ARTICLE

Psychiatric assessment of adults in care proceedings

Rajan Nathan, Ruth Scarisbrick & Gaynor Brown

Rajan Nathan, MBBCh, MMedSc, MRCPsych, DipFSc, MD, is a consultant forensic psychiatrist with Cheshire and Wirral Partnership NHS Foundation Trust, an Honorary Senior Research Fellow at the University of Liverpool, Visiting Professor at the University of Chester, and Adjunct Professor at Liverpool John Moores University, UK. His clinical work has spanned forensic, general adult and specialist autism spectrum and personality disorder services in community, hospital and prison settings. He has over 20 years' experience of working in a range of medico-legal contexts, including the regular provision of opinions to the family court. **Ruth Scarisbrick**, BA (Hons) Law, is a Partner of Bell Lamb & Joynson Solicitors in the north of England, has extensive experience of family law and specialises in divorce, children and care work. She has been a member of the Law Society's Children Law Accreditation Scheme (formerly the Children Panel) since 1996 and was one of the first professionals to receive specialist accreditation from Resolution (formerly the Solicitors Family Law Association). She regularly conducts her own advocacy in the family court. **Gaynor Brown**, MA (Social Work), is a practising social worker in an inner-city local authority children's service in the north of England and is experienced in undertaking assessments and preparing care plans in the course of care proceedings
Correspondence Professor Rajan Nathan, Chester Medical School, Bache Hall, Chester CH2 1BR, UK. Email: taj.nathan@nhs.net

First received 12 Feb 2019
Final revision 19 Aug 2019
Accepted 27 Aug 2019

SUMMARY

Psychiatric assessments of adults involved in care proceedings can play a critical role in assisting the family court to resolve proceedings justly. To properly carry out this role, the psychiatric expert should have an up-to-date understanding of the wider context within which they are working. This article outlines the legal framework of care proceedings in England and Wales and summarises the key aspects of the process. The duties of the expert and how the expert is engaged are explained. Finally, guidance is presented on how the expert should approach questions that are commonly raised in these proceedings.

LEARNING OBJECTIVES

After reading this article you will be able to:

- appreciate the legal framework relevant to care proceedings in England and Wales
- recognise the circumstances in which expert psychiatric evidence relating to adults in care proceedings is commissioned
- understand the common questions posed to expert psychiatrists undertaking assessments of adults in care proceedings and develop an assessment framework.

DECLARATION OF INTEREST

None.

KEYWORDS

Risk assessment; psychiatry and law; perinatal psychiatry.

Family law is the term used to describe legal issues and processes arising in the context of childcare, parenting and adult relationship formation, breakdown and violence. A conceptual distinction is made between matters of 'private' and 'public' law. 'Private law' refers to a legal dispute between private individuals, such as a dispute over the arrangements about who children live with and how much time they spend with the other parent. 'Public law' describes legal disputes between individuals and the state, and includes care proceedings in which local authorities apply to the family court for orders concerning the care and supervision of children. In practice, the distinction is less clear cut, since cases may at different stages involve elements of both types of law. It is care proceedings in England and Wales that are the focus of this article, and particularly the psychiatric assessment of adults in care proceedings.

The majority of family law cases in England and Wales are heard in the family court, which was established in April 2014 by the UK's Crime and Courts Act 2013 and replaced the previous tiered system of family courts. It is a single national court that sits across the two countries. However, within the family court, a tier system remains to deal with appeals. Thus, appeals from a decision by the lay justices or a district judge are made to a circuit judge; appeals from circuit judges or High Court judges go to the Court of Appeal. The High Court deals with family cases of a very complex nature and other specific matters reserved only to be heard by the High Court (e.g. wardship). The Family Procedure Rules 2010 (www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu) are a statutory instrument that govern the practice and procedure followed in family proceedings. These rules are accompanied by practice directions, some of which are of direct relevance to expert evidence (see below).

Section 1 of the Children Act 1989 sets out a series of principles that apply to a court when determining any questions with respect to the upbringing of a child. These include the principles at section1(1) that the child's welfare shall be the court's paramount consideration (the 'paramountcy of welfare' principle); at section1(2) that any delay in determining the questions is likely to prejudice the welfare of the child (the 'no delay' principle); at section 1(3) that when making decisions about the well-being and upbringing of a child, the court should give due regard to seven statutory criteria, which are known collectively as the 'Welfare Checklist' (Box 1); and at section1(5) that the court shall not make any of the orders unless it considers that doing so would be better for the child than making no order at all (the 'no order' principle). The 'paramountcy of welfare' principle applies when a court determines any question with respect to (a) the upbringing of a child or (b) the administration of a child's property or the application of any income arising from it.

