Response to: Family Procedure Rule Committee consultation on the standards required for expert witnesses: proposed Practice Direction changes

About Rights of Women

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women's vulnerability, exclusion and marginalisation.

By offering a range of services – including specialist telephone legal advice lines, legal information and training for professionals – we aim to increase women's understanding of their legal rights and improve their access to justice. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

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Rights of Women's consultation response

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Summary

The proposals put forward by the FPRC fall short of the changes needed to address the problems identified in *Re C (parental alienation)* [2023] EWHC 345 (Fam), reporting on experts in the Family Court and the extent of the poor practice arising in alienation cases.

In summary:

- The experts who are perpetuating dangerous myths about alienation are psychologists and dual-qualified psychotherapists / independent social

workers. To tackle this problem, the rules need to specifically target the appointment of these experts and not experts generally.

- There is no reference to the admissibility of expert opinion evidence, the test to be applied by the court, or the circumstances under which any expert evidence would be deemed inadmissible. This is a missed opportunity to remind the court that not all opinion evidence is admissible.
- There should be no discretion to accept psychological assessments from unregulated psychologists or evidence under Part 25 from psychotherapists, even if the court gives reasons.
- The misuse of psychotherapist evidence in cases of alienation is such that it must be made clear that opinion evidence from psychotherapists is inadmissible. There is no reason why a court would need to appoint a psychotherapist to provide opinion evidence to the court. Treatment recommendations should only be made by a regulated psychologist.
- The proposed definition of 'regulated expert' must be reconsidered. It will allow unregulated professionals to call themselves a 'regulated expert' despite them being completely unregulated. There must be no blurring of boundaries in relation to regulation and registration.

Question 1

Are there any experts not accounted for in the current draft of the amendments who you feel should be considered? If yes, why do you think they should be considered?

Yes – as explained above, it appears that the FPRC has not addressed the specific problems they are trying to resolve with these rules. The issues are not in relation to experts generally, but psychologists and psychotherapists. The rules must target these specific professionals.

<u>Unregulated psychologists</u>

The FPRC should aim to make the application of the rules clearer and more consistent. There is a need to protect families from unqualified psychologists who are conducted inadequate assessments. Psychological assessments conducted by unregulated psychologists have no role in the Family Court. The only way of achieving this is to prohibit the appointment of unregulated psychologists to conduct a psychological assessment of any party or family member involved in children proceedings. There should be no discretion (as is currently proposed).

The FPRC cannot ignore the very real warning revealed by the investigative journalism of Hannah Summers in relation to unregulated psychologists. Melanie Gill was recorded, speaking to a potential future client saying, "There are brave judges trying to instruct me, but the minute someone realises it's me, they go out and they grab all the nasty people – the feminists, the journalists. And they start [going] on

and on and on."[1] Our experience of cases in which opinion evidence is permitted from so-called experts on alienation leads us to believe these judges may indeed exist and with the discretion permitted in the proposed rules, will mean unregulated psychologists, especially those who endorse parental alienation beliefs (now 'alienating behaviours') will continue to be instructed.

The FPRC must also be mindful of practices occurring outside court proceedings. Psychologists are sometimes approached in pre-proceedings work by the local authority or by solicitors during negotiations. If an unqualified person has conducted a psychological assessment outside of court proceedings, the court must be robust to respond to this as inadmissible evidence. By doing so, the FPRC will improve practice and safeguard vulnerable parties.

In our experience, case where unregulated psychologists are appointed are often accompanied by poor adherence to the rules and a lack of scrutiny on the part of the judiciary. This is another reason why there is no room for discretion in relation to unregulated psychologists.

The Rules should make clear that any psychological assessment conducted by an unregulated psychologist will be deemed inadmissible.

Instead of vague and discretionary rules, the FPRC should be clear and specific – the conduct of *psychological assessments* for use in court must only be done by *regulated psychologists*.

Focusing on this particular type of evidence and type of expert would prevent the need to create discretion, as is set out in the current proposals. It would permit a judge to, for example, appoint an academic psychologist to give opinion evidence on the admissibility of unevidenced theories that are not supported by a reliable body of knowledge.

The reason for the development of different regulatory practices amongst psychologists was to permit academics (who are unlikely to be providing psychological services to members of the public) to continue to call themselves psychologists while ensuring psychologists who are in contact with the public are appropriately regulated. It was justified as a matter of public protection when regulation was introduced. Our proposal aligns with this broader policy position in relation to regulation only applying to psychologists who are likely to be providing psychological services to the public i.e. psychological assessment.

