

This text takes account of the 2013 Public Law Outline, the Practice Directions relevant to experts in Family Proceedings (PD 25 A-F) ([http://www.justice.gov.uk/courts/procedure-rules/family/rules\\_pd\\_menu](http://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu) ) & previous Family Justice Council guidance now contained at the end of Practice Direction 25C. At the end of this document is an extract from the case of Re F (Children) (DNA Evidence) [2007] EWHC 3235 (<http://www.familylawweek.co.uk/library.asp?i=3430>) on the instructions to DNA experts.

**Practice Direction 25C** says the following about letters of instruction to experts:

#### 4.1

The party responsible for instructing the expert shall prepare (in agreement with the other parties where appropriate), a letter of instruction to the expert and shall –

(a) set out the context in which the expert’s opinion is sought (including any ethnic, cultural, religious or linguistic contexts);

(b) set out the questions approved by the court and which the expert is required to answer and any other linked questions ensuring that they –

- (i) are within the ambit of the expert’s area of expertise;
- (ii) do not contain unnecessary or irrelevant detail;
- (iii) are kept to a manageable number and are clear, focused and direct; and
- (iv) reflect what the expert has been requested to do by the court

(Annex A to this *Practice Direction* sets out suggested questions in letters of instruction to (1) child mental health

professionals or paediatricians, and (2) adult psychiatrists and applied psychologists, in Children Act 1989 proceedings);

(c) list the documentation provided, or provide for the expert an indexed and paginated bundle which shall include–

(i) an agreed list of essential reading; and

(ii) a copy of this Practice Direction and Practice Directions 25B and E and where appropriate Practice Direction 15B (re adults & children who are or may become protected parties);

(d) identify any materials provided to the expert which have not been produced either as original medical (or other professional) records or in response to an instruction from a party, and state the source of that material (such materials may contain an assumption as to the standard of proof, the admissibility or otherwise of hearsay evidence, and other important procedural and substantive questions relating to the different purposes of other enquiries, for example, criminal or disciplinary proceedings);

(e) identify all requests to third parties for disclosure and their responses in order to avoid partial disclosure, which tends only to prove a case rather than give full and frank information;

(f) identify the relevant people concerned with the proceedings (for example, the treating clinicians) and inform the expert of his or her right to talk to them provided that an accurate record is made of the discussions;

(g) identify any other expert instructed in the proceedings and advise the expert of their right to talk to the other experts provided that an accurate record is made of the discussions;

(h) subject to any public funding requirement for prior authority, define the contractual basis upon which the expert is retained and in particular the funding mechanism including how much the expert will be paid (an hourly rate and overall estimate should already have been obtained), when the expert will be paid, and what limitation there might be on the amount the expert can charge for the work which they will have to do. In cases where the parties are publicly funded, there may also be a brief explanation of the costs and expenses excluded from public funding by Funding Code criterion 1.3 and the detailed assessment process.

### **Adult who is a protected party**

#### **5.1**

Where the adult is a protected party, that party's representative shall be involved in any instruction of an expert, including the instruction of an expert to assess whether the adult, although a protected party, is competent to give evidence (*see Practice Direction 15B – Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings*).

### **Asking the court to settle the letter of instruction to a single joint expert**

#### **6.1**

Where possible, the written request for the court to consider the letter of instruction referred to in rule 25.12(2) should be set out in an e-mail to the court and copied by e-mail to the other instructing parties. The request should be sent to the relevant court or (by prior arrangement only) directly to the judge dealing with the proceedings. In the magistrates' court, the request should be sent to the relevant court or (by prior arrangement only) to any district judge (magistrates' courts) hearing the proceedings (and copied to the legal adviser) or to the legal adviser. The court will settle the letter of instruction, usually without a hearing to avoid delay; and will send (where practicable, by e-mail) the

settled letter to the lead solicitor for transmission forthwith to the expert, and copy it to the other instructing parties for information.

## **DRAFT LETTER FOR INSTRUCTION OF EXPERT IN CHILDREN ACT CASES**

Dear [expert]

**In the matter of:**

[names of children with dates of birth]

[CASE NO]

I / We write further to the telephone conversation between [you/your secretary] and [name of solicitor] on [date] concerning the above children.

Thank you for agreeing to provide a report in this case. The court has ordered that your report should be filed with the court and served on the other parties by X DATE. A copy of that order is enclosed.

