail: mb-dh-consultations-coordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

Annex C:

Partial regulatory impact assessment – Public Services Threshold Test

The Chief Medical Officer's (CMO's) report, *Bearing Good Witness: Proposals for reforming the delivery of medical expert evidence in family law cases*, recognises that the current system of ad-hoc arrangements between individual lawyers and a small cadre of medical expert witnesses is failing to provide sufficient expert evidence to the family courts.

In 2004, the Department for Constitutional Affairs estimated that there were 5,195 delays in family proceedings, of which 611 (12%) were caused by the unavailability of experts or by late submission of their reports.

Cost of medical expert witnesses

No accurate data are collected on the total costs of medical expert witnesses in these cases. The Department for Constitutional Affairs estimates, very approximately and based on a number of assumptions, that the cost of experts per case is about £2,230 (averaged over all cases, including those involving no experts) and that the cost of experts is around £20 million per year.

In practice, the overwhelming majority of public law Children Act cases are publicly funded through legal aid and by local authorities.

Under the CMO's proposals in *Bearing Good Witness*, the NHS would be reimbursed for the cost of providing this service. Overall, the proposals should be cost neutral. There may be scope for rationalising the system of financing medical expert witnesses' work.



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