Psychotherapists

The second category of opinion evidence relied on to advocate for alienation beliefs are psychotherapists. In our experience, they are often psychotherapists who also

[1] https://www.thebureauinvestigates.com/stories/2025-03-22/how-melanie-gill-became-a-leading-authority-on-parental-alienation

sell their services as independent social workers, giving an air of regulatory accountability that does not exist for their work as psychotherapists.

Psychotherapists or psychotherapeutic counsellors provide talking therapies. Their role in helping people in contact with the Family Court may be very valuable. But the role they have is that of a therapist, not an independent expert.

Some of the practice we have seen in relation to psychotherapists' roles in court proceedings are shocking. They include:

- Part 25 applications that are requests for an order that a family engages in therapy with a named psychotherapist (nothing to do with independent opinion evidence).
- Production of opinion evidence from a psychotherapist providing therapy with no application being made under Part 25.
- Part 25 being used to obtain psychotherapist evidence that a child has been alienated and for that psychotherapist to provide the 'treatment' in response.

These are all entirely inappropriate uses of Part 25 and confuses the independent roll of a court appointed expert with that of a treating therapist. There is no reason for a psychotherapist to have to provide expert opinion evidence to the court. To prevent this poor practice, the FPRC must, again, be clear and consistent in the correct approach.

While our experience is specifically with people who call themselves psychotherapists, it would also apply to any counsellor or therapist.

The rules should be clear that:

- Psychotherapist opinion evidence to the court is inadmissible. There are no circumstances in which it would be reasonable for the court to appoint a psychotherapist to provide expert opinion evidence.
- Therapeutic relationships between a psychotherapist and any party or family member involved in the proceedings immediately excludes them from being an independent expert. Their views may be taken into account by a court-appointed expert and they can provide factual evidence to the court but they cannot provide the court with an independent opinion. Furthermore, providing information to the court about therapy may undermine the therapeutic relationship they have with their client and is an ethical decision for them to make, having discussed this with their client.
- Treatment recommendations can only be made by a regulated psychologist, having conducted a psychological assessment.
- It should be set out explicitly that these professionals cannot provide psychological opinion evidence to the court.
- Opinion evidence from a psychotherapist that recommends their own therapeutic services is inadmissible on grounds of conflict of interest.

- Where an independent social worker is also a psychotherapist, any court order and letter of instruction for that professional must be clear the opinion is sought in relation to their social work expertise and that they must not stray into giving opinions outside of this remit. If they do, it may deemed inadmissible.

The current proposal does not address the poor practice in relation to the appointment of experts in the Family Court or the exceptionally poor approach to the admissibility of expert evidence.

We propose the following as alternatives to the proposals set out by the FPRC to tackle the problems that arise in the Family Court:

New FPR 25.5A

As explained above, the proposal does not respond appropriately to the problems the FPRC are trying to address.

Instead, the FPRC should take the opportunity to assert the legal test in relation to the admissibility of expert evidence as set out in *Kennedy v Cordia (Services) LLP* [2016] UKSC 6, namely:

a) whether the witness has the necessary knowledge and experience
b) whether the witness is impartial in his or her presentation and assessment of the evidence
c) whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

The FPRC should also take the opportunity to make a number of points in relation to this test, specifically:

- it is a conflict of interest for an expert to provide opinion evidence that recommends their own services or those of an associate. In these circumstances, the evidence would be inadmissible on the basis of a failure of impartiality.
- reliance on pseudo-scientific concepts such as parental alienation or any of the beliefs associated with this concept will render the evidence inadmissible as it fails the requirement for a reliable body of knowledge or experience to underpin the expert's evidence.
- recommendations for unevidenced treatment programmes such as reunification therapies in response to parental alienation / alienating behaviours or whatever other language is used to endorse those beliefs will render the opinion evidence inadmissible as it fails the requirement for a reliable body of knowledge or experience to underpin the expert's evidence.
- an expert who fails to understand the limitations of their role in relation to fact finding risks having questions of impartiality raised in relation to their opinion evidence.