In order to comply with this timetable we need to receive the report from you by Y DATE.

It is also a possibility that you will need to attend court to give evidence. The case is listed for final hearing on the following DATES. You are requested to keep yourself available during that time / for one of those dates. Please advise me as a matter of urgency as to your preferred date to come to court and give evidence, should that prove necessary. If it will assist, it may be possible to make arrangements to receive your evidence by video link.  
**OR DEAL WITH THIS LATER - SEE HEADING 'Timetable'.**

I am the lead solicitor in terms of your instructions in this matter.

## **The nature of the proceedings & the issues likely to require determination by the court**

[This case centres on an application by party A for an X order eg the local authority for a care / supervision order]  
OR [The issues before the court are eg where or with whom children should live or have contact with etc].

## **The Background**

I / We enclose a chronology of the main events and the court hearings to date, together with a schedule of all documents filed in the case so far [INDICATE WHETHER THE CHRONOLOGY HAS BEEN AGREED AND WHICH PARTY HAS PREPARED IT].

I / We enclose photocopies of those documents which it has been agreed are necessary for you to consider and these are marked with an asterisk on the schedule. If, having read the schedule and the documents enclosed, you consider that you require any further documents, please contact the lead solicitor who will consult with the other legal advisors. As lead solicitor, I will be responsible for sending you copies of any relevant documents filed after the date of this letter.

In brief, the background to the current application(s) and to your instruction in this matter is as follows:

[Here set out the family relationships, the important areas of factual dispute, the present whereabouts of the children, the level and nature of contact with the relevant parties, and any other specific relevant issues. In setting out the background it is important to set out the context in which

the opinion is sought including any ethnic, cultural, religious or linguistic contexts.]

*COMMENT: this section should be drafted as far as possible, by setting out first, the facts which are most likely to be agreed or about which there can be the least dispute, for example, the sort of information which one would put before a bench of magistrates as being facts not in dispute or could constitute an agreed chronology.*

Position of parties re proposals for placement / contact etc

[Summarise what each party's case is, if that is clear.

For example:

The local authority is considering whether the children can be returned to the care of their parents or should be placed for adoption.

The parents propose in order of preference

- a) that the children should live with them;
- b) that the children should live with the maternal grandparents;
- c) that the children should live with the paternal grandparents.]

The other representatives in this case are as follows:

i) [Mr/Miss/Mrs/Ms name] of [firm], [address, telephone and FAX numbers, email address] represents [party] who is/are applying for [nature of the order] [eg a residence / contact order / who opposes the making of a care order, seeking the return of the children to their care];

ii) [Mr/Miss/Mrs/Ms name] of [firm], [address, telephone and FAX numbers, email address] represents [party] who is/are

[opposing the application/applying for].....etc [nature of the order]

iii)...

SET OUT SIMILAR DETAILS FOR EACH PARTY

[It may also be helpful to you to know that the responsible social worker is [name], but please do not approach or contact [him/her] direct, without first discussing this with the lead solicitor / the instructing solicitor from the legal department of the local authority who is [NAME / TELEPHONE NO.].

### **Maintaining independence**

Pursuant to the Order of His/Her Honour/District Judge ... dated ... and enclosed, you are being instructed jointly by all the above solicitors on behalf of each of the parties named [or solely by X party], but on the basis that you will provide an expert opinion entirely independent of [all of] them. While, of course, it is expected that you will have meetings with the parents /children [where leave is given] / social workers / the Child(ren)'s Guardian, nevertheless it is essential both to your role as an independent expert and to the parties' perception of your independent status, that there are no informal unrecorded discussions, or correspondence with any of the professionals or the lay parties involved in the case.

### **Further information**

If you need further information, please contact me as the lead solicitor and I will provide it after consultation with the other legal advisors involved. If documents are exchanged with one party, please copy them to all the others. Where possible communication is best achieved by FAX or LETTER or EMAIL. In addition please ensure that you notify the

parties through the lead solicitor of any materials or documents that you request or receive from any other sources which you take into account when preparing your report and identify the source from which you have received them.

## **Examining the children**

[You will see that the court has given leave for you to see the child(ren). Whether or how you do this is within your discretion, but if you decide not to see the child(ren) (in the company of a parent or foster parent (or possibly, after consultation with the lead solicitor, the social worker), the court will need to know your reason.]

