



## **FAMILY COURT PRACTICE NOTE**

### **SPECIALIST REPORT WRITERS**

#### **1 INTRODUCTION**

- 1.1 This Practice Note replaces all previous practice notes pertaining to specialist report writers.
- 1.2 Specialist report writers do not include cultural, medical or psychiatric report writers.
- 1.3 This revised Practice Note will take effect from 9 July 2018.

#### **2 BACKGROUND**

- 2.1 The terms of this Practice Note were originally settled by the Principal Family Court Judge, the Ministry of Justice, the Family Law Section of the New Zealand Law Society, the New Zealand Psychologists Board, the New Zealand Psychological Society, and the New Zealand College of Clinical Psychologists.
- 2.2 The complaints process was amended in March 2011 following consultation between the Principal Family Court Judge, the Ministry of Justice, and the New Zealand Psychologists Board.
- 2.3 The complaints and reviews processes were amended in March 2014 following consultation between the Principal Family Court Judge, the Ministry of Justice, and the New Zealand Psychologists Board.
- 2.4 The complaints and competency reviews process was amended in September 2016 following consultation between the Principal Family Court Judge and the New Zealand Psychologists Board.
- 2.5 The reports and content of referral process were amended in July 2018 following consultation between the Acting Principal Family Court Judge, the New Zealand Law Society and the New Zealand Psychologists Board.

#### **3 CONTENTS**

- 3.1 This Practice Note covers the following matters:
  - 4. Terms and definitions.
  - 5. Legislative provisions.
  - 6. Process for appointment.
  - 7. Case management.

8. Reports.
9. Access to notes.
10. Second opinions or critiques.
11. Content of referral.
12. Process for selection.
13. Criteria for selection.
14. Review of the list.
15. Administration of the list.
16. Complaints.
17. Competency reviews.
18. Removal from the list.

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| <b>4</b> | <b>TERMS AND DEFINITIONS</b> |
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4.1 In this Practice Note:

- (a) References to “the Board” refer to the New Zealand Psychologists Board;
- (b) The term “specialist report writer” means any person (other than a cultural report writer) from whom a psychological report has been requested under s 133 of the Care of Children Act 2004 or under s 178 of the Children, Young Persons and Their Families Act 1989 (CYPF Act);
- (c) References to “report writers”, unless otherwise stated, refer to specialist report writers. “Report” has a corresponding meaning;
- (d) References to “(the) lawyer” and “lawyer for the child” unless otherwise stated mean a barrister and/or solicitor appointed by the Court for any child/young person;
- (e) References to “counsel to assist”, unless otherwise stated, mean a barrister and/or solicitor appointed to assist the Court; and
- (f) The term “child” includes both “child” and “young person” as defined in the CYPF Act.

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| <b>5</b> | <b>LEGISLATIVE PROVISIONS</b> |
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- 5.1 Section 133 of the Care of Children Act 2004 provides for the Court to appoint a person to prepare a cultural, medical, psychiatric, or psychological report on a child who is the subject of any of the following applications: guardianship, parenting order (other than an application for an interim order), and return of a child abducted to New Zealand.
- 5.2 Section 178 of the CYPF Act provides for the Court to appoint a person to prepare a medical, psychiatric or psychological report on a child who is the subject of care and protection proceedings, and in respect of any parent, guardian or caregiver to which the proceedings relate. An order for a report on a parent, guardian or caregiver must be with their consent.
- 5.3 Any psychologist accepting an appointment under s 178 of the CYPF Act is bound by provisions of the Act. Particular reference is made to the requirements of s 179(4) of the

CYPF Act:

- (4) *Every child or young person who is examined under section 178(1) of this Act is, where practicable, entitled to have present during that examination one adult—*
- (a) *who is nominated for that purpose by that child or young person or, if the age or level of maturity of the child or young person makes it impracticable for him to her to make such a nomination, by a social worker; and*
  - (b) *who consents to be present.*

