

This Practice Direction is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor and comes into force on xxx 2012

PRACTICE DIRECTION 25E – DISCUSSIONS BETWEEN EXPERTS IN FAMILY PROCEEDINGS

This Practice Direction supplements FPR Part 25

Scope

1.1 This Practice Direction supports FPR25.16 by providing details about how and when expert’s discussions are to be arranged, their purpose and content. This Practice Direction applies to children proceedings and all other family proceedings.

Experts’ discussion or meeting: purpose

2.1 In accordance with rule 25.16, the court may, at any stage, direct a discussion between experts for the purpose outlined in paragraph (1) of that rule. Rule 25.16(2) provides that the court may specify the issues which the experts must discuss. The expectation is that those issues will include-

- (a) the reasons for disagreement on any expert question and what, if any, action needs to be taken to resolve any outstanding disagreement or question;
- (b) explanation of existing evidence or additional evidence in order to assist the court to determine the issues.

One of the aims of specifying the issues for discussion is to limit, wherever possible, the need for the experts to attend court to give oral evidence.

(paragraph 6.2 of PD25A)

Experts’ discussion or meeting: arrangements

3.1 Subject to the directions given by the court under rule 25.16, the solicitor or other professional who is given the responsibility by the court (“the nominated professional”) shall **within 15 business days after the experts’ reports have been filed and copied to the other parties** – make arrangements for the experts to consult. Subject to any specification by the court of the issues which experts must discuss under rule 25.16(2), the following matters should be considered as appropriate—

- (a) where permission has been given for the instruction of experts from different disciplines, a global discussion may be held relating to those questions that concern all or most of them;
- (b) separate discussions may have to be held among experts from the same or related disciplines, but care should be taken to ensure that the discussions complement each other so that related questions are discussed by all relevant experts;

- (c) 5 business days **prior to a discussion or meeting**, the nominated professional should formulate an agenda including a list of questions for consideration. The agenda should, subject always to the provisions of rule 25.16(1), focus on those questions which are intended to clarify areas of agreement or disagreement.

Questions which repeat questions asked in the court order giving permission for an expert to be instructed or expert evidence to be used or the letter of instruction or which seek to rehearse cross-examination in advance of the hearing should be rejected as likely to defeat the purpose of the meeting.

The agenda may usefully take the form of a list of questions to be circulated among the other parties in advance and should comprise all questions that each party wishes the experts to consider.

The agenda and list of questions should be sent to each of the experts **not later than 2 business days before the discussion;**

- (d) the nominated professional may exercise his or her discretion to accept further questions after the agenda with list of questions has been circulated to the parties. **Only in exceptional circumstances should questions be added to the agenda within the 2-day period before the meeting. Under no circumstances should any question received on the day of or during the meeting be accepted.** This does not preclude questions arising during the meeting for the purposes of clarification. Strictness in this regard is vital, for adequate notice of the questions enables the parties to identify and isolate the expert issues in the case before the meeting so that the experts' discussion at the meeting can concentrate on those issues;
- (e) the discussion should be chaired by the nominated professional. A minute must be taken of the questions answered by the experts. Where the court has given a direction under rule 25.16(3) and subject to that direction, a Statement of Agreement and Disagreement must be prepared which should be agreed and signed by each of the experts who participated in the discussion. In accordance with rule 25.16(3) the statement must contain a summary of the experts' reasons for disagreeing. The statement should be served and filed **not later than 5 business days after the discussion has taken place;**
- (f) in each case, whether some or all of the experts participate by telephone conference or video link to ensure that minimum disruption is caused to professional schedules and that costs are minimised.

(paragraph 6.3 of PD25A)

Meetings or conferences attended by a jointly instructed expert

4.1 Jointly instructed experts should not attend any meeting or conference which is not a joint one, unless all the parties have agreed in writing or the court has directed that such a meeting may be held, and it is agreed or directed who is to pay the expert's fees for the meeting or conference. Any meeting or conference attended by a jointly instructed expert should be proportionate to the case.

(Practice Direction 25C, paragraphs 2.1 to 2.9 deals generally with single joint experts in children proceedings and Practice Direction 25D paragraphs 2.1 to 2.9 deals with single joint experts in relation to other family proceedings).

(paragraph 6.4 of PD25A)

Court-directed meetings involving experts in public law Children Act cases

5.1. In public law Children Act proceedings, where the court gives a direction that a meeting shall take place between the local authority and any relevant named experts for the purpose of providing assistance to the local authority in the formulation of plans and proposals for the child, the meeting shall be arranged, chaired and minuted in accordance with the directions given by the court.

(paragraph 6.5 of PD25A)

The Right Honourable
Sir Nicholas Wall
The President of the Family Division

Signed by authority of the Lord Chancellor:

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Parliamentary Under Secretary of State
Ministry of Justice