## **Nature of enquiries**

You are requested to:

- a) read all the papers enclosed / read at least the documents identified as essential reading and any other documents from the enclosed bundle which you consider relevant and confirm that you have done so in the report. Please let us know immediately if there is any additional material you require. You will also be sent additional updating material if relevant to your instructions;
- b) see the parents, maternal and paternal grandparents and the children in such a combination or combinations to enable you to assess the issues raised in the scope of your instructions.
- c) Discuss matters as you consider appropriate with the parents, grandparents, social workers, foster carers and Child(ren)'s Guardian, treating clinicians and other health care professionals (please keep notes of any such



conversations & notifying myself as lead instructor about any such conversations).

## *COMMENTS*

*It may assist the expert if you identify the relevant professionals from whom they expert may wish to gain information relevant to the report if their identities are not apparent from the background summary.*

*If materials in the bundle have not been produced either as original medical or other professional records or in response to an instruction from a party these should be identified. The expert should also be told if materials are available or can be made available from other sources directly such as hospitals / GPS etc. Relevant GP records / Pyschiatric care notes etc should always be disclosed to the expert. If there is likely to be a delay the expert may have to provide a provisional report with an addendum once the relevant direct evidence has been obtained.*

*All requests to third parties for disclosure should also be specifically identified together with their responses.*

## **Your Instructions**

You are requested kindly to consider and provide your opinion on the following issues:

[Here set out the issues as agreed or defined by the court]

## **Duties of experts**

I appreciate that you have extensive experience in giving evidence to the court, but I hope you will forgive me if I formally remind you of one or two important principles derived from case law and published guidance during the course of this letter.

Practice Directions supporting the Family Proceedings Rules Part 25 set out the duties of an expert including the contents of the expert's report and, where an expert is to attend court, the arrangements for such attendance. Other Practice Directions deal with different aspects of experts in family proceedings. The relevant Practice Directions are –

- (a) Practice Direction 25A (*Experts – Emergencies and Pre proceedings Instructions*);
- (b) Practice Direction 25C (*Children Proceedings – The Use of Single Joint Experts and the Process Leading to an Expert Being Instructed or Expert Evidence Being Put Before the Court*);
- (c) Practice Direction 25D (*Financial Remedy Proceedings and Other Family Proceedings (except Children Proceedings) – The Use of Single Joint Experts and the Process Leading to Expert Evidence Being Put Before The Court*);and
- (d) Practice Direction 25E (*Discussions Between Experts in Family Proceedings*).

Please find enclosed a copy of Practice Directions 25B, C & E and all the Practice Directions can be accessed online at [http://www.justice.gov.uk/courts/procedure-rules/family/rules\\_pd\\_menu](http://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu)

Your particular attention is drawn to paragraphs 4.1 & 9.1 of Practice Direction 25B.

Acceptance of instructions imposes an obligation on you to comply with the court's timetable and notify me if there is any risk that the timetable cannot be adhered to.

Please inform me immediately if:-

- a) any particular aspect of what you have been asked about is outside your expertise;
- b) at any time you change your opinion on a material matter;
- c) during the course of your investigation, other issues appear to you to become relevant, so that I can consult with the other legal advisors and consider whether the scope of your instructions should be amended;
- d) you consider that a professional or expert from another discipline should be instructed to consider issues which fall outside your expertise and which seem to you to be relevant to the outcome of the case or decision which the court has to make;
- e) you consider that a second opinion from an expert in your own specialist field should be sought on any key issue.

Unless you have been specifically asked to do so, you should please avoid expressing a view regarding the factual dispute(s) as this is, of course, the province of the judge at the final hearing. Where appropriate, it will be of assistance if you are able to express your opinion on the basis of alternative findings regarding the factual dispute(s).

### **Other experts instructed**

To date, the following other experts have been instructed. LIST. You may wish to speak with them before and after finalising your report. Such conversations should be noted by you and we would prefer it if you notify us in advance that they are necessary or likely to happen.

You should also note that it is a condition of your acceptance of these instructions that, should the court consider it necessary, you will be expected to participate in a discussion with the other experts instructed with a view to identifying the areas of agreement / disagreement between you and producing a report recording these points. I / We would like to know of your availability during the week of X which is the most likely point at which such a meeting would take place, if necessary. If it would assist, arrangements can be made for your participation by telephone or video link. In the event that the meeting is required you will be provided with an agenda setting out the points for discussion in advance.