There are limits to the 'paramountcy of welfare' principle. Notably, the interpretation of 'upbringing' at section 105 of the Act limits the meaning of this word to the care but not the maintenance of the child. Furthermore, the paramountcy principle may also be excluded by other legal provisions. The 'no order' principle does not introduce a presumption in favour of no order. Rather, it requires the court to consider whether it would be better for the child to make the order than to make no order at all.

Although the parties in proceedings before the family court may advance different positions (including with regard to expert evidence), the court adopts a quasi-inquisitorial approach to resolving the issues. Thus, the objective is to achieve the best outcome for the child. This differs from the approach in the criminal courts, which overtly adopt an adversarial approach. The other key difference is that facts are determined by the family court to the civil standard of proof, i.e. on the balance of probabilities, which is a lower one than in the criminal courts (which apply a standard at the level of beyond reasonable doubt). The relevance to the expert is that if there is room for a range of opinions about a particular question (which is often the case for psychiatric evidence) then the expert needs to consider whether they believe the opinion to be more likely than not (i.e. the level of probability equivalent to balance of probabilities). However, it is ultimately the court's decision and the psychiatric opinion will be part of the overall picture considered by the court in reaching that decision.

BOX 1 The 'Welfare Checklist' criteria

1 The ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding)
2 The child's physical, emotional and educational needs
3 The likely effect on the child of any change in their circumstances
4 The child's age, gender, background and any characteristics that the court considers relevant
5 Any harm the child has suffered or is at risk of suffering
6 How capable each of the parents, and any other person to whom the court considers the question to be relevant, is of meeting the child's needs
7 The range of powers available to the court under the Children Act 1989 in the proceedings in question

(Based on the Children Act 1989: section 1(3))

Care proceedings

Orders

At the final hearing there are several orders the court can make. Pursuant to section 33(1) of the Children Act 1989, the effect of a care order is that the local authority receives the child into its care (although this may also mean that the child remains in the care of a parent or a family member assessed as suitable) and keeps the child in its care while the order remains in force. The key consequence of a care order is set out in section 33(3) of this Act. The designated local authority assumes parental responsibility for the child and has the power to determine the extent to which others with parental responsibility may meet that responsibility. In practice this means that the local authority can decide with whom the child lives and the circumstances of the care provided to the child. A supervision order, pursuant to section 35 of the Act, places the child under the supervision of the local authority. In practice, the placement (which may be with the parent) will be supervised by the children's services department of the local authority. A supervision order does not give the local authority parental responsibility for the child, but requires the local authority to 'advise, assist and befriend' the child. Other orders include a child arrangements order (specifying where the child will live or the time that they spend with a non-resident parent or other family member), a special guardianship order (placing a child with someone other than their parents, e.g. family member or friend, with an enhanced level of parental responsibility and who would share parental responsibility with the parents) and a placement order (allowing the local authority to place a child for adoption). Section 12 of the Children and Families Act 2014 replaced the contact and residence orders with the child arrangements order, which regulates (a) with whom the child is to live, spend time or otherwise have contact and (b) when a child is to live, spend time or otherwise have contact with any person.

If there are pressing concerns about the child's welfare while the proceedings are ongoing, the court may, under section 38 of the Children Act 1989, make an interim care order or supervision order. In practice, this allows temporary arrangements to be put in place where necessary before the final hearing. An interim order does not prejudge the outcome of proceedings.

Threshold

Section 31(2) of the Children Act 1989 sets a threshold that must be crossed to justify making a care or supervision order (Box 2). The threshold for an interim order is set at a lower level by section 38(2) of the Act, which requires the court to be satisfied that there are reasonable grounds for believing the circumstances mentioned in section 31(2) of the Act exist. For a full order the court must be satisfied that the grounds exist.

The local authority must prove on the balance of probabilities to the court's satisfaction that the

BOX 2 Section 31(2) of the Children Act 1989, on care and supervision

'A court may only make a care order or supervision order if it is satisfied –

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to –

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control.'

'threshold criteria' are met. Thus, it must be proven that (a) the child is suffering, or is likely to suffer, significant harm and (b) that the harm, or likely harm, is attributable to care given to the child (or the care that would be given if the order were not made) or to the child being beyond parental control.

Parties to the proceedings

The applicant in care proceedings (i.e. the party making an application to the court for a care order or supervision order in relation to a child) is usually the children's services department of the local authority. In practice, a social worker undertakes the assessments and the legal department provides the necessary legal input.

Section 3(1) of the Children Act 1989 states that parental responsibility 'means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'. In practice, those with parental responsibility are allowed to have a say in decisions about the upbringing of the child. Where the child's mother and father were married at the time of the child's birth they have parental responsibility. Unmarried mothers automatically have parental responsibility. Unmarried fathers may acquire parental responsibility by, for example, becoming registered as the child's father, making a parental responsibility agreement with the mother, or a court order. The automatic respondents are the persons who have parental responsibility for the child. Other people can be made parties, such as a father without parental responsibility, or grandparents. In addition, a person other than a parent who has a child arrangements order or special guardianship order in their favour in respect of a child for whom care proceedings are issued at the time of issue has parental responsibility and is also a party.