Amendments to FPR 25.5

Paragraph 1 – should be amended so the court *must not* grant an application that does not meet the requirements in rules 25.6 (see amendments below) and 25.7. The court cannot scrutinise an application without these documents and unrepresented parties are denied their Article 6 rights without access to this information in advance. It should never be acceptable for a lawyer to produce many pages of information on the morning of a hearing and an unrepresented party be expected to make important decisions without having the time to even read the information provided.

New paragraphs – there should be three new paragraphs added to this rule.

The first new paragraph should deal with the issues raised above in relation to unregulated psychologists and include the following:

- Where the application is for a psychological assessment of any person, the expert appointed must be a psychologist regulated by the Health and Care Professions Council.
- Any psychological assessment conducted by a psychologist who is not regulated by the Health and Care Professions Council shall be deemed inadmissible in its entirety.

The second new paragraph should deal with the issues above in relation to psychotherapists and include the following:

- Psychotherapists cannot provide opinion evidence to the court as an independent expert.
- The provision of therapeutic support by a professional, which may be a psychotherapist, automatically presents a conflict of interest between the role of therapy provider and independent court expert. It is not possible to be both.
- Recommendations for therapeutic support or interventions cannot be made by a psychotherapist but should be made by a regulated psychologist or psychiatrist, having conducted an assessment of the parties / family.

The third new paragraph should deal with issues in relation to the misuse of experts to find facts and include the following:

- Allegations of domestic abuse, child sexual abuse or child abuse are likely to be relevant to the court's consideration of:
    - whether a psychological assessment is necessary.
    - the effective use of resources given the likelihood that the psychologist will conclude a fact-finding is necessary and will then have to provide an addendum report after any fact-finding
- Any application made in a case with disputed facts, especially allegations of domestic abuse, child sexual abuse or child abuse, should lead to a

consideration of whether a fact-finding hearing may be a more appropriate and more efficient response to issues in the case.

- Any psychologist appointed in a case where there are allegations of domestic abuse, child sexual abuse or child abuse or the court is satisfied that these behaviours have occurred, should be able to demonstrate that they have appropriate understanding of the impact of abuse and trauma.
- Any psychologist appointed in a case where there are disputed facts must be reminded, in the letter of instruction, that it is the court's role to determine disputed facts, not theirs. They should provide an opinion based on possible alternate facts. They should inform the instructing party as soon as possible if they do not believe this will be possible.

Amendments to FPR 25.6

In our experience, the requirements in relation to the timing of applications for expert assessment are never considered as relevant in cases where they are not followed. This is most likely to be in private children cases. We recognise in care proceedings, the rules in relation to the timing of applications are more likely to be followed.

We take the view that this rule is currently drafted with care proceedings in mind and does not cater to the way in which Part 25 applications arise and are pursued in private children in proceedings. Too often, we see non-compliant applications being made a few days before a hearing and then followed up by a letter of instruction and a number of CVs on the day of the hearing. We have also come across cases where a judge was willing to consider the application without any letter of instruction / questions at all and leave the decision in relation to the questions to be agreed between the parties.

The chaotic way in which applications are made, often late in proceedings and in non-compliant ways extremely stressful. This is particularly unacceptable when one of the parties is unrepresented. They are also, in our view, in breach of those parties' Article 6 rights to a fair hearing.

As a result, we propose this rule is amended to take account of these issues in practice and place requirements on the timing of applications that are more helpful to unrepresented parties. Namely:

- That applications under Part 25 must be made as early as possible within proceedings (before the first non-urgent hearing as is it is currently drafted).
- That applications made after the first non-urgent hearing in a case are accompanied by an explanation of why the application was not made earlier.
- That an application must not be considered at any hearing unless a rule compliant application is filed and served no less than two weeks before the hearing. This must include compliance with all relevant practice directions, all required paperwork must be filed and served in this timescale. The court must refuse to hear applications made in this way.

- That upon service of the application, information is provided to the other parties that they may consider looking for alternative experts and the information required to do so. The other party must be informed they will have to provide the CV, costs and timescales of the alternatives. They should also be informed that even if they do not agree with the application, they may wish to propose alternatives so that the court can consider them, in the event they grant the application.

Amendments to FPR 25.8

We suggest this rule is amended to prevent permission being granted to obtain opinion evidence of a particular type rather than from a named expert. The court should always be scrutinising the credentials of the expert proposed. Paragraph (1)(a) should be amended to read “it will grant permission only in relation to a named expert, having considered their relevant qualifications in the field identified in the application notice requesting the court’s permission”.