## **The Timetable**

Pursuant to the above Order your report should be filed and served on or before [time and date]. This means by that time and date copies of your report are to reach the court office at [address] AND / OR each of the above named solicitors at the address given. If you wish this firm to distribute copies to the other parties and the court, please ensure that your report reaches us in good time for this to be done, preferably by Y DATE. It will be of great assistance if you could provide your report in electronic format and I would be grateful if you could let me know the format in which you propose to produce it.

It is crucial that you comply with this time limit as the subsequent timetable for the filing of statements and reports, and the final hearing are dependent on the receipt of your report by the due date.

## **Funding**

As previously agreed your fees will be paid at the hourly rate of XXX and you have advised us that the likely overall cost is

£XXX. Please advise us immediately if at any time you consider that the cost of completing your work is likely to exceed this sum. You will be aware that the Legal Aid Agency imposes strict costs limits & certain work is not covered by public funding. We cannot guarantee that any fees outside of the agreed amounts will be met. (IF APPLICABLE also explain the detailed assessment process and the timescale in which the experts' fees are likely to be met)

Yours etc

### ***Points to Note***

*The letter of instruction should be included in the court bundle together with a copy of the expert's cv.*

*The paragraph in relation to the instructing solicitor / party may need to be amended to accommodate instruction by only some of the parties.*

*The parties should agree a 'lead' solicitor who can act as the conduit for such communication. This will often be the guardian's solicitor. If agreement cannot be reached, the court may direct that a particular solicitor take the lead.*

*Many, if not most, judges are reluctant to order the attendance of such experts unless there is a real issue about their evidence and this is now likely to be heavily scrutinised at the IRH which should be preceded by an advocates' meeting at which the issues to be addressed by the experts should be identified. If experts do have to attend then experts in the same area should be lined up to attend on the same day and / or in some logical sequence.*

*Charles J in A Local Authority v K, D & L [2005] EWHC 144 (Fam) suggests that it is better not to ask experts in a case concerning children to express their views by reference to the balance of probability but that if reports that have been written for a criminal investigation are introduced into family proceedings the relevant expert should be asked whether it has been written against the criminal standard of proof and thus whether a possible or plausible explanation or cause, is being put forward as being reasonable (as opposed to fanciful or simply theoretical) in that context, and his or her view as to how likely that possibility is.*

## Specific questions for experts

### COMMENT:

The questions which follow set down a few possibilities only and are not intended to provide a complete blueprint. The necessary investigations will obviously vary from case to case. Generally, the more that facts are in dispute, the less leading the questions should be or the more options the expert should be given. Included below are also questions drafted by the FJC which appear in the Annex to the Practice Direction.

The questions are roughly divided between Adult Psychiatrists, Child & Family Psychiatrists, Psychologists, Medical experts (principally Paediatricians), Radiologists and Ophthalmologists. These distinctions are not necessarily as hard and fast as they might seem. A Paediatric Radiologist based at a hospital with a casualty department and who works in a multi-disciplinary team may well be able to comment on what might seem to be a strictly clinical issue. Don't forget that a radiologist first qualifies as a doctor, as does a psychiatrist. They may therefore feel able to comment on basic medical details.

### Possible questions to Adult Psychiatrists

Do you consider X to be suffering from any psychological or psychiatric condition?

Does X have – whether in his / her history or presentation – a mental illness / disorder (including substance abuse) or other psychological or emotional difficulty and, if so, what is the diagnosis? (FJC)

If the answer to the above is yes, are there any features of either the mental illness or psychological / emotional difficulty or personality disorder which could be associated with risk to others, based on the available evidence base

(whether published studies or evidence from clinical experience)? (FJC)

What are the experiences / antecedents / aetiology which would explain his / her difficulties, if any (taking into account any available evidence base or other clinical experience)? (FJC)

Specifically is X suffering from or has X suffered in the past from [eg depression or post natal depression]? If so please set out any relevant history giving detail of past and present treatment.

If you consider X to be suffering from any psychological or psychiatric condition can you comment on the impact of this on X's parenting abilities either currently or in the past?

