

**Annex A: Consultation
questionnaire
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*

October 2006

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*

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

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

Full name: Mary Mullin

Capacity in which you are responding to this consultation

Assistant Chief Executive National Youth Advocacy Service

(eg member of the public, expert witness)

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

If so, in which capacity? Solicitor

Are you under 18?

No

Date 1.02.07

**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**

The National Youth Advocacy Service

Postal address 99 - 105 Argyle St, Birkenhead. Merseyside. CH

E-mail. main@nyas.net

About The National Youth Advocacy Service

NYAS is a unique 'not for profit' registered children's Charity which, building on more than twenty five years experience of providing advice, advocacy and representation for children, works to provide a safety net for children and young people through the provision of seamless socio-legal advice, information and advocacy services for children and young people aged 0 – 25, throughout England and Wales.

NYAS has a Specialist Family Legal Help Contract with the Legal Services Commission providing services for children in public and private law proceedings. NYAS has developed a specialist service providing separate representation for children and young people under Rule 9.5 of the Family Proceedings Rules 1991 when invited by the courts to do so. NYAS uses the Tandem Model approach bringing together the skills of an experienced social work practitioner and solicitor working closely together to protect a child from the damaging effects of being caught up in difficult and protracted legal proceedings. NYAS works with a range of expert witnesses and provides multi disciplinary training on advocacy, children's rights and issues of current interest for professionals and agencies working with children and their families within both public and private law family proceedings.

Article 12 of the United Nations Convention on the Rights of the Child underpins NYAS' Mission statement. Article 12 states that:

"Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".

"For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law".

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

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

Making the provision of medical expertise witnesses a part of the NHS contract and introducing a team approach will ensure more people learn 'on the job' and with greater numbers available as they gain in confidence and skill. It would rationalise the payment for this service.

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

2.2 If so, what?

Lawyers might require a process whereby they could veto allocation of a particular expert witness within an NHS team to a specific case. They would then seek input to the decision as to who was to act. There would need to be close liaison with the Team leader, as less experienced or inept witnesses could be hidden within the team model and only exposed in the court setting. A feedback or learning loop should be developed as part of the liaison process. There should be accreditation of experts.

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:

- (i) Solicitor and Guardian
- (ii) Professionals meeting where a number of experts have input
- (iii) Multi-agency working together.

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

Advantages:

- (i) An improved supply of expert witnesses at a more reasonable cost.
- (ii) A more holistic analysis for the Court and provision of services to the parents or young people involved in the Court process by way, for example, of therapeutic intervention - which there is presently great difficulty in funding.
- (iii) To improve the speed of the decision making process and therefore reduce delay, particularly for children.

Disadvantages:

- (i) The cost implications for the NHS if not properly resourced - such resources to include training needs of the experts.
- (ii) If not properly resourced any team may fail to match the need for full and focused assessments which can lead to poor or no preparation of evidence and in turn to immense volumes of paperwork being pulled into the Court process.

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

As set out in the paper but with more collaboration with legal representative/the Family Justice Council eg. formal liaison processes built in.

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

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?

- (i) LSC. They are a neutral body that already administers the legal aid budget and are very much focussed on cost. The commissioning body must be seen as non-partisan and have the administrative capacity.
- (ii) CAFCASS – Although an option CAFCASS already have capacity problems and may be seen as partisan.
- (iii) PCT who have knowledge of team availability, capacity and costs.

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

n/a

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

Yes

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

Given the proposed change to the current system, the appointment of an expert could be delayed by excessive bureaucracy, by the medical team not having the capacity for the additional workload, by a delay in reaching agreement for appointment/funding.

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

Streamlining procedures across agencies, with agreed time scales for each stage.

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?

- (i) It will be important not to limit access to the use of an expert witness through the provision of instructions in fewer places for purely budgetary reasons.
- (ii) Guidance from experts on the nature and quality of instructions to them would be helpful.

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?

This should be an on-going process through training/accreditation, as well as peer review of practice and regular feedback from service users, instructing solicitors, courts etc.

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

Yes

4.3 If so, how might the different schemes work?

For new Doctors more support mentoring than those with experience – training in Court skills for examination in chief and cross-examination to be provided by the legal profession. Continuing Professional Development requirements.

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

None

4.5 Would a National Knowledge Service support medical expert witnesses in their work?

(See proposal 16 in the report.)

Yes

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

GMC/ Royal Colleges - the success will be dependent upon adequate funding.

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

5.2 If so, how might accreditation work in practice?

As set out in the paper but with formal feedback/input from the Solicitor, Guardian and Local Authority over and above professional bodies.

5.3 If not, what alternative system would you suggest?

N/a

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

A collaborative system between the GMC, the funding body (if not the NHS), the Court/Family Justice Council.