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First published  
March 2013

ISBN 978 1 84099 588 6

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## Experts in Public Family Law Cases in England and Wales

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Expert evidence plays an important role in ensuring that balanced and informed legal judgements can be reached. This study provides an insight into the use of experts by examining an area where they are frequently utilised – public family law. It examines the number and type of experts used in cases, together with the associated information on hours and costs. The study is based on a random sample of 433 cases which were supported by Legal Aid and provides estimates on how much experts cost this fund. It provides a baseline for costs *prior* to the expert fee reforms that were introduced in October 2011 against which future expenditure can be compared.

### Key findings

#### Numbers of experts

- The majority of cases in the review (63%) involved one or two experts and the mean number of experts used per case was two.
- Psychologists made up the majority of experts (34%), followed by psychiatrists (14%), drug and alcohol analysts (13%) and independent social workers (11%).

#### Hourly rates and hours worked

- The median hourly rate for psychologists was £130 and for psychiatrists £160.
- The median number of hours spent on a case was 30 hours for each psychologist involved and 17 hours for each psychiatrist involved.
- Maximum hourly rates set in October 2011 included higher rates for experts based outside London compared to those inside. A comparison of hourly rates for psychologists and psychiatrists found the reverse, with higher rates being paid inside London prior to the expert fee reforms. Few reports in this sample were supplied by experts within London, with just seven per cent of psychologists involved in these cases being based there.

#### Total cost of experts

- The total median cost of experts per case, for those cases in which they were involved, was £6,700. The Legal Aid Fund paid an average of £2,300 of that total per case. The remaining charges were paid by other parties in the case, such as local authorities.
- The median cost of a psychologist was £4,600, while for a psychiatrist it was £2,500; these costs were frequently shared among multiple parties. The median cost to the Legal Aid Fund of a psychologist was £1,400, while the cost of a psychiatrist was £900.
- Experts were found to account for around 89 per cent of administrative or 'disbursement' costs in the cases reviewed. If this figure is applied to public family law cases closed in the 12 months prior to October 2011, it suggests a total expenditure on experts of approximately £52m per year.

## Introduction

Legal Aid is designed to help people in need and provides funding for legal information, advice and representation. It covers civil, family and criminal law cases and, for example, may involve funding a solicitor or barrister in a case requiring legal representation.<sup>1</sup> Legal Aid can also be used to fund an expert to assist a case. For example, testimony from a medical expert may be critical to determining whether a child was harmed by accident or not.

This study builds on past research by examining the hours worked by experts and the cost of using them.<sup>2</sup> A lack of information on costs and hours is primarily due to experts being contracted by solicitors, and the resulting fees being aggregated with wider expenses when recorded against the Legal Aid Fund.

Concerns have been raised about a perceived increase in the use of experts in some types of legal case<sup>3</sup> and a rise in associated costs.<sup>4</sup> Recent legal aid reforms include placing a greater degree of control on the cost of experts, with maximum hourly rates for the majority of their work being introduced in October 2011.<sup>5</sup>

The study focused on public family law, as initial scoping identified this area as being where experts were most likely to be called upon. Public family law cases partly consist of '*Special Children Act Proceedings*'.<sup>6</sup> These are cases where local authorities have concerns about the welfare of children and by using the Children Act 1989 may, for example, seek a care or supervision order, a child assessment order, or an emergency protection order. Public family law cases also consist of '*other public law children cases*', which may involve, for example, appeals against the above types of order, adoption proceedings and proceedings under the jurisdiction of the High Court.

## Research aims

This study aimed to provide an insight into the use of experts in fully or partially legally aided public

family law cases. It sought to quantify: the number and types of experts used; hours worked; hourly rates; the cost of each expert type per case; the total cost of experts per case; and how much of these were paid from the Legal Aid Fund.<sup>7</sup> The study examined cases prior to the maximum hourly rates being set in October 2011<sup>8</sup> in order to provide a baseline against which future expenditure on experts can be compared.