How do any / all of the above (and their current treatment if applicable) affect his / her functioning, including interpersonal relationships? (FJC)

If you consider X to be suffering from any psychological or psychiatric condition can you indicate what treatment, therapy or support might be indicated? What is the likely duration of such treatment?

What is the capacity of X to participate in / partake of the treatment / therapy? (FJC)

Can you provide any information about local resources from which treatment could be sought?

If possible please advise as to the prognosis for recovery or relapse and what effect relapse would have on X's ability to parent.

Are you able to indicate the prognosis for, timescales for achieving and likely durability of, change? (FJC)

What other factors might indicate positive change? (FJC)

## **Possible questions to Child & Family Psychiatrist**

Please undertake a general family assessment dealing in particular with:-

a) the interaction, attachment and bonding between the parents and each of the children;



- b) the interaction, attachment and bonding between the grandparents and each of the children;
- c) the degree of attachment between each child and his or her siblings.

To what extent do you consider the parents or either of them understand the children's emotional and developmental needs?

To what extent do you consider the parents or either of them are able to meet the children's needs?

Do you consider it to be in the child/ren's best interests that their contact with either or both parents(s) should be supervised? If so, please explain why.

Can you make recommendations as to the frequency and nature of contact in future between the child/ren and the parents or inter-sibling or other relative contact?

OR

Please comment on the value of contact for each child with each family member. Comment on the appropriate level of future contact between the children and family members.

What changes and / or improvements in the parents' individual or collective parenting approaches towards their children would need to be achieved to reduce or eliminate any risks identified?

What treatment, therapy or other support would be appropriate to enable the parent(s) to make any necessary changes or improvements?

What timescale would be needed for any treatment, therapy or other support?

What are the prospects of success for any treatment, therapy or other support identified as necessary?

Please indicate the positive and negative features which have influenced your opinion on the prospects of success?

What is your assessment of the child/ren's emotional, social and behavioural development?

Is there any likelihood of further attempts at self-harm by the child in future?

Can you comment on the benefits or disadvantages of the child being placed with his / her siblings and the effect on them all of being separately placed?  
What therapeutic or other help does the child need?  
Please comment on the suitability of the present placements and all the parties' different proposed future placements.

### **Possible questions to child mental health professional or Paediatrician (all from FJC)**

#### **The children**

Please describe the child(dren)'s current health, development and functioning (according to your area of expertise) and identify the nature of any significant changes which have occurred

Behavioural

Emotional

Attachment organisation

Social / peer / sibling relationships

Cognitive / educational

Physical

Growth, eating, sleep

Non-organic physical problems (including wetting & soiling)

Injuries

Paediatric conditions

Please comment on the likely explanation for / aetiology of the child(ren)'s problems / difficulties / injuries

History / experiences (including intrauterine influences and abuse and neglect)

Genetic / innate / developmental difficulties

Paediatric / psychiatric disorders

Please provide a prognosis and risk if the difficulties you identify are not addressed.

Please describe the child(ren)'s needs in the light of the above

Nature of care-giving

Education

## Treatment

In the short and long-term (subject, where appropriate, to further assessment later)

## **The parents / primary care-givers**

Please describe the factors and mechanisms which would explain the parents' (or primary care-givers') harmful or neglectful interactions with the children (if relevant).

What interventions have been tried and what has been the result?

Please assess the ability of the parents or primary care-givers to fulfil the children's identified needs.

What other assessments of the parents or primary care-givers are indicated?

Adult mental health assessment

Forensic risk assessment

Physical assessment

Cognitive assessment

What if anything is needed to assist the parents or primary care-givers now, within the child(ren)'s timescales, and what is the prognosis for change?

Parenting work

Support

Treatment / therapy

## **Alternatives**

Please consider the alternative possibilities for the fulfilment of the child(ren)'s needs.

What sort of placement?

Contact arrangements?

Please consider the advantages, disadvantages and implications of each for the children.

## **Possible questions to Clinical Psychologists**

Please provide an individual psychological profile of X.

Please comment on the quality of relationship and level of attachment between the child/ren and the parent(s).

Please say whether there is any aspect of the parent(s) psychological profile which in your view has any bearing on their ability to parent a child.

Please comment on the ability of the parent(s) to cope with stress.

In the event that you consider either or both of the parents have a psychological provide which affects their ability to care for a child, please comment on that parent's ability to change, the timescale within such change could be achieved and whether in your opinion that timescale is compatible with the child/ren's long-term needs?