## 6 PROCESS FOR APPOINTMENT

- 6.1 Appointments must be made by the Court. The Judge is responsible for settling the brief for the report writer. This will usually be done in consultation with the lawyer for the child and the parties' solicitors. The lawyer for the child will consult with any party to the proceedings who is unrepresented.
- 6.2 In allocating the brief to a report writer, the Court will consider:
- (a) the match of skills to the case requirements;
  - (b) the availability of the report writer;
  - (c) the current workload of the report writer; and
- 6.3 Once the Court has settled the brief for the report writer, the Registrar will negotiate and approve the hourly rate of payment and an estimate of time and cost for undertaking the brief with the report writer. This will include any payment of any disbursements.
- 6.4 Extensions to the initial allocation of hours: Where, during the course of the work, it becomes clear that the initial allocation of hours is insufficient for the report writer to meet the requirements of the brief satisfactorily, the report writer must seek an extension to the initial allocation of hours from the Registrar before commencing the additional work.
- 6.5 Extensions to the brief: Where, during the course of the work, the report writer considers that an extension or variation to the content of the brief is required, the matter must be referred to the Court in writing for approval by the Judge before the extension or variation is commenced.
- 6.6 A bill of costs should be provided with the report and should be calculated in accordance with the agreed hourly rate of remuneration.
- 6.7 Where a case is to proceed to a hearing, the Registrar and the report writer will settle a basis for payment for preparation and appearance at hearings. Prior to the hearing, the report writer will be advised of the time when he or she is required to be present at Court in anticipation of being called to give evidence.

## 7 CASE MANAGEMENT

- 7.1 In most cases, an appointment under s 133 of the Care of Children Act 2004 will be made following counselling and a mediation conference, or following the filing of an urgent

application resulting from a perceived serious welfare issue.

- 7.2 An appointment under s 178 of the CYPF Act will usually be made after the family group conference has been held. Reports that are required for family group conferences are the responsibility of Child, Youth and Family. Section 178 reports are reports to the Court and will require the Court's permission for release and use for any purpose, including at a family group conference.
- 7.3 On receipt of the engagement letter, the report writer will forward written acceptance of the referral to the Family Court Co-ordinator.
- 7.4 A letter advising of the appointment of the report writer under s 133 of the Care of Children Act 2004 or s 178 of the CYPF Act will be sent to the parties, the parties' lawyers and, where such have been appointed, to lawyer for the child and/or counsel to assist.
- 7.5 The report writer will not attend a mediation conference or a family group conference without the written approval of a Judge.
- 7.6 In the interests of efficiency and effective cost control:
  - (a) The brief for the report writer should be concise and specific; and
  - (b) Timetabling directions should follow the filing of a report to avoid lengthy delays between completion of the report and the hearing, and to avoid the need for updated reports.
- 7.7 The appointment will terminate on the date the report is filed, unless the report writer is requested by the Court to give evidence.
- 7.8 Where a report is commissioned under the Care of Children Act 2004 or under the CYPF Act, a party to the proceedings or lawyer for the child may present evidence on any matter referred to in the report.
- 7.9 Section 134(7) of the Care of Children Act 2004 and s 194 of the CYPF Act provide for the Court to call the report writer as a witness, if it thinks fit. Report writers who are asked by a lawyer to give evidence at a hearing should, before doing so, request advice from the lawyer as to whether the Court requires them to be called as a witness.

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| <b>8</b> | <b>REPORTS</b> |
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- 8.1 Reports are usually expected to take six to eight weeks to prepare. Within ten weeks of the direction appointing the report writer the Court will allocate a date in the Registrar's list to develop a timetable for further steps to be taken.
- 8.2 For matters relating to the preparation, presentation and content of reports, report writers should refer to the most recent guidelines published by the profession in New Zealand.
- 8.3 Report writers also have a responsibility to comply with the relevant obligations of the code of conduct for expert witnesses contained in Schedule 4 to the High Court Rules. The

Court will supply a copy of Schedule 4 to the specialist report writer at the time of appointment.