For clarity, it should not limit the permission to a named expert within the application notice, as another party may propose a different expert after service of the application notice.

Amendments to FPR 25.19

We suggest an amendment to this rule that places a responsibility on the court or instructing party to notify the HCPC or other regulator of concerns raised about the behaviour of the expert or quality of the opinion evidence provided by the expert to the court.

This should be accompanied by an order providing for disclosure of court documents to the HCPC / regulator.

We are concerned that there is a lack of interest in ensuring poor practice is reported to regulators with the aim of either improving practice or preventing poor experts from being instructed again. It is currently the case that if a judge makes significant criticism of an expert in a particular case, unless the judgment is published and the expert named, the expert can simply be instructed by different professionals and judges who will be unaware of the criticism. It is a matter of public protection that these actions should be taken or ordered by the court.

Practice Direction amendments

In the event the FPRC adopted some or all of our recommendations as set out above, subsequent amendments would likely to needed to the Practice Directions to ensure alignment. We would welcome the opportunity to discuss these further with the FPRC once the position in relation to rule amendments is settled.

Question 2

Do you have any feedback on Rule 25.5A and the amendments to PD's relating to the standards of experts, as currently drafted?

We are very concerned about the ability of the court to continue to appoint unregulated psychologists under the new rule 25.5A. This is a significant oversight in the drafting of this new rule.

We have made proposals in relation to the specific problems around psychologists and psychotherapists above. We would encourage the FPRC to take this opportunity to improve practice and consistency in this area and, in particular, in relation to the use of psychologists and psychotherapists.

We strongly encourage the FPRC to adopt our recommendations above.

<u>Use of 'regulated' and 'registered'</u>

We strongly object to the definition of 'regulated expert' as including people who are registered with voluntary registration bodies.

The FPRC will understand that there is a confusing regulatory landscape in relation to psychologists. There are very few unrepresented parties who are aware of this. There are also many lawyers and judges who remain unaware of the problem.

'Psychotherapists', 'counsellors', 'therapists' and other professionals can voluntarily join registration bodies but have no obligation to do so. Registered bodies have varied requirements and no statutorily set standards they are upholding. Furthermore, it is the body that is accredited by the Professional Standards Authority for Health and Social Care, not the individual professional. This mechanism provides little protection for members of the public as a psychotherapist removed from a register can still continue to work as a psychotherapist and sell their services to vulnerable parties in proceedings.

Defining 'regulated' to include 'on an accredited register' is, in our view, extremely dangerous in the context of the above confusion in relation to regulation and the voluntary nature of registration.

We are very worried that the proposal set out by the FPRC creates a worrying new legal entity – the 'regulated expert' who is not regulated.

This would enable, for example, psychotherapists to advertise themselves as 'regulated experts' because they are voluntary members of an accredited body. We hope that the dangers associated with the proposed definition of regulated expert are clear but if not, we would be happy to provide further clarification.

We would very strongly urge the FPRC to reconsider this concerning aspect of the proposal. The suggestions we have made above would avoid this altogether.

The FPRC amendments to Practice Directions 25B and 25C

We have no comment in relation to the specific drafting of these amendments save what has already been set out above.

Question 3

Are there any other comments you would wish to make regarding the instruction of unregulated experts?

We would like to make clear that our position in relation to unregulated psychologists does not minimise the great harm caused by regulated psychologists who espouse beliefs about parental alienation. These psychologists are also causing real harm to children and adult survivors of domestic abuse, child sexual abuse and child abuse when they are instructed in cases.

We also do not want to give the impression that we believe the current regulatory regime for psychologists provides absolute protection against poor practice. The HCPC can take many years to complete investigations and we have come across complaints that have been dismissed partly because the Family Court accepted the evidence of the psychologist. There is also a problem with accountability for this group of experts.

This is why we believe it is important that the FPRC adopts our suggested amendments in relation to the admissibility of expert evidence. We have never come across a case involving experts in which the lawyers have made an application to exclude opinion evidence on the grounds of admissibility. It is extremely concerning that the legal profession and judiciary seem unaware that there are rules in relation to the admissibility of evidence which have a very important role in protecting not only vulnerable parties within the court but also the integrity of the court process itself.

Finally, the lack of communication between the HCPC and Family Court is an area that requires significant work. In relation the remit of the FPRC, this is something that should be considered in relation to disclosure of information relating to proceedings under PD12G.

Rights of Women
6th June 2025