Please comment on the state/ status of the parents' relationship with each other.

Please comment on the commitment of X to remain separated from Y.

Please comment on whether it would be advisable for there to be a separate psychiatric assessment of either parent or the children.

### **General questions eg to social work / independent Guardian type experts**

Please comment on:

1. The needs of each of the children in terms of their short and long-term care;
2. The ability of the parents, together or separately, to meet those needs in the long-term, any difficulties they might have in meeting those needs, and any support which should and could be offered in order to support them in meeting those needs (and their ability to take advantage of that support);
3. The current and past relationship between the parents and the impact of that on each of the children;

4. The ability of the parents to work with professionals to promote the welfare of the children;
5. Your recommendations for the appropriate placement for each of the children;
6. If your recommendation is that any of the children should not be placed with the parents or either of them, what contact would you recommend there should be with the parents or either of them and with their siblings.

**Questions for medical experts** (those marked with an asterisk are taken from the judgment of Charles J in *A Local Authority v K, D & L* (supra) & those marked with a # are suggested by the Family Justice Council / Chief Medical Officer)

Please detail any medical difficulties experienced by X from birth to date.

\* For each medical condition (death / injuries / harm) reported or identified please state all possible causes leading to such a condition and whether the condition(s) note can be said to have resulted from any particular cause and if so why it should be considered as a cause.

\* Please state your views as to the likelihood of each possibility being the cause of the relevant condition / death / injury / harm and the reasons why they include or reject it as a reasonable (as opposed to a fanciful or merely theoretical) possible cause.

\* Compare the likelihood of the cause (or causes) identified as reasonable possibilities being the actual cause of the relevant condition / death / injuries / harm.

\* State whether you consider that a cause (or causes) is (are) the most likely cause (or causes) of the relevant death / injuries / harm and your reasons for that view.

\* State whether you consider that a cause (or causes) is (are) more likely than not to be the cause (or causes) of the relevant condition / death / injuries / harm.

- # Describe the child's (current) health and development, functioning or difficulties and the prognosis for these difficulties if they are not addressed.
  - # Describe the child's presenting condition / injuries, if any.
  - # Can you comment on the likely explanation and/ or aetiology of the child's problems / difficulties / injuries and on the existence or likelihood of significant harm?
  - # Can you describe and prioritise the child's needs, including the nature of future care-giving and treatment, in the light of the above, in the short and long term?
  - # Can you advise as to the parents' / caregivers' ability to fulfil the child's identified needs?
  - # What, if anything, would be required to assist the parents / primary caregivers to be able to do so; and, if assistance is needed, what is the prognosis and timescale for change?
  - # Are other assessments needed?
  - # What are the alternative possibilities for meeting the child's needs and what are the implications of each?
- What effect will the medical condition have on the child's development and behaviour [and on his future needs]?

What level and type of care will the child need in future?  
Can you comment on the likely cause, timing and mechanism of any injuries suffered by the child?  
If you consider that a possible cause of X's presentation has to be ruled out, please explain why.  
Is there anything of particular relevance arising from the detailed medical records?  
What further investigations, if any, would need to be carried out to determine which of the possibilities put forward is correct?  
Is an ophthalmological [or other specific] investigation required?  
Is it possible to state whether there is any common medical predisposition or condition in this family which may be relevant to the question of causation of any injury?

Can you comment on the significance, if any, of the absence or presence of any markings on the child's body such as bruising?

Is it possible to comment on the likely presentation of the child after suffering the earlier subdural haematoma?

What significance, if any, should be attached [to the blood test results and in particular the haemoglobin level and the white blood cell count / the child's clinical presentation etc]?

### **Possible questions to Radiologists**

What is seen on radiological examination?

What interpretation should be placed on this?

What is the significance of the appearances on the CT and MRI scans?

What injury(ies) did the child suffer? Is there any organic cause or other explanation for what is seen?

If injury was suffered what was the cause of injury, its mechanism and likely timing?

Can you comment in general terms on the difficulty or ease with which it is possible to date any injuries sustained and the factors which make it difficult or easy to do so?

What was the clinical course of the child's presentation and how does this correspond with the appearances on the CT and MRI scans?

The parents have described an incident as follows .... Could this account for any injuries identified?