The children are represented by the Children and Family Court Advisory and Support Service (Cafcass). Established by the Criminal Justice and Court Services Act 2000, Cafcass is independent of the courts and social services. Cafcass 'family court advisors' work with children and families to advise the courts on decisions that are the children's best interests. In care cases, the Cafcass worker is known as a children's guardian. He or she scrutinises the local authority's care plan. The child has legal representation and, in most cases, that legal representative takes their instructions from the children's guardian.

Pre-proceedings

Where the threshold criteria for issuing care proceedings have been met, the local authority has a duty to explore with the parents the possibility of making positive changes that would avoid the need for court proceedings. If the risk to the child is considered too high, the local authority may make an application to the Court straightaway. Otherwise, the pre-proceedings stage commences with a letter ('letter before proceedings') sent to the parents (a) setting out the concerns, the support already provided and what needs to change, (b) advising them how to obtain legal representation and (c) inviting them to attend a pre-proceedings meeting with the social worker and legal representative. The aim of this meeting is to agree a plan to protect the child from harm and timescales for agreed changes. At the conclusion of the pre-proceedings possible outcomes include: (a) cessation of pre-proceedings because of sufficient positive progress; (b) the placement of the child with family members; and (c) initiation of care proceedings because of insufficient progress. Since during pre-proceedings the local authority does not have special powers, placement with a relative or in foster care will be with parental agreement.

Stages of proceedings

Care proceedings comprise four stages (Table 1). More detail can be found in Practice Direction 12A (the full names of the Practice Directions mentioned in this article are given in Box 3).

In stage 1, the application is issued by the local authority and the case is allocated to the appropriate level of judge of the family court. By day 2, a children's guardian and a solicitor for the child are appointed and the documents served on the parties. Stage 2 comprises the case management hearing, when the court gives case management directions, including setting out the timetable for the proceedings, identifying the key issues and the evidence necessary to resolve those issues, and determining whether an application for an expert is necessary. These directions are recorded in a case management order. Stage 3 is the issues resolution hearing, at which there is an attempt to resolve or narrow the issues. Final case management directions are given by the court and issued as a case management order. Final orders can be made at the issues resolution hearing. If the parents and local authority

BJPsych Advances (2020), vol. 26, 16–25 doi: 10.1192/bja.2019.55

cannot agree a plan for the child, then a final hearing is listed. This hearing is stage 4 and the point at which the court will make a final decision, which may include making a care or a supervision order.

A maximum time limit of 26 weeks from the issuing of the application for a care or supervision order to the completion of proceedings was introduced by section 14 of the Children and Family Act 2014. Extensions of 8 weeks at a time may be granted but only if the court considers extension necessary for the proceedings to be resolved justly. The Act states that extensions should not be granted routinely and they require specific justification.

Litigation capacity

If a parent is thought to lack capacity to conduct proceedings, then an expert assessment of capacity may be sought. The expert assessing capacity must apply the principles set out in section 1 of the Mental Capacity Act 2005 and refer to the definitions of (a) lack of capacity and (b) inability to make decisions at sections 2 and 3 respectively of the Act. The assessment considers whether the parent is capable of understanding the issues with the assistance of proper explanation from the legal advisors or others. A parent held to lack capacity to conduct proceedings is a 'protected party' to whom a 'litigation friend' (usually the Official Solicitor) is appointed to instruct the protected party's solicitor.

Instructing experts

Section 13 of the Children and Family Act 2014 introduced new controls of expert evidence in children proceedings. An expert may only be instructed with the permission of the court and permission shall only be granted if the court is of the opinion that 'the expert evidence is necessary to assist the court to resolve the proceedings justly'. In making this decision the court must consider (a) the impact of giving permission on the welfare of the children, (b) the issues to which the expert evidence would relate, (c) the questions to be answered by the expert, (d) other expert evidence that may be available, (e) whether others could give evidence on the particular matters, (f) the impact of giving permission on the timetable of the proceedings, (g) the cost of the expert evidence and (h) any matters prescribed by the Family Procedure Rules 2010. If the court has not given permission, then the report is inadmissible unless the court rules otherwise. Wherever possible a single joint expert (SJE) should be instructed by all the parties. Expert psychiatric assessment of the parent may be sought in pre-proceedings if the parent consents.

