

## Consultation on the standards required for expert witnesses: proposed Practice Direction changes

### The Academy of Experts

This response has been prepared by an inter-disciplinary group of active expert witnesses drawn from the membership of The Academy of Experts. The Academy is a professional and accrediting body for expert witnesses of all disciplines. It is independently run by experts for experts and those using them.

#### **About The Academy of Experts (TAE):**

- TAE is a not-for-profit members organisation dedicated to the pursuance of cost-effective dispute resolution providing accreditation and training for Expert Witnesses. Based in Gray's Inn, London, TAE was founded in 1987 with the objective of providing, for the first time, a professional body for experts to establish and promote high objective standards.
- All applicants to TAE who wish to become Accredited Practising Expert Witnesses undergo a rigorous vetting procedure to ensure standards of excellence are maintained. This is the process which gives accreditation as a Practising Expert Witness. Those achieving it are awarded designatory letters (eg SAAE, MAE or FAE). Ethical and professional standards are underlined by Codes of Practice and enforced by a disciplinary committee.
- Although there is representation on TAE's Council from the legal profession the majority of the officers, including the Chairman, are practising Experts - *The Academy of Experts is run by Experts for Experts and those using them.*
- TAE has played an active role in the consultations impacting on expert evidence and has offered its assistance to the various Rules Committees including the Family Procedure Rules Committee.

In giving our opinion, we have considered not only the proposed amendments to the FPR but also the thinking leading up to those proposals, in particular:

1. President [of the Family Division]’s Memorandum: Experts in the Family Courts (4 October 2021)
2. Re C (‘Parental Alienation’; Instruction of Expert) [2023] EWHC 345 (Fam)
3. Family Justice Council Guidance on responding to a child’s unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour (December 2024)

We note that the Memorandum discusses the general principles of expert evidence and concludes:

*“The Family Court adopts a rigorous approach to the admission of expert evidence. As the references in this memorandum make plain, pseudo-science, which is not based on any established body of knowledge, will be inadmissible in the Family Court.”*

This conclusion is referenced in the Re C judgment at 31 and 32.

The Family Justice Council Guidance is equally clear. It states at paragraph 2:

*“Despite the lack of research evidence, and international condemnation, reference is still made to the discredited concept of ‘parental alienation syndrome’. For the avoidance of doubt, the Family Justice Council (FJC) recognises that ‘parental alienation syndrome’ has no evidential basis and is considered a harmful pseudo-science.”*

In these circumstances, one would expect ‘parental alienation’ evidence to be inadmissible on the grounds that it is unscientific. The Courts do not accept expert evidence on astrology or other pseudo-sciences. Further, the Courts have ruled that scientific evidence may be disallowed when applied in a new area (R v T [2010] EWCA 2439).

The proposed amendments do not take this type of scientific approach.

### **Advantages and disadvantages of the proposed amendments**

In our opinion, the most obvious disadvantage of the proposed amendments is that they do not directly address the problem. The problem is the admission of unscientific evidence in the Family Courts and the amendments are silent on this point.

We have considerable sympathy with the FPR Committee in its decision-making process. Much of the evidence in the Family Courts is not 'scientific' in the way that chemical or blood tests are scientific – reproducible, with a known error rate. For example, evidence from a Social Worker is valuable and expert, but not scientific.

Being regulated by a statutory body should be an assurance of standards and quality but of itself says nothing about scientific validity. Some statutory bodies have a science requirement; others do not.

In making the proposed amendments, the FPR Committee appears to have accepted the argument that requiring expert witnesses to be regulated experts will ensure the scientific validity of evidence. We would expect different expert opinions to continue to be expressed in the Family Courts as elsewhere, and periodically accusations of their being of an unscientific nature.

We note with approval that the FPR Committee proposes to limit the amendments to Family Law Children proceedings.

### **Conclusion**

We consider the proposed amendments to be adequate, limited as they are to Family Law Children proceedings. We would, however, have preferred the FPR Committee to have addressed the problem of unscientific evidence directly.