Here are the relevant obligations.

- (a) An expert has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise.
- (b) An expert is not an advocate for any party.
- (c) An expert must state his or her qualifications in a report.
- (d) If an expert witness believes that his or her evidence might be incomplete or inaccurate without some qualification, that qualification must be stated.
- (e) The facts, matters and assumptions on which opinions are expressed must be stated explicitly.
- (f) The reasons for opinions given must be stated explicitly.
- (g) Any literature or other material used or relied upon to support opinions must be referred to by the expert.
- (h) The expert must not give opinion evidence outside the witness's area of expertise.

8.4 The Court can only commission a report on the child (s 133(2) Care of Children Act 2004, and s 178(1) the CYPF Act). A report on a parent or guardian can only be requested by the Court under s 178(2) of the CYPF Act, and only with the consent of the proposed subject person. Report writers are thus to avoid making a parent or guardian the subject of the report. If, in the opinion of the report writer, it would be valuable to provide the Court with further information on a parent or guardian, this should be drawn to the attention of the Court. The Court will then decide how to proceed. There is no provision for a report on a parent or guardian under the Care of Children Act 2004.

8.5 When a report commissioned under the Care of Children Act 2004 is received, the Registrar will release a copy of the report to:

- (a) The lawyer acting for each party, on the basis that the report is not given or shown to the parties if the Court so orders;
- (b) The lawyer for the child, who may give or show the report to the child only if the Court so orders. However, in every case the lawyer for the child will explain to the child the purpose and contents of the report unless the lawyer considers that to do so would be contrary to the welfare and best interests of the child;
- (c) Counsel to assist; and
- (d) Any party who is unrepresented unless the Court is satisfied that the information in the report, if provided directly to that party, would place the child concerned or another person at risk of physical, sexual or psychological abuse. The Court may appoint counsel to assist the Court to explain the contents of the report to the unrepresented party. (See s 134 Care of Children Act 2004.)

8.6 When a report commissioned under the CYPF Act is received, the Registrar will release a copy of the report to:

- (a) Every person entitled to appear and be heard on the proceedings to which the report relates;
- (b) Any barrister or solicitor appearing for that person;
- (c) The lawyer for the child, or any other person representing the child or young

- person;
- (d) Counsel to assist;
  - (e) A parent or guardian, or any other person having the care of the child or young person;
  - (f) The Chief Executive of Child, Youth and Family; and
  - (g) Any other person whom the Court considers has a proper interest in receiving a copy of the report. (See s 191 CYPF Act.)

The Court may order that the whole or any part of the report not be disclosed to the above persons where the Court is satisfied that disclosure would be detrimental to the physical or mental health or emotional wellbeing of the child, young person or other person to whom the report relates (see s 192 CYPF Act.)

- 8.7 The report writer shall state in a separate paragraph whether, in the opinion of the report writer, the report should be given or shown to the child by the lawyer acting for the child. If the report writer believes to do so would be contrary to the welfare and best interests of the child, that should be stated.
- 8.8 If the Registrar has concerns about the release of any report, the issue will be referred to a Judge for directions.

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| <b>9</b> | <b>ACCESS TO NOTES</b> |
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- 9.1 All applications for access to psychologist's notes and other materials relied upon for the production of a report under s 133 of the Care of Children Act 2004 or s 178 of the CYPF Act shall be made to the Family Court.
- 9.2 The Privacy Act 1993 does not apply to information held or created by the Court in its judicial function. This includes the report and any notes or materials relied upon by a report writer in preparing their report.
- 9.3 On application to the Family Court, generally notes and materials will be made available to a suitable expert engaged by a party to the proceedings, in order for that expert to be able to give a second opinion or critique on the report requested by the Court.
- 9.4 Generally disclosure of notes and materials to counsel in order to aid them to prepare their case will not be permitted. However, on application to the Family Court, counsel may be granted access to notes and materials relating to their own clients, but not any other person.
- 9.5 The Court may release notes and materials after proceedings have been concluded or where no proceedings are pending. Any such release is at the discretion of the Court and, in the exercise of its discretion, the Court will take account of the fact that the most appropriate time to test the report is during the hearing before the Family Court.
- 9.6 While the Court will consider the interests of justice, the welfare and best interests of the child shall be the paramount consideration in deciding whether or not to release the notes

and materials.

