

General Authority for the Use of Psychiatrists and Psychologists as Expert Witnesses in Public Law Children Order Cases in the Family Proceedings Court

This General Authority allows expert psychiatrists and psychologists to be deployed as expert witnesses in Public Children Order Proceedings in the Family Proceedings Court without prior authority, providing a Certificate for legal aid has been granted by the Legal Services Agency and the work will be done within the limits in the General Authority.

This guidance also outlines the circumstances in which Prior Authority must be sought before deploying a psychiatrist or psychologist.

The expert can only be instructed when the Court has given leave for the instruction of an expert.

The duty of any expert witness is to give objective, unbiased opinion on matters within their expertise to assist the Court in reaching a fully informed opinion. This duty overrides any obligation to the person from whom the expert receives instructions.

The General Authority also allows for specific, Court directed alcohol and drug testing and DNA testing.

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1. Overview

- 1.1. The Legal Services Agency (LSANI) issues a General Authority under Regulation 37(4) of the Civil Legal Services General Regulations 2015.

2. Extent of the General Authority

- 2.1 The general authority applies to new work undertaken by expert psychiatrists and psychologists in Public Law Children Order cases in the Family Proceedings Court on or after 25 January 2021.
- 2.2 There are transitional arrangements for the introduction of the General Authority where a C2 has been submitted to the court prior to 25 January 2021 and is still under consideration. In these circumstances, the General Authority does not apply and an application for prior authority should be made.
- 2.3 Public Law Children Order cases are those where a Health & Social Care Trust or other public body has intervened to protect a child from harm and includes applications for care orders, supervision orders, child assessment orders, education supervision orders, emergency protection orders and extensions of these, and applications for secure accommodation orders. The General Authority does not extend to private Children Order cases.
- 2.4 The general authority applies to work undertaken in the Family Proceedings Courts (FPC) throughout Northern Ireland and does not apply to the higher court tiers. If a case is transferred from the FPC to a higher court tier and the Court has granted leave to release papers to an expert in order to obtain a report, this report will be paid in accordance with the general authority, but further reports will require prior authority. An expert may give evidence under the General Authority to the higher court where the report was commissioned at the FPC stage. No further reports may be commissioned without prior authority.

3. The Expert must be necessary in the case

- 3.1 Expert evidence is often of significant benefit to the Judiciary in making its decisions which are of fundamental importance to the child and the family in the case before the courts and the judiciary may give leave for an expert report where that is necessary.
- 3.2 The Family Proceedings Rules (NI) 1996 precludes the examination, by an expert, of a child without leave of the court.
- 3.3 The Court must grant leave for the instruction of an expert in order that they may be instructed under this general authority.

4. Notification of Engaging an Expert under this General Authority

- 1.1 An application, by way of an 'Authority – Profit Cost Disbursement' Request must be made on LAMS to instruct a psychiatrist or psychologist under the General Authority with an overall estimate of costs. This is for forecasting purposes and to assist with the evaluation of the pilot. The request will be treated as automatically having been granted and the estimate of costs submitted may be exceeded, providing the costs are necessary and remain within the limits allowed by the General Authority.

5. Features of the General Authority

- 5.1 The general authority provides for the remuneration of psychiatrists and psychologists based on an hourly rate appropriate to the expert involved, multiplied by the number of hours necessarily required to undertake the work. In certain cases, travel time and travel expenses incurred may also be paid.
- 5.2 This General Authority sets out the rates payable for certain types of expert, together with a ceiling in the number of hours for a particular case type. If the proposed work will be undertaken within these limits, and a Representation

Lower certificate is in place, no further authority is required. However, if it is proposed to work outside these limits, then prior authority must be obtained from LSANI.

6. Joint instruction of experts

6.1 Where there is joint instruction of an expert for a number of parties, one solicitor can engage the expert as a Lead Instructor, with the formal approval of the other parties and one bill will be submitted to LSANI for all legal aid costs in respect of the instruction of the expert.

7. Hourly Rates

7.1 A list of the applicable hourly rates for the experts payable from 25 January 2021 under the General Authority is in table 1 below.

Table 1

Expert Type	NI Hourly Rate
Child psychiatrist	£108
Psychiatrist	£100
Psychologist	£100

8. Hours Allowed

8.1 A solicitor can engage an expert witness under the General Authority without seeking the prior authority of LSANI providing the hourly rate in Table 1 is being charged and providing the number of hours for which the expert is to be engaged does not exceed the maximum hours in Table 2 unless the restrictions in paragraph 18 apply.

8.2 Table 2 below provides a maximum number of hours, above which you must apply for prior authority.

Table 2

Number of hours above which prior authority must be applied for			
Expert Type	One individual to be assessed	More than one individual to be assessed	More than 2 individuals to be assessed
Psychologist (including Child Psychologist)	16 hours in total for the assessment and report 3 hours for observing contact (per parent/relative)	10 hours per extra individual	10 hours per extra individual
Child Psychiatrist	10	15	20
Psychiatrist (full report)	10	15	20
Psychiatrist (Competence Report)	5		

8.3 These numbers are a guideline and we would not expect experts to require this number of hours in every case. When engaging an expert the solicitor should have regard to the public purse and the hours requested by the expert.

