

Court Report Procedure

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Name of author:	CAMHS Director
Lead Director:	CAMHS Director
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Court Report Procedure

1 Introduction

The Trust receives requests to prepare expert reports for court proceedings, usually in the Family Court, but on occasions in relation to proceedings in the Criminal Court.

This documents sets out the processes that operate in the Trust to ensure that when Court reports are prepared they are of the highest quality and meet all the procedural requirements of the Court process. The document also sets out the way in which the Trust will support staff who are asked to prepare Court reports.

2 Purpose

The purpose of this document is to set out the procedural steps that will be followed on receipt of a request to prepare a report for Court proceedings.

3 Scope

This procedure is to be followed by any member of Trust staff who is involved in producing reports for the Courts on behalf of the Trust, (including the preparation of a risk assessment for use in Court proceedings).

This includes those who consider requests for reports, those preparing reports, and those offering administrative support to the process.

Whilst this procedure refers primarily to work undertaken in staff contracted hours, it also contains a section that relates to requests for Court reports that are sent to the Trust which individual staff receives authority to undertake outside their Trust time and for which the Trust receives a fee.

Exclusions from this Procedure:-

- The Family Drug and Alcohol Court Service (FDAC)
- Multi-Agency Liaison Team (MALT) in Camden
- Portman Court Reports Service
- Tavistock Immigration Legal Service

These have separate procedural and funding arrangements; these services are outside the remit of this procedure.

4 Definitions

The following definitions apply in this procedure

Expert Report	<p>This is a report that can be requested by either party, or by the Court (i.e. via a Judge or Magistrate) in legal proceedings, which includes both factual evidence of the persons' clinical condition together with expert opinion to help the Court interpret the problems / symptoms portrayed by the person.</p> <p>The subject of the report (the patient) may not be a current patient of the Trust and be referred specifically for the purpose of preparing a report; alternatively a request for a Court report may be received for a current patient and the work required to prepare this report goes beyond that within the scope of the patients assessment / treatment plan. In both cases the preparation of this type of report is outside the scope of routinely funded NHS work and funding will be sought by the Trust to cover the costs of preparation.</p> <p>(Note the terms 'expert' report indicates that expert opinion in additional to factual information is to be included in the report).</p>
Statement for Court Proceedings	<p>In legal proceedings a statement is a written account of the facts known directly to the author of the case (as a result of the author observing facts; receiving first-hand information from the patient / carer; or extracting extracted information from the clinical record or from a colleague directly involved in the care of the patient record).</p> <p>A statement does not contain expert opinion.</p>
Professional Report	<p>These reports, to referrers and other legitimate interested parties, on patients' problems and progress form part of the routine work of the Trust for which fees cannot be charged.</p> <p>Such a report would normally be prepared from the clinician's direct knowledge of a patient and information already including in the patient's record file.</p> <p>The preparation of professional reports falls outside the scope of this procedure.</p>
Risk Assessments requested by Social Services for Court Proceedings	<p>The Trust may receive a request to conduct and report on a risk assessment of a patient / carer for the explicit purpose of providing information to the Court in legal proceedings. These requests would usually be made by Social Services. This work is outside the scope of funded NHS work and a fee for service will be sought by the Trust.</p>
Request to attend court as a professional witness (expert)	<p>Any author of a Court report may be required to attend Court as a Professional Witness. The time to undertake this is outside the scope of standard NHS funded time and therefore a fee for the clinician's time will be sought from the relevant party in the case.</p>

5 Procedure Statements

Indemnity Cover for Trust Court reports

All Court report work undertaken within the Trust is deemed to be undertaken on behalf of the Trust and authors will be given professional indemnity for this work under the NHSLA scheme.

Extent of Indemnity Cover

The ultimate legal liability for the accuracy and truthfulness of the report lies with the author. In the event that it is shown during Court proceedings that an author lied under oath (perjury) and was to be found guilty the Trust would withdraw their legal support for the author.

Arrangements for staff acting as independent expert witnesses

Staff cannot accept work as an independent practitioner if the request is directed to or through the Trust, neither can they allocate it to anyone else on a private basis.

6 Duties and Responsibilities

The CAMHS and SAAMHS Directors have overall responsibility for ensuring the quality of Court reports prepared by their staff.

The Director of Finance has overall responsibility for ensuring that the correct financial procedures are followed in relation to funding of Court report work.

Procedurally the following roles and responsibilities apply under this procedure.