TABLE 1 Stages of care proceedings in England and Wales

Stage	Process	Time from issuing of application
Stage 1	Issue and allocation	Days 1 and 2
Stage 2	Case management hearing	Days 12–18
Stage 3	Issues resolution hearing	As directed by the court
Stage 4	Final hearing	By week 26 or earlier

Psychiatric expert evidence

Duties of an expert

An expert witness is a person who is qualified by knowledge or experience to provide an opinion to the court on a specialist or technical matter. A psychiatrist undertaking expert witness work in care proceedings should be familiar with the general expert witness guidance for doctors (General Medical Council 2019) and psychiatrists (Rix 2015), as well as the more specific guidance. Practice Direction 25B of the Family Procedure Rules 2010 (Box 3) states that the expert in family proceedings has an overriding duty to the court that takes precedence over any obligation to the person instructing the expert. An expert commissioned to undertake an assessment and prepare a report in pre-proceedings is also bound by the duties of an expert as set out in this practice direction. Annexed to it is the 'Standards for expert witnesses in children proceedings in the family court' with which the expert should become familiar and must comply. They include (but are not confined to) the requirements that the expert has competencies (as evidenced by their CV) appropriate to the issues on which expert evidence is sought, has been active in the area of work and is familiar with the breadth of current practice, has working knowledge of the social, developmental and cultural norms applicable to the case, is up to date with relevant continuing professional development and has a licence to practise.

BOX 3 Practice directions from the Family Procedure Rules 2010 of direct relevance to expert evidence

- Practice Direction 12A – Care, supervision and other Part 4 proceedings: guide to case management
- Practice Direction 25B – The duties of an expert, the expert's report and arrangements for an expert to attend court
- Practice Direction 25C - Children proceedings – the use of single joint experts and the process leading to an expert being instructed or expert evidence being put before the court
- Practice Direction 25E – Discussions between experts in family proceedings
- Practice Direction 27A – Family proceedings: court bundles (universal practice to be applied in the High Court and family court)

The Family Procedure Rules 2010 can be found at https://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu

Enquiries of an expert

The initial inquiry of an expert is usually before the hearing at which the application for an expert will be made. Although the permission of the court is required before information relating to proceedings can be disclosed to an expert, Practice Direction 25C (Box 3) indicates that the disclosure of specific information necessary to make an enquiry does not require the court's permission or amount to contempt of court. In making the enquiry the expert should be informed about the nature of the proceedings, the issues in the proceedings (including those to which the proposed expert evidence relates), the questions about which the expert will be asked to opine, the date when the court is to be asked to consider giving permission to instruct an expert, the volume of reading, the date by which the report will be required, the date of any hearing at which the expert may be called to give evidence and the funding arrangements for payment of the expert. The details of several experts and their timescales may be submitted to the court.

The controls of expert evidence covered above and the 26-week time limit for care proceedings (introduced by sections 13 and 14 respectively of the Children and Families Act 2014) were intended to reduce the excessive, costly and damaging length of proceedings. An expert must be clear about their own timescales before agreeing for their name to be put to the court. Not only can a delay in filing the report have potential negative consequences for the child and family, but also the expert may be censured by the court. The Legal Aid Agency sets upper hourly fees and the total hours involved in preparing the report. If there is a particular reason (e.g. excessive documentation) for the expert to anticipate that the work will exceed the benchmarked number of hours, then they should raise this with the instructing solicitor before accepting the appointment.

If the court accepts that expert evidence is necessary, the expert chosen by the parties and the court will be instructed by means of a letter of instruction, which is agreed by the parties in the proceedings. Convention dictates that the solicitor for the child generally takes the lead (hence the term 'lead solicitor') in preparing the letter, agreeing its contents with the other parties and sending the letter to the expert. Although there is variability, the letter should include a list of the representatives for the parties in the proceedings, the nature of the instructions, brief account of the background (or reference to where this information can be found in another document made available to the expert), the particular questions to be addressed by the expert, an explanation of how to deal with factual disputes (see the section 'Disputed facts', below), the court timetable (including the date on or before which the report needs to be filed) and the arrangements for payment for the work. If the expert finds that any of the questions they are to address are outside their domain of expertise, then they should inform the lead solicitor as soon as possible. The parties and the court will need to decide whether to seek another expert or whether the particular question is not critical to assisting the court to resolve the proceedings, in which case the assessment can go ahead.

The letter of instruction in pre-proceedings should also comply with the principles articulated in Practice Direction 25C (Box 3).

The court bundle

The expert will usually receive a large quantity of documents. These documents may comprise the whole or selected parts of the court bundle. The bundle comprises papers filed with the court or obtained for the purpose of the proceedings. These papers (and the information therein) must not be disclosed to anyone who is not a party to the proceedings without the court's permission. The same rule will apply to the expert's report as this is a document filed with the court.