## Methodology

Because little systematic electronic data was collected on the funding of experts via Legal Aid, a manual review through a sample of files was conducted in order to collect the required data. This case file review was based on a sample of 500 public family law cases. These were all drawn from the Legal Services Commission's Case Information System, and were closed in the five months prior to October 2011.<sup>9</sup>

A total of 67 files were excluded from the review as they did not hold sufficient information to establish whether an expert was linked to the case. Therefore, unless specified, the results are based on a sample of 433 cases. The vast majority of cases reviewed involved '*Special Children Act Proceedings*' (92%) with '*other public law children cases*' making up the remainder (8%).

## Results

### Numbers of experts in cases

Experts were used over 1,000 times across the 433 public family law case files reviewed.<sup>10</sup> All cases involved at least one expert, and the mean number of experts used per case was two. Table 1 presents the distribution of cases, and shows that the majority (63%) involved one or two experts.

<sup>1</sup> For eligibility to receive Legal Aid see:

<https://www.gov.uk/community-legal-advice>

<sup>2</sup> See Cassidy and Davey (2011), and Masson *et al.* (2008).

<sup>3</sup> Family Justice Review (2011).

<sup>4</sup> Ministry of Justice (2010).

<sup>5</sup> For details see:

<http://www.legislation.gov.uk/ukxi/2011/2066/contents/made>

<sup>6</sup> This definition of public family law is derived from Legal Services Commission classifications.

<sup>7</sup> The study also aimed to examine the types of work conducted by experts, such as report writing and attendance at court. However, this information is not reported on, as details held in case files were variable. Geographical location data were limited and only allowed a comparison of key experts based in or outside London.

<sup>8</sup> Hourly rates for Independent social workers were introduced separately in May 2011.

<sup>9</sup> In order to focus on cases involving experts the sample was drawn from those above a specific 'disbursement' cost. See Methodological note for more details.

<sup>10</sup> An individual expert was counted once per case, but might appear more than once across the cases in the sample.

**Table 1: Proportion of experts used in cases**

| No. of experts | No. of cases | %          |
|----------------|--------------|------------|
| 1              | 128          | 30         |
| 2              | 144          | 33         |
| 3              | 87           | 20         |
| 4              | 48           | 11         |
| 5              | 16           | 4          |
| 6 and more     | 10           | 2          |
| <b>Total</b>   | <b>433</b>   | <b>100</b> |

Table 2 lists the types of expert most commonly used in the cases examined, with the top four types of experts discussed below.

**Table 2: Types of experts used in cases**

| Types of expert                | No. of experts | %          |
|--------------------------------|----------------|------------|
| Psychologist                   | 342            | 34         |
| Psychiatrist                   | 141            | 14         |
| Drug and alcohol analyst       | 135            | 13         |
| Independent social worker      | 114            | 11         |
| DNA analyst                    | 64             | 6          |
| Transcriber                    | 35             | 3          |
| Paediatrician                  | 34             | 3          |
| Other medical professional     | 23             | 2          |
| Translator/Interpreter         | 18             | 2          |
| Radiologist                    | 10             | 1          |
| Child psychiatrist             | 7              | 1          |
| Psychotherapist                | 6              | 1          |
| Child psychologist             | 3              | 0          |
| Risk assessment expert         | 3              | 0          |
| Other                          | 80             | 8          |
| <b>Total number of experts</b> | <b>1,015</b>   | <b>100</b> |

1. Percentages do not total 100% due to rounding.
2. Individual experts counted once per case; however some experts appeared more than once in cases across the sample.

By far the most frequently used experts were psychologists (34%), followed by psychiatrists (14%). There is a degree of potential overlap in the work of these two groups. Both may be involved in providing an expert opinion on a variety of matters. These include health and wellbeing, cognitive issues, relationship difficulties and issues relating to alcohol or drug use, and how these may impact on stability within the family.

However, psychologists are commonly instructed to assess the psychological functioning of an adult in terms of their ability to manage their daily commitments. Psychiatrists are usually instructed to provide an expert opinion when one or more of the adults in the case may have a diagnosable mental health disorder. Their assessments usually focus on understanding, diagnosing and treating mental disorders and involve some element of behavioural interpretation and evaluation.

