Dr Janine Braier/Linda Jeffes (delete as appropriate)

Consultant Clinical Psychologist
Parenting Profiles Ltd
(If Janine) Colton House, Princes Ave, LONDON N3 2DB
(If Linda) The Albany Centre, 4 Victoria Street, St Albans, Hertfordshire AL1 3JD

 Date Here

Dear Dr Braier/Jeffes

Thank you for agreeing to undertake an assessment and report in this matter. The Court has directed that your report must be filed by Filing Date Here.If you anticipate for any reason not being able to file your report by this date please let us know as soon as possible.

I act on behalf of the First/Second/Third Respondent in this matter Client Name Here.

**The Representatives**

A Schedule of Parties will be provided by email before the appointment.

I act on behalf of Applicant/Respondent Name Here

**Nature of the Instruction**

You are instructed solely by the First Respondent/Joint Parties to provide an independent expert opinion. You are instructed to undertake an assessment of:

Client Name Here

You have leave to see a complete copy of the Court bundle for the purposes of your assessment.

It is expected that you will have meetings and conversations with the parties and the Children’s Guardian. Nevertheless it is essential both to your role as an independent expert and to the parties’ perception of your independent status that there are no informal or unrecorded discussions or undisclosed correspondence with any of the professionals or lay parties involved in this case. You are at liberty to liaise with the other professionals involved in the case.

When you provide your opinion, you must have regard to the principle that when determining any questions with respect to a child, the child’s welfare must be of paramount consideration. If during the course of your assessment other issues become relevant, please contact me and after consultation with the other legal representatives, I will consider whether the scope of your instruction should be amended. If you need any further information, please contact me and I will provide same after consultation with the other parties involved. If any documents are exchanged with one party, please copy them to all parties. Where possible, communication is best achieved by fax, letter or email.

When preparing your report, please have regard to the Family Procedure (Amendment) (No.5) Rules 2012 at <http://www.justice.gov.uk/courts/procedure-rules/family> and Practice Direction 25 attached thereto at <http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25> (experts in Family Proceedings Relating to Children).

**Documentation**

I will provide you with a copy of the index and the court bundle by email before your appointment. I will provide you with copies of further documentation as and when they are filed in the proceedings. If you consider that you require any further documentation, please do not hesitate to contact me.

**Background**

The background to this matter will be set out in the paperwork included in the Court bundle.

**Your Instructions**

You are instructed to undertake an assessment of Client Name Here as follows:

1. Please undertake a cognitive assessment.
2. Please assess whether there are any learning difficulties? If so, please identify them. Please comment on whether any identified learning difficulties will impact on parenting capacity.
3. Can you confirm whether or not the professionals involved need to employ particular methods of communication to ensure that understanding and retention of any information given? If so, please give details.

**Factual Issues**

Unless you have specifically been asked to do so, you should please avoid exercising a view regarding the factual issues of this case as this is of course the province of the Judge. Where appropriate, it will be of assistance if you are able to express your opinion on the basis of alternative findings regarding the factual issues. Please ensure that in the event of you having any discussions with anyone else in this case, which you are not precluded from doing, that you keep a contemporaneous record of such discussions which you may then be required to produce within these proceedings.

**Timetable**

This case is being heard at Court Name Here. The date for filing your cognitive report is Filing Date Here. If this is not possible, I would be grateful if you would please let me know and I will apply to the court for an extension. As you may be required to give evidence at either the IRH or the final hearing, I would be grateful if you could please advise me if you have any dates to avoid.

**Fees**

***How your fees are met***

The fees for your instruction will be borne solely by ourselves/divided between the parties. Client Name Here is in receipt of Legal Aid and your fees will therefore be met through our Legal Aid Certificate.

Ultimately, your fees will be assessed by either the Court or Legal Aid Agency (LAA) at the conclusion of the case as to reasonableness in terms of both hourly rate and time spent.  We cannot be responsible for any fees over and above those finally assessed and paid by the LAA.

***Fees that the LAA will, and will not pay***

A table of maximum hourly rates that the LAA is allowed to pay to different types of expert witness is contained at Schedule 5 of the Legal Aid (Remuneration) Regulations 2013 and has effect in respect of instructions to expert witnesses whose fees will be met through legal aid certificates issued after 2nd October 2011. Such hourly rates can only be exceeded with the written prior authority of the LAA, and in the circumstances set out in the Funding Order.

In your case the maximum hourly rate is £93.60.  This means that you cannot charge, or be paid, a higher hourly rate unless the LAA has granted prior authority.  Such prior authority, we repeat, will only be granted in the exceptional circumstances set out in the Funding Order.

We confirm that you have agreed to carry out the assessment under the hourly rate of £93.60 and that your fee estimate is for 18 hours.