- 9.7 The Court may attach any conditions it sees fit to the release of notes and materials.

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| <b>10 SECOND OPINIONS OR CRITIQUES</b> |
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- 10.1 Second opinions or critiques are usually called for by one of the parties in order to challenge a report already before the Court. Typically, the second opinion/critique writer works from the Court-appointed report writer's report and associated notes and materials (for example, psychometrics, school reports, children's drawings, video or audio recordings).
- 10.2 Second opinions or critiques that involve examination of the Court-appointed report writer's notes and other materials must be approved by a Family Court Judge before those materials are released.
- 10.3 The Court-appointed report writer has an obligation to co-operate with the second opinion/critique writer where the preparation of such a report has been approved by the Court.
- 10.4 Authorisation of access to the report or the report writer's source data does not authorise access to, contact with or interview of the child(ren) who is/are the subject of the report, or any party to or witness in the proceedings. Authorisation of such access, contact or interview may only take place within the terms of a specific order of the Court. Such an order is likely to be made by the Court only in the most exceptional circumstances. Such access, contact or interview with any such party or witness is subject to their express consent.
- 10.5 The Judge's directions to give effect to a second opinion or critique request should include a brief for the second opinion/critique writer and directions as to the material to be released and the manner in which the material is to be accessed. In normal circumstances this would be that inspection of the Court-appointed report writer's notes and materials is to take place at his or her premises since, in most cases, notes and materials will need some interpretation by him or her. Exceptions to this general process should be detailed; for example, that notes are to be copied and sent to the second opinion/critique report writer with the expectation that there will be subsequent phone contact to clarify and interpret notes and materials.
- 10.6 The Court will give the Court-appointed report writer a copy of the critique or second opinion and he or she will be given an opportunity to respond to the critique or second opinion.
- 10.7 The costs associated with the preparation of the second opinion or critique will be carried by the party requesting the second report. Such costs will include reasonable fees payable to the Court-appointed report writer for his or her time in assisting the second opinion/critique report writer with the access and interpretation of his or her notes and materials, and any meetings with that second opinion/critique report writer following receipt of their report, should such a meeting be required by the Judge.

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| <b>11</b> | <b>CONTENT OF REFERRAL</b> |
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11.1 Under s 133 of the Care of Children Act 2004, the referral from the Court should comprise:

- (a) The standard engagement letter;
- (b) The brief;
- (c) The current information sheet G7;
- (d) A copy of Schedule 4 of the High Court Rules 2016;
- (e) A copy of the original application, including any without notice application;
- (f) A copy of the notice of defence;
- (g) A copy of any affidavits of the parties;
- (h) A copy of the lawyer for child report;
- (i) A copy of the Judge's directions, if applicable;
- (j) Interim reporting requirements (if any);
- (k) The date for filing of the report (reports are usually expected to take six to eight weeks to prepare); and
- (l) An upper limit of authorised hours to complete the brief.

A list of documents supplied by the Court will be attached to the engagement letter.

11.2 Under s 178 of the CYPF Act, the referral from the Court should comprise:

- (a) The standard engagement letter;
- (b) The brief;
- (c) The current information sheet CYPF4;
- (d) A copy of Schedule 4 of the High Court Rules 2016;
- (e) A copy of the original application, including any without notice application;
- (f) Copies of any applications filed by the child's/children's parents or caregivers;
- (g) A copy of any affidavits of the parties;
- (h) A copy of the lawyer for Child report;
- (i) A copy of the Judge's directions, if applicable;
- (j) Interim reporting requirements (if any);
- (k) The date for filing of the report (reports are usually expected to take six to eight weeks to prepare); and
- (l) An upper limit of authorised hours to complete the brief.