Drug and alcohol analysts (13%) are used when possible substance abuse by one or both parties needs to be determined, particularly in cases where there is a dispute regarding the care and/or custody of a child.

Independent social workers (11%) may be instructed to assess a parent if a parenting or risk assessment has not previously been carried out; information is missing from a previous assessment; or particular circumstances have changed.<sup>11</sup>

The next two sections – exploring hourly rates and hours worked – focus on the two most common kinds of expert: psychologists and psychiatrists.

### Hourly rates

The hourly rates for psychologists and psychiatrists varied widely (see Table 3), and the median rates were £130 and £160 respectively.<sup>12</sup>

**Table 3: Hourly rates for main expert types**

| Types of expert | Hourly rates £ |        |         |
|-----------------|----------------|--------|---------|
|                 | Lowest         | Median | Highest |
| Psychologist    | 60             | 130    | 500     |
| Psychiatrist    | 30             | 160    | 360     |

1. Base numbers: psychologists; 342; psychiatrists; 141.
2. Figures exclude VAT and rates for travel and subsistence.
3. Figures are rounded to the nearest £10.

The maximum hourly rates introduced in October 2011 were set at £117 per hour for psychologists and £135 per hour for psychiatrists outside London. These were based on an estimated ten per cent cut in rates. In this study figures for outside London provide some correspondence with these rates, with the median rate for psychologists being £130 – the same as the maximum rate when a ten per cent cut is made. The median figure for psychiatrists outside London was £160, slightly higher than the maximum rate when a ten per cent cut is made.

The study found very few reports supplied by experts within London with just 7% of psychologists (for example) being based there. The maximum hourly rates set in October 2011 included higher rates for experts based outside London compared to those inside. In this study a comparison of rates for psychologists and psychiatrists found the

<sup>11</sup> For more on independent social workers see Brophy, Owen, Sidaway and Jhutti Johal (2012).

<sup>12</sup> Drug and alcohol analysts are not included as their tests are conducted at a fixed rate. Hourly rates for independent social workers changed during the time period of this study as part of a separate process, and have therefore been excluded.

reverse, with median rates higher for those in London compared to those outside.<sup>13</sup> However, some caution should be applied given the small numbers of experts based in London.

### Hours worked

Information on how much time an expert spent on a case was not always recorded in the files reviewed. Nor, in many cases, was it clear what activities had been conducted, how much time was spent on particular tasks, or how many people were involved in activities such as assessments or interviews. Given the quality of the data, the study sought to group together *all* activities by an expert on a case.

Table 4 provides estimates for the average number of hours worked by psychologists and psychiatrists on the cases in which they were used. The median figures for psychologists and psychiatrists were 30 hours and 17 hours, respectively.

**Table 4: Number of hours worked by psychologists and psychiatrists per case where they were used**

| Types of expert | Median number of hours |
|-----------------|------------------------|
| Psychologists   | 30                     |
| Psychiatrists   | 17                     |

Base numbers (cases where information was available): psychologists 260; psychiatrists 99.

### The cost of using an expert

Expert fees in public family law cases ranged from £25 for a single medical report provided by a GP to £46,700 for assessments, interviews and observations on multiple children and adults by an independent social worker. Table 5 provides figures when all types of expert cost on a case are aggregated, with the median cost being £6,700.

**Table 5: Median cost of experts per case**

| Type of cost           | £     |
|------------------------|-------|
| Total cost per case    | 6,700 |
| Cost to Legal Aid Fund | 2,300 |

1. Base numbers: 391 cases where information on total cost of experts and cost of experts to the Legal Aid Fund was available.

2. Figures are rounded to the nearest £100.

Expert costs were commonly divided across other parties in the case, including the local authority and other family members. This had the effect of

reducing the size of payments from the Legal Aid Fund, with the median being £2,300.

Table 6 provides the cost of the main types of expert per case where this type of expert was used. It shows that psychologists cost the greatest amount, both in terms of total spend and the charge to the Legal Aid Fund. Independent social workers were the next most expensive expert, followed by psychiatrists.

The variations in these costs reflect two factors. First, the frequency with which these expert groups were used. Second, differences in the types of work they undertook and the time needed to conduct it.

