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Experts are appointed by the court to provide evidence for use in family proceedings and assist the court in making decisions on matters within their expertise. Experts operate within the framework of the Family Procedure Rules (FPR) and they have an overriding duty to the court to provide objective and independent advice that conforms to the best practice of their profession.

The Children and Families Act 2014 introduced a change to the threshold for permission to put expert evidence before the court from 'reasonably required' to 'necessary' to resolve the case justly.

Challenging the outcome of a court hearing

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Challenges to court decisions can only be made by way of appeal. The grounds for appeal are:-

- a) The law was not applied correctly by the Judge
- b) The Judge didn't follow the correct procedure
- c) There is a strong reason to demonstrate the decision was wrong or unfair

You cannot appeal a court decision just because you do not agree with it.

An appeal can only be brought by a person with legal standing (locus standi), ie. a party to proceedings.

Finding of Fact/Final Hearing

Findings of Fact must be based on evidence, not speculation. The judge is not allowed 'to sit on the fence' and has to find for one party or the other. The court has to find on the balance of probabilities

If, following the conclusion of a Fact Finding Hearing in relation to a single issue case that involves an injury to a child, the court determines that it is unable to make findings as to the cause of the injury, the local authority cannot rely on the injury as part of the threshold on which it is asking the court to find significant harm.

If, however, it is not a single issue, there may be other limbs that continue to meet the threshold test of significant harm and the case will proceed to Final Hearing.

Letters of Instruction

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When experts are appointed, a Letter of Instruction is written that outlines the questions that the expert is asked to address for the court. The instructions are written and agreed by the solicitors of all parties involved in the proceedings and the court. This instruction is, therefore, referred to as a joint instruction.

If a case involves a multi-disciplinary analysis of medical information carried out by a group of experts with different specialisms, the court must be careful to ensure that each expert keeps within the bounds of their own expertise and defer to other experts where appropriate.

Court Appointed expert and/or Treating Professionals

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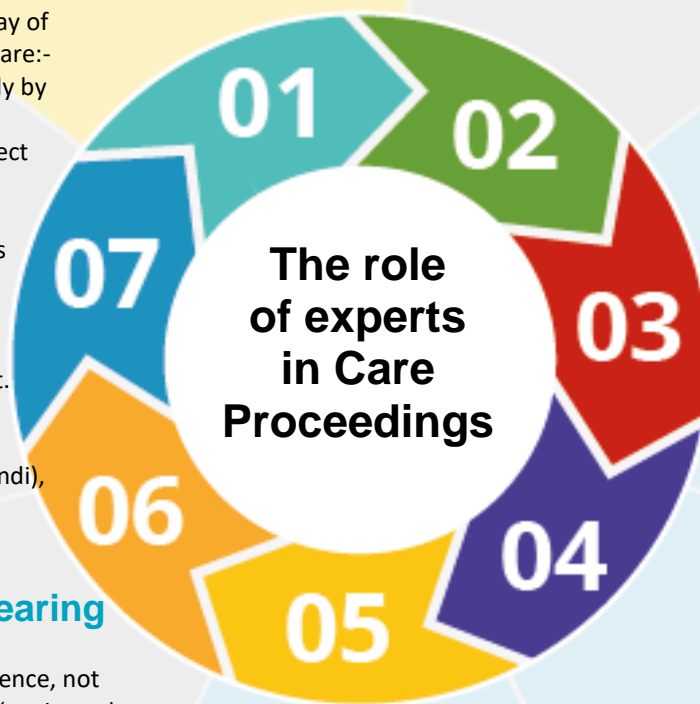
It is important to understand the difference between a professional with expertise who examines and treats a child and an 'expert witness' in court proceedings.

The medical professionals treating a child or recording injuries are not 'expert witnesses' as far as the court is concerned. They are experienced and knowledgeable, but they are witnesses of fact, not expert witnesses.

The difference between the roles of the treating team and the expert witness can be thought of in this way:-

- a) the treating team is asked to answer the questions
 - Is there anything to be worried about?
 - Is there anything further we need to do now?
 - Does the child need treatment?
- b) the expert witness however is trying to answer a different question:
 - On the basis of all the material you have, what is your expert opinion about how (and when) these injuries were caused or might have been caused?

Ultimately, the treating doctor is a witness of fact and is not called to give an expert opinion beyond an explanation of their diagnosis and treatment and generally the work they have done in the case.



The role of experts in Care Proceedings

Challenging an expert

Upon receipt of an experts' report, any party to the proceedings may ask further written questions of the expert. The questions must be proportionate, and they must be aimed at clarifying something in the report that isn't already clear or further information that has come to light since the filing of their report.

Where several experts have been instructed, it is also possible to arrange an Experts Meeting, whereby all the experts involved in the case are able to discuss their respective findings with the solicitors for the parties to the case and clarification sought in relation to issues raised.