A list of documents supplied by the Court will be attached to the engagement letter.

- 11.3 If a lawyer for child report is not filed by the time the Court appoints the report writer and sends the report writer the letter of engagement and additional documents prescribed under paragraphs 11.1 or 11.2, the Court will forward a copy to the appointed report writer once the Court receives the report.
- 11.4 Affidavits and lawyer for child reports provide the background and perspective of the parties. Affidavits and lawyer for child reports relevant to the issues outlined in the brief should be sent to the report writer. Such affidavits and lawyer for child reports will contain untested material and they should be treated with caution, particularly in relation to contentious issues and where, as in most cases, the affidavit and lawyer for child report evidence is incomplete.
- 11.5 Should additional affidavits be filed after the appointment of the report writer, the Court will forward copies of these affidavits to the report writer.
- 11.6 If additional information is required, the report writer must make the request in writing to the Family Court Co-ordinator.
- 11.7 The referral will also include:
- (a) The agreed hourly rate of payment;
  - (b) An agreed allocation of hours for interviews and writing the report;
  - (c) Standard disbursements payable; and
  - (d) Provision for application for extensions to authorised hours or changes to the brief.
- 11.8 Additional expenditure incurred, except for unforeseen additional attendances where there was no opportunity to seek prior approval, will not be reimbursed.
- 11.9 Judicial approval is required for:
- (a) Requests for access to, or copies of, additional file material;
  - (b) Access to the Court file/s;
  - (c) Access to Child, Youth and Family's diagnostic videos; or
  - (d) Access to Police videos (access is governed by regulation 22 of the Evidence Regulations 2007).
  - (e) Requests for access to, or copies of, a supervised access providers report.
- 11.10 At the end of proceedings, the Court will advise the report writer of the Court's decision and will provide a copy of that decision to the report writer.

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| <b>12</b> | <b>PROCESS FOR SELECTION</b> |
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- 12.1 In each Court there will be a list of report writers who are available to accept appointments from the Court as a report writer and from which the report writer may be appointed in individual cases.
- 12.2 The Registrar or Family Court Co-ordinator will convene a panel to consider applications for inclusion in the list of report writers available to undertake Family Court appointments.

The panel will consist of a Caseflow Manager or Family Court Co-ordinator as chair, two experienced report writers appointed by the Court, and a Family Court Judge nominated by the Principal Family Court Judge.

- 12.3 The panel should normally sit with four people, but a panel of three may be convened in some circumstances (for example, when an interview would be unable to be arranged in a reasonable timeframe). Any panel of three must comprise a Family Court Judge, an experienced report writer and a Caseflow Manager or Family Court Co-ordinator.
- 12.4 Panels will be convened as required, but no less than twice a year if there are applications waiting to be considered and a need for a report writer to be appointed.
- 12.5 The following appointment process should be followed.
  - (a) The applicant will submit an application in form SRW1a to the Registrar in the Court region in which they wish to practise, nominating their area of specific expertise and the particular Court or Courts where they wish to be on the list.
  - (b) The application will be referred to a panel convened by a Registrar or a Family Court Co-ordinator.
  - (c) The Registrar shall give copies of the application and any supporting documentation to the Regional Administrative Family Court Judge (Administrative Judge) who shall be given seven days to make any comment in writing in relation to the application.
  - (d) Panel members may make such enquiries as may be needed for them to be informed about the applicant's ability to meet the criteria, including enquiries of the applicant's supervisor and two referees.
  - (e) The panel will interview each applicant. If the panel has any concerns about the applicant's ability to meet the criteria, these concerns will be put to the applicant, who will have the opportunity to reply.
  - (f) An unsuccessful applicant shall be provided with reasons for not being included in the list. It is expected that if an applicant is not selected the panel will have discussed its concerns with the applicant during the selection process.
  - (g) It is expected that the panel's approval will be by way of a consensus decision.
  - (h) The Registrar will advise the applicant and the Court/s, of the decision in writing.
  - (i) On request, the National Office of the Ministry of Justice will make a list of approved report writers available to the Board, the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists.
  - (j) Report writers will be able to transfer their approval from one Court to another. Where such a transfer is sought, the Registrar of the original Court shall confirm with the Court to which transfer is sought, that approval has been given and the date of that approval.