There is often significant overlap between the individual documents, but they are not equivalent and all should be read. According to Practice Direction 27A (Box 3), court bundles for family proceedings should be arranged in a standard order (Box 4). The preliminary document section includes summary documents, such as the case summary and statement of issues to be determined. The applications and orders section commonly includes a C110A application form, which sets out the case for a care or supervision order. The case management order has an 'experts' section, which refers to the rationale for any expert evidence that has been agreed. Within the statements and affidavits section, a useful and comprehensive source of information is the social work report. For the main social work report, local authorities are encouraged to follow a template (Social Work Evidence Template, often shortened to SWET). Within this document is a description of the family composition (with a genogram), the social work chronology, various analyses (i.e. of harm, child impact, parenting capacity and wider family capability), the proposed care plan, and the range of views of parties and others. The chronology (which may be a standalone document as well as being part of the SWET) lists in date order significant events, particularly with regard to the involvement of children's services. As well as the references to mental health problems

BJPsych Advances (2020), vol. 26, 16–25 doi: 10.1192/bja.2019.55

and contact with mental health services, the expert should be vigilant for reported problem behaviours that are relevant to the risk assessment. There may be additional social work statements that provide updates after the initial SWET was filed. Statements of evidence by the respondents often contain information relevant to the psychiatric assessment. If other expert evidence (e.g. psychological evidence) has been filed before, this should appear in the court bundle. There is also often an initial report by the children's guardian and, if relevant, reports of testing for alcohol and drug use. Other documents that may be available include the police disclosure (which should contain the Police National Computer list of offences) and the medical records of the parent and of the child. There may well be mention of documents that the expert should peruse, but are not included in the bundle. These should be requested through the lead solicitor.

BOX 4 Sections of the court bundle for family proceedings

1 Preliminary documents
2 Applications and orders
3 Statements and affidavits
4 Care plans (where appropriate)
5 Experts' reports and other reports
6 Other documents
(Family Procedure Rules 2010: Practice Direction 27A)

Questions to be addressed in the report

Annex A of Practice Direction 25C (Box 3) sets out suggested questions in the letter of instruction sent to an expert conducting a parental psychiatric assessment (Box 5). In practice, solicitors use their discretion in the type of questions they ask.

Nature of the mental disorder/difficulty

In addressing questions about mental disorder diagnoses, the expert is expected to evidence their diagnoses with reference to the specific criteria present in the case in accordance with recognised diagnostic systems (i.e. ICD-10 or DSM-5). The part of the suggested first question in Box 5 referring to other psychological/emotional difficulty may be dealt with by exploring and commenting on symptoms and/or personality disorder traits that are not present to an extent that would reach the diagnostic threshold and other traits or vulnerabilities that affect functioning.

Functioning

When undertaking an assessment of functioning, the expert should be especially mindful of the effect of identified mental disorder/disturbance on functioning relevant to parenting (e.g. emotional availability and responsiveness; and carrying out practical tasks such as maintaining the home, ensuring the child's attendance at school and health appointments, and facilitating activities and social contact relevant to the child's developmental stage). Although parental mental disorder does not inevitably lead to adverse child outcomes (Reupert 2015), the expert should consider the potential effects across various domains. A framework for assessing the ways in which parental mental illness, intellectual disability and substance misuse may affect children's health and development has been presented by Cleaver *et al* (2011) (Table 2). There are not diagnostically specific patterns of parenting problems, but the assessing clinician should be mindful of the potential consequences of different types of psychopathology. For example, applying Cleaver *et al*'s framework in an assessment of a parent who meets the criteria for a depressive disorder would lead one to explore for the possible effects of fatigue, reduced motivation and indecisiveness on parenting skills and meeting the children's physical needs. Distorted perceptions about competence as a parent may occur in depressive disorders owing to a tendency towards negative cognitions (such as hopelessness, worthlessness and guilt feelings). With regard to the attachment relationship domain, a parent's reduced emotional availability and responsiveness may have an impact on the child's experience of proximity seeking and communication with the parent.

Emotional availability, which predicts a variety of child outcomes (Saunders 2015), may be compromised. It has been defined as 'the capacity of a dyad to share an emotional connection and to enjoy a mutually fulfilling and healthy relationship' and operationalised into four adult components (sensitivity, structuring, non-intrusiveness, non-hostility) and two child components (responsiveness, involvement) (Biringen 2012). In a family in which the parent has a mental health problem that has an appreciable impact on functioning, there may be role reversal. In these cases, the child is expected to (or comes to believe they should) take on a parent role. This process of parentification is a potential risk to the psychological development of the child (Earley 2002). If available, assessment reports by other professionals should be studied for findings relevant to the psychiatric expert's opinions. These may include parenting assessment reports, psychological reports and independent social work reports.

Opinion on interpersonal functioning should also refer to the effect of the disorder/disturbance on relationships with professionals (e.g. social care, educational and healthcare professionals) where this is germane to the issues in the proceedings.