Stage in process	SAAMHS	CAMHS
Identification of requests for court reports	Intake Coordinator or SAAMHS Service Manager	Intake Coordinator
Allocation of court reports to clinician	Associate Clinical Director or Unit Director	Service Line Manager
Seeking of authorisation for funding from commissioners	SAAMHS Service Manager	PA To Court Work Clinical Lead
Maintaining of records of correspondence with commissioner including authorisations	SAAMHS Service Manager	PA to Court Work Clinical Lead
Raising Sales Order	SAAMHS Service Manager	PA to Court Work Clinical Lead
Signing off Sales Order	Associate Clinical Director or Unit Director (or SAAMHS Director if Associate Clinical Director	Associate Clinical Director (or CAMHS Director if Associate is the author of the

Stage in process	SAAMHS	CAMHS
	or Unit Director is the author of the Court report)	Court report)
Providing summary of hours worked and if applicable invoice for payment of clinician	Clinician undertaking court report	Clinician undertaking court report
Checking TPFT invoice against original agreement from commissioner	SAAMHS Service Manager	PA to Court Work Clinical Lead

7 Procedures

7.1. Procedures for acceptance of Court work

7.1.1. Processing a request for a Court report

- A request for a Court report will be managed in line with the Trust system for considering a new referral. It is a local decision as to whether in addition to opening a paper file the case is added to the Trust patient administration system (RiO).
- On receipt of a request for a Court report the Intake Coordinator should forward details of the referral to the Court Work Clinical Lead and Court Report Administrator in CAMHS and to the relevant Associate Clinical Director, Unit Director or Service Manager in SAAMHS.
- The Court Work Clinical Lead will consider the request and the availability of appropriate expertise to complete the work, and if appropriate allocate the work to a member of the team who has been approved by a Director to undertake Court reporting work.

7.1.2. Allocating work to a clinician

- The decision as to whether the selected clinician has the capacity to complete this work in their contracted hours rests with the Service Line Manager for the relevant clinician.

7.1.3. Managing an accepted referral for a Court report

Once a referral has been accepted by the Trust, the Court Work Clinical Lead in CAMHS or the relevant Associate Clinical Director or Unit Director in SAAMHS will agree an estimate of hours and costs which will be forwarded to the Commissioner by the relevant administrator (see table above) for acceptance. Only when written acceptance of the Trust fees, terms and conditions have been received can the work commence.

7.1.4. Record keeping for Preparation of a Court Report

A paper file for each Court report will be opened in the name of the patient

In this all relevant documents will be stored for future reference. All relevant clinical information used to complete the report should be stored in the report file together with a copy of the final signed version of the Court report.

Note: Any draft versions must be disposed of in the confidential waste bins provided.

In addition to storing records relating to the preparation of the report the clinician should keep a time sheet stored in the records recording all times spent on the preparation of the report and/or travelling to meetings in relation to the report.

At the conclusion of work, the clinician will forward all relevant information to the administrator responsible for Court work in their service who will store it securely.

7.1.5. Preparation of Report: Insufficient time estimate

If a clinician reaches 85% of the allotted time and realises that the work cannot be concluded within the original time agreed with the commissioner, then before proceeding further the clinician should seek confirmation from the Commissioner via the relevant administrator (see table above) that extra costs can be incurred.

If the commissioner declines then the clinician should refer the matter to the service line manager for a decision on whether or not to proceed and under what circumstances.

7.1.6. Format of final report

The final report should be presented on Trust note paper.

The heading format shown at Appendix 3 can be used to ensure that the primary purpose of the Court report document is made clear and the authorship identified together with relevant expertise.

When complete the author should sign and date the report, and if requested by the Commissioner a statement of confirmation that the "content of this report is true to the best of my knowledge and belief" added to the end of the report prior to the signature.

7.1.7. Sending report to Commissioner

It is normal practice for reports to be sent as a signed original by Royal Mail (Special Delivery provides for reliable next day signed receipt delivery). If urgent, a signed copy can be scanned and sent electronically

7.1.8. Calculation of costs to be invoiced to the Commissioner

The Trust must cover its costs and generate a surplus on each piece of work.

The Court report administrator will calculate costs based on the time sheet and travel costs detail provided by the report author and will raise an invoice (sales order) for this amount.

The nominated manager will be responsible for authorising the sales order on SBS.

7.1.9. Recovery of fees from Commissioners

The Finance Directorate will be responsible for ensuring payment and debt collection, supported by Court report administrators.

7.2. Procedures for setting fees; invoicing and staff payment

7.2.1. Procedure for agreeing fees from commissioners for court reporting work

The PA to Court Work Clinical Lead in CAMHS or the Service Manager in SAAMHS will liaise with the Commissioner in respect of Court fees.

The Trust will agree fees with commissioners (usually solicitors or Local Authorities) prior to accepting the work.

An agreement to the Trust fees will be received in writing (or by e-mail) prior to the work starting.

In the event that there is an issue that cannot be resolved then the PA to the Court Work Clinical Lead in CAMHS or the Service Manager in SAAMHS will escalate the issue to the Service Line Manager.