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| <b>13 CRITERIA FOR SELECTION</b> |
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- 13.1 To be eligible for selection onto the list, the report writer must:
  - (a) Be a registered psychologist with a current practising certificate;

- (b) Be a current financial member of the New Zealand Psychological Society or the New Zealand College of Clinical Psychologists; and
- (c) Have five years' clinical experience or its equivalent, including a minimum of three years' experience in child and family work.

13.2 Psychologists will provide evidence of competency in the following areas.

- (a) Assessment/diagnostic skills:
  - (i) child-parent attachment, bonding;
  - (ii) child development; and
  - (iii) physical, psychological and sexual abuse.
- (b) Demonstrated knowledge and understanding of:
  - (i) family systems;
  - (ii) family separation and impact on children and adults;
  - (iii) parenting skills;
  - (iv) family violence and impact on children and adults;
  - (v) child abuse and neglect;
  - (vi) alcohol and drug misuse and abuse;
  - (vii) psychopathology;
  - (viii) local community resources for children and their families; and
  - (ix) the responsibilities of the report writer in relation to the Family Court.
- (c) Cultural awareness, including an understanding of:
  - (i) the need and ability to refer to/make use of specialist cultural advice for families of different cultures;
  - (ii) the significance of cultural prohibitions, customs and language of other cultural groups; and
  - (iii) alternative child and human development perspectives.

13.3 Evidence of competency will be demonstrated by relevant academic and formal training, participation in relevant workshops, seminars and conferences, and by maintaining knowledge with current trends in research and literature.

13.4 On initial appointment to the list, each report writer will:

- (a) Complete a statement listing any past complaints and outcomes and any current complaints, or confirming that no complaints, past and/or present, have been made; and
- (b) Agree to advise the Court if they are at any time the subject of a complaint to their professional body and/or the Psychologists Board or the Health and Disability Commissioner, and to provide the Court with information on the outcome of any such complaint.

## **14 REVIEW OF THE LIST**

- 14.1 The Registrar in each Court will ensure that every report writer is reviewed at intervals of not more than three years. Where several Courts use one pool of report writers, the Registrars in those Courts may choose to review the list of report writers together.
- 14.2 The panel convened by the Registrar of each Court to consider applications for inclusion on the list of report writers available to undertake Family Court appointments will also conduct the reviews of report writers.
- 14.3 The Registrar will request all report writers who are currently on the list to indicate on a SRW4a, within 28 days:
- (a) Whether they wish to remain on the list and continue to receive report writer appointments; or
  - (b) Whether they wish to withdraw from the list.
- 14.4 If a report writer wishes to remain on the list they must complete an application form prior to the review and provide all the information requested in the form.
- 14.5 The panel shall meet as soon as practicable and reconstitute the report writer list.
- 14.6 The panel will consider all the information provided by the report writer as well as any other matters raised that relate to the administration of the list, and may choose to meet with the report writer.
- 14.7 The panel will contact the report writer's regulatory body, for example the Psychologists Board, to confirm whether the report writer is of good standing.
- 14.8 A report writer may only be removed from the list at the report writer's request, or as a result of the report writer's failure to respond within the stipulated time. The Registrar will notify all report writers as to whether they are to remain on the list or have been removed, as the case may be, and specify any reasons for removal.