8.4 The maximum hours allowed includes the assessment of individuals, preparation of a report and addendum reports. It does not include travel time or court attendance, for which prior authority normally will not be necessary and should be justified on final assessment instead.

- 8.5 If an experts' meeting is required, up to five hours will be allowed under the General Authority and prior authority will be required to exceed this.
- 8.6 Reading time is not included in the maximum hours allowed and is dealt with separately below. It is recognised that the hours required for reading varies from case to case and therefore it is not included in the cap on hours allowed.

9. Provision of Relevant papers and Reading Time

- 9.1 The Solicitor should ensure that the expert is provided with the annotated and relevant notes and records, including medical information. On occasions experts have been provided with all the assisted person's medical information, regardless of relevance which is potentially a breach of the General Data Protection Regulations.
- 9.2 LSANI will allow an hour for reading 100 pages of relevant information.
- 9.3 LSANI will allow 4 pence per page for photocopying relevant papers for the expert.

10. Research

- 10.1 LSANI will not allow payment for research.

11. Confirmation that Expert can Produce Additional Work, Attend Expert Meetings and Attend Court Proceedings

- 11.1 Before confirming the instruction of an expert solicitors must confirm with the expert that they are willing to produce additional work and attend expert meetings at the hourly rate in the general authority and make themselves available to attend court proceedings, if necessary at rates of up to £250 for a half day and for £500 for a full day in court, or part thereof.

12. Travel Time

12.1 The rate for travel time is £33.50 per hour.

13. Travel and Subsistence Payable

13.1 All expenses must be properly vouched.

13.2 The following rates apply:

a. Local Expert

Properly expended mileage will be paid at 35.7 pence per mile. Travelling expenses such as car parking will be considered if deemed reasonable.

No other subsistence will be payable.

b. Expert from outside the jurisdiction

Air travel - will be paid at the economy rate and by the most economical routes.

Where there is uncertainty as to the duration of court proceedings a flexible ticket may be the most economical rate in the circumstances.

Overnight Allowance – if essential, costs for bed and breakfast up to a ceiling of £100 including VAT and up to £18.30 to cover lunch and dinner will be allowed per day providing they are supported by receipts. Costs for alcohol, newspapers, telephone calls and other sundries are not recoverable.

Taxis – will only be paid if considered necessary.

Public Transport – will be reimbursed at standard fares.

Car Hire – if a car is hired it must be an economy rate which is limited to £40 per day.

14. Use of Experts Outside of Northern Ireland

14.1 Experts from outside of Northern Ireland should only be instructed if there are no experts in this jurisdiction able to provide the expert evidence due to the specialism of the evidence required, or it is necessary to meet the Court's timescales. This is to protect the legal aid fund from unnecessary travel costs. This General Authority only applies to the instruction of experts based in the UK and ROI.

15. Evidence by Video Conference Facilities

15.1 If possible, expert witness evidence should be provided to the court by way of video conference if the witness is outside this jurisdiction. Prior authority should be sought for the costs of the video link.

16. Administration Costs

16.1 Additional administration costs, including secretarial or administrative support, fees in respect of office space or provision of a consultation room, courier fees, photocopying etc. will not be payable.

17. Cancellation Fees

17.1 Cancellation Fees are not payable and this should be confirmed in the instruction to the Expert Witness.

18. Prior Authority

18.1 There are circumstances when you must apply for prior authority, which includes circumstances when the expert is within the hourly rate and maximum hours in Table1.

18.2. You must always apply for prior authority where one or more of these occur;

- you seek to incur costs of an expert service at higher rates than those set out in Table 1 for that service;
- the hours requested are in excess of those set out in Annex 1;
- the travel costs, travel time and incidentals exceed £200 for an expert based in NI or £800 for an expert based outside this jurisdiction; or
- the time required for preparation and attendance at an experts' meeting will exceed 5 hours.

18.3 The flow chart at Annex 1 demonstrates when a solicitor should seek prior authority to instruct an expert.

19. Prior Authority for Higher Rates in Exceptional Circumstances

19.1 LSANI cannot pay rates or hours in excess of those listed in the General Authority unless prior authority has been granted to exceed the rates or hours. Authority to exceed rates will only be given in exceptional circumstances.

19.2 Exceptional circumstances are where:

- a) the complexity of the material is such that an expert with a high level of experience is required; or
- b) the material under consideration or the issues in the case are of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence.

19.3 LSANI will not grant a higher rate merely because any of the parties to the proceedings has a preferred expert who charges a higher rate. LSANI may require three alternative quotes before granting prior authority for an expert. LSANI has a statutory duty to aim to obtain the best possible value for money.

19.4 Where a rate set out in the General Authority has been exceeded and no authority to exceed the rates has previously been granted, LSANI will disallow any fees exceeding the maximum rates.