Where a reasonable level of fees cannot be agreed the work shall be declined.

Trust fee structure: (see table below).

Type of work	Fee structure <i>(note VAT at current rate to be added to all invoices)</i>
Preparing the report including <ul style="list-style-type: none"> • Meeting with the client • Reading documents • Drafting the report • Conference with professional(s) / clients • Attending pre-trial reviews in Court (if required) 	Agreed hourly rate ¹ commensurate with the grade of staff carrying out the work, plus on costs and a contribution to the surplus. The current rates will be set by the Director of Finance and are available on request from Directorate administrators.
Travel time and travel costs	Travelling time for legally aided cases to be at the set rate of (£40 per hour at the time of writing) unless prior authority is obtained for a higher rate. Travel costs for legally aided cases can be billed at 45p per mile (unless prior authority is obtained for a higher rate) or the fare for public transport. Fares for public transportation should be included in the bill and receipts must be submitted.

7.3. Invoicing and Securing Payment.

An official Trust invoice will be issued for all Court work covered by this procedure. Payment will be made payable to "The Tavistock and Portman NHS Foundation Trust", via the Trusts invoicing system.

Note: Clinical staff must **not** issue personal invoices to purchasers.

7.4. Arrangements for remuneration of staff who work additional hours (in addition to their contracted hours of work) in order to fulfil Court reporting requirements

Any additional hours must be agreed with the respective SAAMHS / CAMHS Director before being undertaken and will only be approved in circumstances where staff are unable to undertake Court report work within their contracted hours of employment. This responsibility may be delegated to the relevant Associate Clinical Director or Unit Director. Any agreed additional hours accrued will be classed as "authorised overtime". Staff will need to complete an

¹ Taking into account that the High Courts have been paying the higher rate and we offer a very high quality service we feel we should bring our rates in line with the top rates charged by equivalent services, such as the Marlborough and SLaM. We have agreed a Trust-wide hourly rate, which would be consistent across the Trust and all Court services we provide.

additional hours / overtime form to claim this payment, which will be made via payroll and will appear on the pay slip as authorised extra hours.

Staff will be remunerated via payroll in the form of “approved additional hours” by the Trust at the following rates:

- **CAMHS and SAAMHS staff** Attendance with the client, writing of report, reading documents, and other work required to produce the report including conferences with counsel / other professionals, attendance at court £70 per hour²
- **Travelling time** incurred outside contracted hours will be payable at a rate of £40 per hour from home / work to Court / conference location
- **Travel costs** will be met at the Trust’s usual (public transport) rate.

Staff claims for payment

- **Travel expenses (staff)** Staff must issue all claims for travel expenses on the standard claim form, with relevant receipts
- **Approved additional hours for Court work** Staff must issue all requests for payment for prior authorised Court approved work on the Trust Additional Hours HR form (see Appendix 2)

7.5. Method of payment to members of staff

Payment of fees and expenses will be via payroll.

Note: The Finance Department will not authorise payment by payroll until full funds for the work have been received from the Commissioner; therefore, staff may experience a delay in payment for this type of work.

7.6. Management of surplus funds from Court reporting

After payment of any approved staff claims for fees and/or travel have been made any surplus from Court reporting work will be credited to the relevant department budget.

8 Process for monitoring compliance with this Procedure

The Finance Department will be responsible for monitoring compliance with recovery of all invoiced fees.

² Or rate agreed with CAMHS/SAMHS Directory in line with level of income being received by the Trust

CAMHS and SAAMHS Directors will be responsible for monitoring compliance with the process for Court work and will investigate any complaint or issue that arises with the process.

9 References

Rules for NHSLA indemnity see www.nhsla.com

10 Associated documents³

Standing Financial Instructions
Information Governance Policy
Records Retention and Disposal Schedule

³ For the current version of Trust procedures, please refer to the intranet.

Appendix 1: Equality Impact Assessment

Does this procedure have an impact on patients, staff and/or the public?
YES – people involved in court proceeding for which court reports are required.

Is there reason to believe that the policy, function or service development could have an adverse impact on a particular group or groups?

NO

No court reports will be prepared in accordance with the requirement of the court providing fact and professional opinion without judgments or favour. The trust will ensure that staff providing reports to the Court under this procedure have suitable and sufficient skills and expertise to carry out the task.

1. Based on the initial screening process, now rate the level of impact on equality groups of the policy, function or service development:

Low negative

Low positive

Full screen not required

Date completed: September 2012
Name: Jane Chapman
Job Title: Governance and Risk Adviser

Appendix 2: Additional Hours Payment Sheet

TAVISTOCK & PORTMAN NHS FOUNDATION TRUST

Additional Hours payment sheet Court Report work

Name Grade Dept.