The expert should aim to be specific about how mental disorder/disturbance may affect functioning

BOX 5 Questions to ask in psychiatric assessment of adults involved in care proceedings

'Suggested questions in letters of instruction to adult psychiatrists and applied psychologists in Children Act 1989 proceedings:

1 Does the parent/adult have – whether in his/her history or presentation – a mental illness/disorder (including substance abuse) or other psychological/emotional difficulty and, if so, what is the diagnosis?
2 How do any/all of the above (and their current treatment if applicable) affect his/her functioning, including interpersonal relationships?
3 If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional difficulty or personality disorder which could be associated with risk to others, based on the available evidence base (whether published studies or evidence from clinical experience)?
4 What are the experiences/antecedent/aetiology which would explain his/her difficulties, if any, (taking into account any available evidence base or other clinical experience)?
5 What treatment is indicated, what is its nature and the likely duration?
6 What is his/her capacity to engage in/partake of the treatment/therapy?
7 Are you able to indicate the prognosis for, timescales for achieving, and likely durability of, change?
8 What other factors might indicate positive change?'

(Family Procedure Rules 2010: Practice Direction 25C, Annex A)

and parenting. This should include how changes in the parent's mental state may be accompanied by changes in functioning. Specifically, attention should be paid to possible triggers for relapse and the effect of that relapse on functioning. Commentary on how the disorder/disturbance affects functioning assists the court and parties to understand the potential for improvement in functioning with a resolution of the disorder/disturbance and for recurrence of previously identified problems in the event of a relapse of the mental disorder or an exacerbation of the psychological/emotional difficulties.

Risk

In the family court, case law has defined risk as consisting of an evaluation of two factors: (a) the likelihood of an adverse event happening and (b) the consequences of that adverse event happening.

The assessment of risk to others should take account of general risks and the more specific risks to the child (or children). The assessment of risk to the child needs to be informed by a review of any previous risks in the parenting domain (such as neglect or physical, sexual or emotional abuse). Consideration should be given to a history of interparental discord and violence (because of the potential adverse effect of exposure to these experiences on the child's psychological development). If there has been a pattern of entering into and returning to domestically abusive relationships (or to a partner who has mistreated the parent's child), this needs to be highlighted as a potential risk.

The empirical data on the association between different parental psychiatric diagnoses and the risk of physical harm to the child arises mainly from studies of parents killing their own child (i.e. filicide). In a UK study of consecutive filicides over a 10-year period, Flynn *et al* (2013) found that in 40% of cases there was a history of parental mental health problems and this finding was more common in maternal than paternal perpetrators. The most common historical diagnostic category was affective disorders, followed by personality disorders, and schizophrenia and other delusional disorders (14, 10 and 8% respectively). Of the 37% who were considered to be mentally ill at the time of the offence, 27% experienced depression and 15% experienced psychosis.

If possible, the expert should attempt to explain the nature of the association between the psychiatric disorder and the risk. Where a parent with a psychotic disorder is vulnerable to psychotic relapse, the potential for the child being exposed to bizarre ideas and behaviour needs to be considered (because of the potential effect of causing confusion and fearfulness in the child). Delusional or other morbid preoccupations about ill health can sometimes extend to the child so that he or she is subject to unnecessary medical investigations (which have the potential to cause harm). If there is a history of repeated presentation of the child

TABLE 2 Framework for assessing the impact of mental disorder on parenting

Domain	Description
Parenting skills	Parenting activities such as maintaining safety, playing, talking, stimulating and supporting engagement in activities (including attendance at school)
Neglect of physical needs	Nutrition, clothing, housing and healthcare
Parents' perceptions	Parents' perceptions and attentiveness to self and others (particularly their children)
Control of emotions	The valence and stability of the parents' emotional presentation
Parent–child attachment relationship	The emotional, motivational and memory processes activated in interactions between the child and the parent
Separation of child and parents	Separation of the child from parents due to, for example, hospital admission, parental separation, imprisonment or placement of the child in local authority care

BJPsych Advances (2020), vol. 26, 16–25 doi: 10.1192/bja.2019.55

https://doi.org/10.1192/bja.2019.55 Published online by Cambridge University Press

TABLE 3 Opinions regarding interventions for parental mental disorder

Opinion	Evidence for opinion	Source of evidence
Intervention options	Recommended interventions for identified diagnoses	Treatment guidelines (e.g. the National Institute for Health and Care Excellence, NICE)
	Availability of recommended interventions to the parent	Local service providers and commissioners
Effectiveness of interventions	Evidence base on effectiveness	Scientific and clinical literature
	Parent's insight into own mental health difficulties	Assessment interview, medical records, other professionals' reports
	Parent's psychological mindedness (for psychological interventions)	Assessment interview, medical records, other professionals' reports
	If relevant, evidence of parent's previous response to interventions	Assessment interview, medical records, other professionals' reports
Likely uptake of intervention	Parent's insight into own mental health difficulties	Assessment interview, medical records, other professionals' reports
	Parent's willingness to accept available interventions	Assessment interview, medical records, other professionals' reports
	If relevant, evidence of parent's previous willingness to accept available interventions	Assessment interview, medical records, other professionals' reports

with unfounded health concerns, the expert should be vigilant to the possibility of factitious disorder imposed on another. Persecutory beliefs held by the parent may be associated with the parent also having fears for the safety of the child, resulting in withdrawal from social contact and non-attendance at school and/or health appointments.