## **15 ADMINISTRATION OF THE LIST**

- 15.1 Each Court will maintain a register (CMS report) listing, case by case, each report writer's appointment, the date of the appointment, the type of case and the date on which the appointment terminates.
- 15.2 The report is to be available for the regular monthly management meeting of each Family Court.
- 15.3 In areas such as Auckland and Wellington where several Courts use one pool of report writers, there should be inter-Court communication to ensure that, as far as possible, there is a spread of assignments to all listed report writers.

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| <b>16 COMPLAINTS</b> |
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- 16.1 This Practice Note applies to complaints made where proceedings are pending, in progress, or have been concluded.
- 16.2 Nothing in this Practice Note is intended to oust any jurisdiction which the Board or the Health and Disability Commissioner has to deal with any complaint which arises in connection with proceedings in the Family Court. The Family Court will inform the Board whenever a formal complaint against a psychologist is made directly to the Court and any steps taken in response to that complaint.
- 16.3 The Family Court should deal with most complaints involving psychologists as part of its jurisdiction to regulate its own process and exercise the powers and functions conferred upon the Court by statute. In addition, the Board will typically deal with matters that go beyond the process of the Court and raise questions about professional competence, conduct or ethics. This may include matters such as inappropriate relationships between the report writer and the parties, breaches of privacy and incompetence. The Court will formally refer all such cases to the Board. Furthermore, the Health and Disability Commissioner should deal with complaints about the examination of the child, who in this context is defined as the consumer of the health service provided. The parents and other parties are not deemed to be health consumers in this context.
- 16.4 Many complaints to the Family Court will be those that raise questions about the quality of the evidence before the Court. Matters that will generally be dealt with by the Family Court may include:
- (a) Allegations of perceived bias;
  - (b) Allegations that the report writer has a sexist, racist or otherwise discriminatory approach;
  - (c) The methodology used;
  - (d) Allegations that one parent was treated differently from the other parent without sufficient reason given; and
  - (e) Any matter relating to the content of the report, such as failure to deal with any fact or issue, the length of the report or the style of the report.
- 16.5 Complaints made to the Family Court about the examination of the child may be directed to the Health and Disability Commissioner or an Advocate under the Health and Disability Commissioner Act 1994. The child may choose to lay such a complaint with any appropriate party, including the Court.
- 16.6 Complaints to be dealt with by the Court where proceedings are pending or in progress should be referred to the presiding Judge. Complaints after proceedings have concluded should be referred to the Administrative Judge.
- 16.7 Where a complaint to the Family Court relates to proceedings that are pending or in progress, the presiding Judge will deal with the complaint where possible, either before the hearing or in the course of the hearing, for example, through cross-examination, submission, or evidence called on behalf of the complainant.