Month

Court report reference number:

Additional hours claimed				Finance Department		
Date	Hours claimed	Agreed rate	Total claimed			

Declaration

- I declare that the information I have given on this form in relation to the hours I have undertaken in addition to my contracted hours that relate directly to completing a Court report is correct and complete and that I have not claimed elsewhere for the hours detailed on this form.
- I understand that if I knowingly provide false information this may result in disciplinary action and I may be liable for prosecution and civil recovery proceedings. I consent to the disclosure of information from this form to and by the Tavistock and Portman NHS Foundation Trust and the NHS Counter Fraud and Security Management Service for the purpose of verification of this claim and the investigation, prevention, detection and prosecution of fraud.
- I understand that payment of additional hours will be via payroll and will be taxed.

Signed: _____
Claimant

Certified: _____
Budget Holder

Date: _____

Code: _____

Received in HR signature: _____

Date: _____

This return must be completed up to and including the last day in the month and should be submitted to the appropriate budget holder for approval and then sent to the Human Resources Department by the 5th of the month in which payment is requested.

Appendix 3: Extract from Court Procedural Rules re Role of Expert in Family Proceedings

For more information consult:

http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_25a#IDA4JSIC

11 The Duties of Experts

Overriding Duty

3.1

An expert in family proceedings has an overriding duty to the court that takes precedence over any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

Particular Duties

3.2

An expert shall have regard to the following, among other, duties –

- (a) to assist the court in accordance with the overriding duty;
- (b) to provide advice to the court that conforms to the best practice of the expert's profession;
- (c) to provide an opinion that is independent of the party or parties instructing the expert;
- (d) to confine the opinion to matters material to the issues between the parties and in relation only to questions that are within the expert's expertise (skill and experience);
- (e) where a question has been put which falls outside the expert's expertise, to state this at the earliest opportunity and to volunteer an opinion as to whether another expert is required to bring expertise not possessed by those already involved or, in the rare case, as to whether a second opinion is required on a key issue and, if possible, what questions should be asked of the second expert;
- (f) in expressing an opinion, to take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed;

(g) to inform those instructing the expert without delay of any change in the opinion and of the reason for the change.

Content of the Expert's Report

3.3

The expert's report shall be addressed to the court and prepared and filed **in accordance with the court's timetable** and shall –

- (a) give details of the expert's qualifications and experience;
- (b) include a statement identifying the document(s) containing the material instructions and the substance of any oral instructions and, as far as necessary to explain any opinions or conclusions expressed in the report, summarising the facts and instructions which are material to the conclusions and opinions expressed;
- (c) state who carried out any test, examination or interview which the expert has used for the report and whether or not the test, examination or interview has been carried out under the expert's supervision;
- (d) give details of the qualifications of any person who carried out the test, examination or interview;
- (e) in expressing an opinion to the court –
 - (i) take into consideration all of the material facts including any relevant factors arising from ethnic, cultural, religious or linguistic contexts at the time the opinion is expressed, identifying the facts, literature and any other material including research material that the expert has relied upon in forming an opinion;
 - (ii) describe their own professional risk assessment process and process of differential diagnosis, highlighting factual assumptions, deductions from the factual assumptions, and any unusual, contradictory or inconsistent features of the case;
 - (iii) indicate whether any proposition in the report is an hypothesis (in particular a controversial hypothesis), or an opinion deduced in accordance with peer-reviewed and tested technique, research and experience accepted as a consensus in the scientific community;
 - (iv) indicate whether the opinion is provisional (or qualified, as the case may be), stating the qualification and the reason for it, and identifying what further information is required to give an opinion without qualification;

(f) where there is a range of opinion on any question to be answered by the expert –

(i) summarise the range of opinion;

(ii) identify and explain, within the range of opinions, any 'unknown cause', whether arising from the facts of the case (for example, because there is too little information to form a scientific opinion) or from limited experience or lack of research, peer review or support in the relevant field of expertise;

(iii) give reasons for any opinion expressed: the use of a balance sheet approach to the factors that support or undermine an opinion can be of great assistance to the court;

(g) contain a summary of the expert's conclusions and opinions;

(h) contain a statement that the expert –

(i) has no conflict of interest of any kind, other than any conflict disclosed in his or her report;

(ii) does not consider that any interest disclosed affects his or her suitability as an expert witness on any issue on which he or she has given evidence;

(iii) will advise the instructing party if, between the date of the expert's report and the final hearing, there is any change in circumstances which affects the expert's answers to (i) or (ii) above;

(iv) understands their duty to the court and has complied with that duty; and

(v) is aware of the requirements of Part 25 and this practice direction;

(i) be verified by a statement of truth in the following form –

'I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.'

(Part 17 deals with statements of truth. Rule 17.6 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)