The co-occurrence of psychiatric disorder and interparental discord or violence may be explained by different mechanisms. At a non-specific level, increased emotional instability (particularly hostility and irritability) may fuel relationship tensions. Disorder-specific explanations include a perpetrator of domestic abuse who is prone to paranoia developing specific paranoid beliefs about their partner. Also, irritability and aggressiveness are recognised features of antisocial personality disorder and relationship instability is characteristic of borderline personality disorder. Psychiatric disorder may contribute to the risk of a victim of domestic abuse being re-victimised. This may be a consequence of non-specific emotional and interpersonal vulnerabilities secondary to mental ill health. More specifically, a susceptibility to low self-regard and blameworthiness that may occur in borderline personality disorder can increase the vulnerability to repeat victimisation.

Experiences/antecedents/aetiology

Questions about factors explaining the parent's difficulties should addressed using a recognised approach to formulation (Baird 2017). In addition to exploring for the factors recognised to play a role in the aetiology of psychiatric disorder, the assessment should also consider the parent's developmental experiences (including their experiences of care), as these may be relevant to their own approach to parenting.

Treatment/therapy

Opinions about the treatment and therapy indicated (Table 3) should be informed by available guidelines relating to the identified disorder (e.g. guidelines published by the National Institute for Health and Care Excellence, NICE). The opinion should also take account of the case-specific history of previous interventions offered and the engagement in and response to those interventions. As part of undertaking the assessment of this area, the expert should consider (and sometimes is specifically asked to comment on) the parent's insight into the identified disorder/disturbance and into the need for treatment. If the expert is anticipating making a recommendation about future interventions, then it is helpful to explore the parent's views about engaging in (and their capacity to engage in) those interventions. If possible, the expert should also consider the availability and waiting times of the recommended interventions, the means by which they can be accessed and the anticipated timescales.

Other questions

There are often supplementary questions to address in relation to any identified psychiatric disorder/disturbance, such as whether the condition is fluctuating or not, the likelihood of relapse, the factors that may contribute to relapse, the availability and means of accessing that treatment, and the timescales for accessing and responding to treatment.

In addition to the parent's insight into their mental health problems, there is sometimes a question about insight into the issues identified by the local authority and the parent's capacity to work cooperatively with the professionals. The letter of instruction may include a question about whether the psychiatric expert believes an assessment by a different expert (e.g. a psychologist) is necessary.

A question may appear about the impact of the identified disorder on the parent's ability to have contact with the child (which may be supervised or unsupervised). The response to this question is informed by a review of any reports from

1 c 2 b 3 a 4 d 5 e

professionals supervising contact and by enquiries of the parent about their experience of contact sessions.

There is often a final question, in which the expert is invited to comment on any other matter within their expertise that they believe is relevant to the welfare of the child and the issues to be determined by the court.

Disputed facts

The parent who is being assessed may not agree with the issues as asserted by the applicant or another respondent. For example, the parent may disagree with reports that their parenting has been neglectful or that they have presented with aggression to professionals. Where there is a dispute about facts, the expert should not express an opinion on which version is preferred. If the disputed facts are relevant to a question that they have been instructed to address, then the expert should use the 'alternative scenarios' approach. For example, the expert's risk assessment in relation to the parent will be heavily influenced by the history of risk-related behaviour. The parent may disagree with entries in the local authority documents in terms of whether or not the behaviour occurred or the severity of the behaviour. The expert should present two risk assessments: one on the basis of a scenario in which the behaviour as documented has occurred and the other relying on the alternative scenario suggested by the parent's account. In some cases, the court may have resolved a dispute in a fact-finding hearing and in this event the expert should rely on the judgment about that particular issue.

Supplementary questions

After the psychiatric report on the parent has been filed, the expert may receive supplementary questions. These questions may be to seek clarity on an opinion expressed in the report or request review of additional documents to consider whether they change any of the previously stated opinions.

Discussions between experts

The psychiatric expert may be directed by the court to hold a discussion with another expert. This can occur if there is a difference of opinion between experts (e.g. the psychiatrist and a psychologist). According to Practice Direction 25E (Box 3), the court may specify the issues the experts must discuss, including the reason for disagreement, what (if any) action needs to be taken to resolve the disagreement, and an explanation of the evidence required to assist the court to determine the issues. An agenda and list of questions should be sent to the experts at least 2 days before the discussion. A nominated person will chair the meeting and the experts may be directed to prepare a statement setting out the issues on which they agree and disagree and the reasons for disagreeing.