- 16.8 Where a complaint to the Family Court relates to proceedings that have concluded, the Administrative Judge will consider the complaint and produce a minute containing the view of the Court regarding the complaint. The complaint and minute need not be formally referred to the Board unless it appears to the Judge there are issues of competence or other issues best dealt with by the Board.
- 16.9 Complaints made directly to the Family Court, as opposed to the Board or the Health and Disability Commissioner, must be received no later than six months from the date the proceedings concluded. Complaints made outside this timeframe will be automatically rejected by the Family Court. This provision does not apply where a complaint is referred to the Family Court by the Board or the Health and Disability Commissioner. Where a complaint made to the Family Court is rejected because it is out of time, the Registry will still advise the Board that the complaint was made and how it was dealt with.
- 16.10 The Family Court will generally consider all complaints at first instance. Any complaint referred by the Board to the Family Court shall be directed to the Registrar of the Family Court at which the report was requested. The Registrar will refer the complaint to the presiding Judge, or Administrative Judge, to consider. Where the Board has referred a complaint to the Court, the Judge considering it shall provide a written minute to the Board as soon as practicable, detailing any opinion on the merits of the complaint and any action that will be taken by the Court. The Court will advise whether:
- (a) The complaint relates to a matter within the Court process, and so will initially be dealt with by the Court; and/or
  - (b) The complaint appears to be of sufficient seriousness to require formal referral to the Board.
- 16.11 Subject to the provisions of clause 16.12 below, the Board will deal with complaints according to its own procedure and the requirements of the Health Practitioners Competence Assurance Act 2003 and is not bound by any decision of the Court.
- 16.12 The Judge considering a complaint may, in the event that the proceedings before the Family Court have not been concluded, reach the view that it is inappropriate for further investigation of the complaint until the final disposition of the proceedings. The purpose for the exercise of such a discretion is to avoid a potential breach of the rules of natural justice that may arise because of the Board's duty to disclose all information it has in relation to a complaint. In the event that a Judge determines to defer consideration of a complaint, the Board is to be notified by the Court. If the Board considers a complaint serious enough to warrant immediate attention, the Board should notify the Judge accordingly and that Judge will then specifically make a direction addressing the disclosure of the Psychologist's report pending the conclusion of the hearing. Such a direction may provide for the report to be made available to the Board, subject to the condition that the report not be copied or provided to the complainant or any other party, or there may be a direction that certain portions of the report be redacted.
- 16.13 Where a complaint is dealt with by the Board and relates to a report under s 133 of the Care of Children Act 2004 or s 178 of the CYPF Act, the Board may make a written request for a copy of the report. Subject to clause 16.12 above the Family Court will release a copy of the report to the Board for the sole purpose of dealing with the complaint. If the Board appoints a Professional Conduct Committee to assess the complaint, the above protocol applies to the Committee.

16.14 Complaints must be in writing.

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| <b>17 COMPETENCY REVIEWS</b> |
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- 17.1 Pursuant to section 35 of the Health Practitioners Competence Assurance Act 2003 (HPCA), the board is required to undertake competency reviews under those circumstances described in section 35(1).
- 17.2 In accordance with s35(2) HPCA, the board is to notify the Principal Family Court Judge if it undertakes a competency review of a Health Practitioner. Upon receipt of the notification, the Principal Family Court Judge will notify the Family Court Judges of those courts where the Health Practitioner is providing services.
- 17.3 The Administrative Family Court Judge for those Courts may then, at his or her discretion, direct that there be no further referrals to that Health Practitioner until the outcome of the competency review is known.
- 17.4 In the event the Administrative Family Court Judge decides to cease referrals, the Board and Health Practitioner shall be notified by the Registrar of the Court.

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| <b>18 REMOVAL FROM THE LIST</b> |
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- 18.1 The report writer may be removed from the list and this shall occur by the same process used to select report writers in paragraph 12, with all necessary modifications.
- 18.2 Grounds upon which report writers can be removed shall be:
- (a) Professional misconduct in carrying out their duties; or
  - (b) Demonstrated failure to abide by this Practice Note or other failure to carry out duties responsibly and competently.
- 18.3 The panel shall advise the report writer in writing that it is considering removing his or her name from the list.
- 18.4 The notice from the panel to the report writer shall:
- (a) Specify the reasons why the panel is considering the removal of the report writer from the list;
  - (b) State the right of the report writer to make submissions or representations within 21 days from the date of service of the notice; and
  - (c) Set out the intention of the panel to consider removing the report writer from the list after 21 days unless the report writer indicates in writing that he or she opposes

removal.

- 18.5 When the 21-day time period has expired, the panel shall convene to consider whether or not the report writer should remain on the list. In the event that the report writer has made submissions or representations opposing the removal, the Registrar shall convene a hearing.
- 18.6 At any hearing, the report writer shall be entitled to be represented and shall be entitled to call witnesses in support.
- 18.7 The Registrar shall advise the report writer, the Administrative Judge, the relevant Court/s and the report writer's regulatory body of the decision in writing.

**COMMENCEMENT DATE**

This practice note comes into operation on 9 July 2018

A handwritten signature in black ink, appearing to read 'D. Smith'.

David Smith

**Acting Principal Family Court Judge**