COMMENT: do be careful to present the parent(s) comments fairly. A parent may offer a suggestion to the doctors at the hospital eg 'the only thing I can think of is there was this time when etc. This is not necessarily the same as it being the parent's case that this is in fact the explanation for the injury.

Do you agree with the conclusion of X that there are Y subdural haematomas of different ages? If so, what

significance is there in the fact that there are haematomas of different ages?

Are the copies of the X rays of sufficiently good quality on which to base any conclusion about the timing of [the skull fracture] and if not, can anything be done to improve them.

### **Possible questions for an ophthalmologist**

Has the child sustained any ophthalmological injury?

Please comment from an ophthalmological point of view as to the likely cause, mechanism or timing of any injury sustained by the child.

Can you comment specifically on whether both retinal haemorrhages occurred at the same time and whether they occurred at the same time as the haematomas identified by expert Y (if you consider this to be within your area of expertise)?

Can you please also comment in general terms on the difficulty or ease with which it is possible to date retinal or other relevant ophthalmic insults and the factors which make it difficult or easy to do so in the case of this child's injuries?

Extract from the Judgment of Mr Anthony Hayden QC, sitting as a Deputy High Court Judge in Re F (Children) DNA Evidence [2007] EWHC 3235 Fam  
(<http://www.familylawweek.co.uk/library.asp?i=3430>)

(i) Any Order for DNA testing made by the Family Courts should be made pursuant to the Family Law Act 1969.

(ii) The Order should specify that it is being made pursuant to the Act and either the company who is to undertake the testing should be named or the Order should direct that the company identified to undertake the testing is selected in accordance with the Act, from



the Ministry of Justice Accredited List. Only accredited companies may be instructed.

(iii) The taking of samples from children should only be undertaken pursuant to the express order of the court. If a need arises for further samples to be taken, that should be arranged only with the approval of the court. If all the parties agree on the need for further samples to be taken, the application may be made in writing to the Judge who has conduct of the matter. These requirements should be communicated to the identified DNA company in the letter of instruction.

(iv) Save in cases where the issue is solely confined to paternity testing, where the identified company may have its own standardised application form, all requests for DNA testing should be by letter of instruction.

(v) The letter of instruction should emphasise that the responsibilities on DNA experts are identical to those of any expert reporting in a family case and that their overriding obligation is to the court. Further, if any test carried out in pursuance of their instruction casts any doubt on, or appears relevant to the hypothesis set by their instructions, they should regard themselves as being under a duty to draw that to the attention of the court and the parties.

(vi) Any letter of instruction to a DNA company should set out in clear terms precisely what relationships are to be analysed and, where the information is available, the belief of the parties as to the extent of their relatedness. (In recent decades British society has become much more culturally diverse. Some cultures have different attitudes to consanguine relationships, others include children within the family for a variety of reasons (usually highly laudable) who may have remote or indeed no genetic connection to the adults. In these cases, separate

statements from the parties setting out the family history and dynamics is likely to be helpful).

(vii) The letter of instruction should always make clear that if there appears to the DNA expert to be any lack of clarity or ambiguity in their written instructions, or if they require further guidance, they should revert to the solicitor instructing them. The solicitor should keep a note or memorandum of any such request.

(viii) The reports prepared for the court by the DNA experts should bear in mind that they are addressing lay people. The report should strive to interpret their analysis in clear language. Whilst it will usually be necessary to recite the tests undertaken and the likely ratios derived from them, care should be given to explain those results within the context of their identified conclusions.

(ix) Particular care should be taken in the use of phrases such as "this result provides good evidence". That is a relative term (and was here overtaken by stronger contrary evidence). Such expressions should always be set within the parameters of current DNA knowledge and should identify in plain terms the limitations as to the reliability of any test carried out. A "likelihood ratio" by definition is a concept which has uncertainty inherent within it. The extent of uncertainty will vary from test to test and the author of the report must identify and explain those parameters (e.g. It is not always possible to demonstrate half sibling relationship by DNA testing, even where it is given that a biological relationship exists").

(x) In this case, Orchid Cellmark conducted all the tests undertaken by Anglia DNA but also some further additional tests. Though it is not a feature of the evidence here, I would also add that where any particular test and subsequent ratio of likelihood is regarded as in any way controversial within the mainstream of DNA

expertise, the use of the test and the reasons for its use should be signalled to the court within the report.