Attending court

The expert should be prepared to attend court to give evidence in person. The parties' advocates are required to ensure that the issues to be addressed by the expert are identified prior to the hearing. Other arrangements for experts to attend court are set out in section 10 of Practice Direction 25B (Box 3).

When the expert attends court, there may be a conference with a lawyer (usually representing the child) to receive an explanation of issues relevant to the expert's evidence and an update on developments in proceedings since their report was prepared. The expert may be required to study documents added to the court bundle since the filing of their report.

Conclusions

In care proceedings in England and Wales, the family court sets out to resolve a dispute between a local authority and the parents of a child (or children) who the local authority believes is suffering (or is likely to suffer) significant harm that is attributable to either the care given (or is likely to be given) to the child or to the child's being beyond parental control; and to determine what orders should be made. An expert psychiatric witness may be instructed to report on a parent in the event that the court is of the opinion that the expert evidence is necessary to resolve the proceedings justly. The psychiatrist accepting such instructions should be familiar with general expert witness guidance, the specific rules that apply to experts in family proceedings and the legal context that applies in the family court.

References

Baird J, Hyslop A, Macfie M, et al (2017) Clinical formulation: where it came from, what it is and why it matters. *BJPsych Advances*, **23**: 95–103.

Biringen Z, Easterbrooks MA (2012) Emotional availability: concept, research, and window on developmental psychopathology. *Development and Psychopathology*, **24**: 1–8.

Cleaver H, Unell I, Aldgate J (2011) *Children's Needs – Parenting Capacity. Child Abuse: Parental Mental Illness, Learning Disability, Substance Misuse and Domestic Violence* (2nd edn). TSO (The Stationery Office).

Earley L, Cushway D (2002) The parentified child. *Clinical Child Psychology and Psychiatry*, **7**: 163–78.

Flynn SM, Shaw JJ, Abel KM (2013) Filicide: mental illness in those who kill their children. *PLOS ONE*, **8**(4): e58981.

General Medical Council (2019) *Acting as a Witness in Legal Proceedings*. GMC (https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/acting-as-a-witness/acting-as-a-witness-in-legal-proceedings). Accessed 4 February 2019.

Reupert A, Maybery D, Nicholson J (2015) Towards the development of a conceptual framework. In *Parental Psychiatric Disorder: Distressed Parents and their Families* (3rd edn) (eds A Reupert, D Maybery, J Nicholson, et al). Cambridge University Press.

Rix K, Eastman N, Adshead G (2015) *Responsibilities of Psychiatrists Who Provide Expert Opinion to Courts and Tribunals* (College Report CR193). Royal College of Psychiatrists.

Saunders H, Kraus A, Barone L, et al (2015) Emotional availability: theory, research, and intervention. *Frontiers in Psychology*, **6**: 1069.

MCQs

Select the single best option for each question

1 The family court in the UK:

a applies a strict adversarial approach to resolving proceedings
b refers appeals against decisions to the Crown Court
c is a single national court sitting across England and Wales
d determines facts using the 'beyond all reasonable doubt' standard
e was established by the Children Act 1989.

2 The Children Act 1989:

a states that any delay in determining the questions is likely to prejudice the welfare of the child (the so-called 'no delay' principle)
b sets out that, if in doubt, the court should make an order (the so-called 'order' principle)
c states that the parents' welfare should be the court's paramount consideration (the so-called 'paramountcy' principle)
d stipulates that interim care or supervision orders can only be made at the final hearing
e defines the criteria for assessing the capacity of a parent to conduct proceedings.

3 The threshold that must be satisfied to justify making a care order or supervision order

a is defined in section 31(2) of the Children Act 1989
b must be proven to the local authority's satisfaction
c must be proven beyond all reasonable doubt
d must be proven by the parents
e is not met by a child who is suffering significant harm that is attributable to the child being beyond parental control.

4 In care proceedings in England and Wales:

a the applicants are usually the persons who have parental responsibility for the child
b the local authority is represented by the Children and Family Court Advisory and Support Service (Cafcass)
c extensions to the time limit will be granted if requested by one of the parties in the proceedings
d there is a time limit of 26 weeks from the issuing of proceedings to their completion
e the issues resolution hearing is the last available hearing.

5 Psychiatric expert witnesses:

a instructed in pre-proceedings are not bound by the same duties of an expert as in care proceedings
b can only be instructed in care proceedings if the court agrees that the expert evidence is likely to be assist the court to resolve the proceedings justly
c must answer all questions even if the issue is not within their area of expertise
d should seek to resolve disputed facts
e must be up to date with relevant continuing professional development.