**Table 6: Cost of main types of expert per case where this type of expert was used**

| Type of expert             | Median cost (£) | Median cost to the Legal Aid Fund (£) |
|----------------------------|-----------------|---------------------------------------|
| Psychologists              | 4,600           | 1,400                                 |
| Psychiatrists              | 2,500           | 900                                   |
| Independent social workers | 3,600           | 1,300                                 |
| Drug and alcohol testing   | 900             | 500                                   |
| DNA testing                | 500             | 200                                   |

1. Base numbers (cases where information on total cost of expert and cost of expert to the Legal Aid Fund was available): psychologists 306; psychiatrists 143; independent social workers 100; drug and alcohol testing 121; DNA testing 63.

2. Figures are rounded to the nearest £100.

Much lower costs were found for drug and alcohol testing, and DNA testing to establish the paternity of a child. This may reflect the standardised and automated nature of the activity involved in these forms of testing.

### Overall cost of experts to the Legal Aid Fund

Expert fees are recorded together with administrative costs, known as 'disbursements'. These may include travel and subsistence costs incurred by solicitors and barristers, as well as court fees and charges for copies of medical notes or police records. Previous estimates suggest expert fees made up around two-thirds of annual disbursement spend across Legal Aid funded criminal, civil and family cases.<sup>14</sup> This study found a higher rate in the area of public family law. Expert fees formed 90 per cent of disbursement costs in '*Special Children Act cases*', 82 per cent

<sup>13</sup> Psychologists: £150 per hour in London; £130 per hour outside. Psychiatrists: £180 per hour in London; £160 per hour outside. Differences are statistically significant at  $p > 0.01$ .

<sup>14</sup> Ministry of Justice (2011).

of costs in 'other public law children cases', and 89 per cent overall.

In the 12 months prior to maximum hourly rates for experts being introduced in October 2011, £58m was spent in disbursement costs on closed public family law cases. The proportional spend on experts found by the case file review was applied to cases where disbursement costs were over £400 to reflect the sample. This suggested that experts accounted for approximately £52m of Legal Aid spend.

## Conclusions

This study sought to quantify the use of experts in public family law cases. It found the most common experts used in these cases to be psychologists and psychiatrists, followed by drug and alcohol analysts, and independent social workers. When used, psychologists and psychiatrists cost around £4,600 and £2,500 per case. Because these costs were shared with other parties in the case, the cost to the Legal Aid Fund was lower – £1,400 for psychologists and £900 for psychiatrists. Expert assistance, as a whole, cost £6,700 per case, of which £2,300 was paid from the Legal Aid Fund.

The hourly rates in this study provided some correspondence with the October 2011 changes; the median hourly rate for psychologists was the same when the related ten per cent cut was taken into account. The October 2011 changes also made a distinction between experts based inside and outside London, with the latter group having higher maximum hourly rates. This study found few psychologists, as the largest group of experts, to be based in London, and median hourly rates to be higher for psychologists and psychiatrists *inside* London.

The study examined cases prior to the maximum hourly rates being set in October 2011. It provides a baseline against which future expenditure can be compared for the key expert types used. Future analysis of expert costs will be made easier by the introduction in 2011 of a new fee claim form for Legal Aid solicitors, which requests more detail on the work of experts. Planned IT improvements will also allow expert fees to be recorded separately from other costs. This will allow greater insight into the activities undertaken by each expert type. It will also offer the possibility of identifying the key drivers for expert usage and costs, as well as comparing costs between experts who conduct the same

activities. In addition, it should inform us about the use of experts in other areas where Legal Aid is provided.

## Methodological note

The cases in this study were selected from 17,300 public family law cases closed between May 2011 and the end of September 2011. This time period was selected because it was immediately before the introduction of maximum hourly rates for experts. Scoping work with an initial set of files confirmed the advice of Legal Services Commission staff that it was extremely rare for experts to be linked to cases with less than £400 in disbursement costs. Because the focus of the study was on experts, a random sample was drawn from cases with disbursement costs of £400 and above. Data collection was conducted by the Legal Services Commission's case work staff.

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