19.5 When making a decision on higher rates LSANI will consider the total costs of the work sought and value for money.

20. Prior Authority for Additional Hours

20.1 The maximum hours in Annex 1 provide a maximum number of hours above which you must apply for prior authority. This does not mean that there is a cap on work that can be done and that hours in excess of these will be refused. It means that prior authority must be sought where an expert's time is expected to exceed these benchmarks and that detailed reasons justifying the greater number of hours will be required.

21. Prior Authority for Travel Time and Travel Costs and Other Incidentals

21.1 Prior Authority must be sought if the cost for travel time, travel costs and associated expenses will exceed £200 for an expert situated in Northern Ireland and £800 for an expert outside this jurisdiction.

22. Where to submit applications for prior authority

22.1 Applications for prior authority for Children Order cases, including urgent applications, should be submitted online on the Legal Aid Management System.

22.2 LSANI may inform the Judiciary if the process for urgent applications is being abused in cases where the matter has only become urgent due to the failure of the solicitor to seek authority at an appropriate juncture. On occasion, in individual cases LSANI may be called upon by the Judiciary to demonstrate

that the solicitor in a case has failed to make an application in a case in a timely manner.

23. Expert standards

23.1 Subject to any order made by the court, LSANI will only pay for expert witnesses in family matters relating to children where those experts comply with any standards as may be specified from time to time in any Practice Direction issued by the courts.

23.2 Responsibility for compliance with the standards in the Practice Directions rests with individual experts.

24. Payment of Experts' Bills

24.1 LSANI will assess experts' fees when paying the final bill. The fees will be considered for reasonableness in light of the court directions and the work undertaken. The following should be provided:

- a. The letter of instruction to the expert and any addendum to this.
- b. The expert's invoice(s) showing the hours and hourly rates with a breakdown of work undertaken including reading time and the number of pages, the time spent on any consultation and the time spent preparing the report and details of the length and purpose of the report;
- c. the dates the work was undertaken;
- d. the court order relating to the invoice;
- e. if relevant, details of all the parties if it is a joint report; *and*
- f. where appropriate, a copy of a letter from LSANI granting prior authority to incur an expert cost.

25. Medical Fees for Scans

25.1 MRI and CT scans may be obtained without prior authority where they are necessary to assist the expert. Court directions and supporting documentation will be required to evidence that same were necessary.

26. Routine Drug and Alcohol Testing

26.1 It is not necessary to apply for prior authority for drug and alcohol tests provided that the tests have been directed by the Court.

26.2 If the Court Order specifies the types of drugs that should be tested then funding will only cover the test for these specific drugs.

26.3 When the Court Order orders alcohol testing it should state whether this is for hair, blood or liver function tests. Funding will be provided only for the tests specified in the Court Order.

26.4 Tests must be obtained from a company recognised by the court to conduct such tests or authorised by the court to conduct such tests and whose evidence is admissible in court.

27. Routine DNA Testing

27.1 The General Authority allows DNA testing on a 'per test' basis, plus a separate fee for report drafting. Tests must be obtained from a company which is recognised by the courts to conduct such tests under Article 8 of the Family Law Reform (NI) Order 1977,

27.2 A test comprises of father and child (plus mother if required).

27.3 If there are a number of alleged fathers, each father and child/children tested would constitute a separate test.

Annex 1

Summary of Caps on Rates, Hours and Allowances under the General Authority

Table 1

Expert Type	NI Hourly Rate
Child psychiatrist	£108
Psychiatrist	£100
Psychologist	£100

Maximum Number of Hours

Table 2, on the next page, provides a maximum number of hours, above which you must apply for prior authority.

Table 2

Number of hours above which prior authority must be applied for			
Expert Type	One individual to be assessed	More than one individual to be assessed	More than 2 individuals to be assessed
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These numbers are a guideline and we would not expect experts to require this number of hours in every case. When engaging an expert the solicitor should have regard to the public purse and the hours requested by the expert.

The maximum hours allowed includes including the assessment of individuals, preparation of a report and addendum reports. It does not include travel time or court attendance, for which prior authority normally will not be necessary and should be justified on final assessment instead.

If an experts' meeting is required, up to five hours will be allowed under the General Authority and prior authority will be required to exceed this.

Reading time is not included in the maximum hours allowed as the hours required for reading can vary significantly from case to case.

Table 3

Travel and Subsistence – expert located in NI	
Cost	Cap
Travel Time	£33.5
Mileage	35.7 pence
<i>Prior authority must be sought if the total travel costs will exceed £200</i>	

Table 4

Travel and Subsistence – expert located outside this jurisdiction	
Cost	Cap
Travel Time	£33.5 per hour
Mileage	35.7 pence
Flight	Economy/most economical
Overnight Allowance	£100
Lunch and dinner	£18.30
Car hire	£40
<i>Prior authority must be sought if the total travel and subsistence costs will exceed £800</i>	

Annex 2

When to Seek Prior Authority for Psychiatrist or Psychologist