In addition, The LAA will not pay:

a) Any separate administration fee including, but not limited to, a fee in respect of offices and consultation rooms, administrative support including typing services, subsistence and couriers;

b) Any cancellation fee where notice of cancellation is given more than 72 hours before the relevant hearing or appointment;

c) Any travelling costs in relation to vehicle mileage in excess of 45p per mile;

d) Any fee for travelling time in excess of £40 per hour;

e) Any costs or expenses of or relating to the residential assessment of a child;

f) Any costs or expenses of or relating to treatment, therapy, training or other interventions of an educative or rehabilitative nature.

g) Any costs and expenses of independent social work provided outside England and Wales;

h) Any costs and expenses in relation to contact activities including fees, charges and costs of contact centres and any reports or other assessments of contact between children and adults. However, please note that this exclusion does not apply to observation of contact which forms part of a psychological or parenting assessment.

You should therefore ensure that none of these costs are included in your invoice.

If you have not already done so please send us an estimate of your fees in this case, setting out the basis of your calculation bearing in mind the allowed rates and the above restrictions on payment.

Please also note that there are terms in the Standard Civil Contract 2013 under which the LAA funded legal representatives and expert witnesses must operate.  In accordance with these, if your fees are to exceed £250 you must keep accurate records of all the time spent on the work for which you have been instructed and of the work done.  You must also permit the LAA to audit your records if necessary.

***Invoices and payments on account***

Your invoice should provide a breakdown of the hours that you have spent on different categories of work (i.e. reading papers, meetings, report writing, travelling) with the charging rate applicable to each type of activity.   The current policy of the LAA, when assessing bills, is to require this information to be clearly summarised on an expert witness’s invoice, and the LAA will not process or pay your fees without this.

On receipt of your invoice a claim will promptly be made for payment on account of your fees to the LAA.

The LAA will only process applications for payments on account which reflect the maximum hourly rate permissible, or which accord with any prior authority granted.

Promptly upon receipt of such payment this payment made to you.

***Final assessment by the LAA and Recoupment***

Please note that payments on account may, however, be recouped by the LAA at the end of the case following the final assessment of the bill. Such recoupment will only apply to any sum, paid on account, which exceeds the amount finally allowed on assessment by both the Court and the LAA.

Please bear in mind that, even if your hourly rate accords with the table in the Funding Order, it is open to the LAA to take the view that they consider the number of hours of work carried out to be excessive, and to reduce your final invoice accordingly.    If your fees are reduced on assessment we will notify you within 7 days of receiving (in our offices) notification from the LAA or the court.  If you wish us to make representations with regard to the reduction then you should notify us within 7 days, and provide us with the text of those representations, or the supporting documentation as the case may be so that we can put the representations to the LAA.

***In accepting this instruction you therefore agree that if your fees are subsequently reduced (whether by the court or by  the LAA) you will promptly reimburse the difference between the amount paid on account to you, and the amount finally allowed on assessment, to the parties’ legal representatives.***

***Exceeding your costs estimate***

Your cost estimate is for 18 hours in the sum of £1648.80 plus VAT. It is important that during the course of your assessment you inform us immediately if you are likely to exceed your costs estimate.  There are three reasons for this:

a) If prior authority has been granted by the LAA, this only extends to your initial estimate.   Any fees over and above that estimate cannot be paid to you without the LAA’s prior approval.

b) If an application for prior authority is not needed because your estimate uses approved hourly rates and the parties believe that it falls within what the LAA would usually consider to be within the normal range of fees for this type of work, we would not be able to pay a higher fee without prior approval from the LAA, or following those fees being allowed by the LAA on final assessment of our bill.

c) All Legal Aid funding certificates have a costs limit set by the LAA, and we need to make an application for an increase in that costs limit whenever it appears that the aggregate of legal and other fees to be incurred in the case is likely to exceed the current limit.

If you exceed your fee estimate without prior notification to us your fees may therefore not be met in full.

**Duties of an Expert Witness**

As an expert witness to the court, of particular relevance to you, is Part 25 of the Family Procedure Rules. Your duties to the court are set out in more detail in the accompanying practice direction to Part 25: Practice Direction 25B ‘The Duties of An Expert, The Expert’s Report and Arrangements for an Expert to Attend Court’. This can be downloaded from: <http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25>

You are asked to bear in mind the Code of Guidance for Expert Witnesses in Family Proceedings set out by Appendix C to the Protocol for Judicial Case Management in Public Law Children Act cases. The following duties are specifically prescribed.

The section on duties of experts is at paragraph 3 of the rules. All experts in family proceedings relating to children have an overriding duty to the court which takes precedence over any obligation to the person from whom the expert received instructions or by whom the expert is paid. You should ensure that you have read and are aware of your duties to the court. If you have any questions then you should contact your lead solicitor.

The conclusion of your report should be verified by a statement 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.’*

Please note that in accordance with Practice Direction 25B, after you have filed your report, you may be asked supplementary questions by any or all of the parties and you may also be asked to attend an experts’ meeting. It is a condition of your instruction that if the court directs that an experts’ meeting should take place, that you take part in that meeting in person or by telephone/video link.

If you have not already done so, I would be grateful if you could provide as soon as possible, an accurate estimate of your likely costs and disbursements, together with confirmation of your hourly charging rates ensuring that these are in line with the Legal Aid Agency expert rates, in order to obtain the appropriate authorisation. Having considered the papers and instructions please would you within seven days of the date of this letter, confirm your acceptance of the letter of instruction and let us have an estimate of the costs of your attendance at Court and at an expert’s meeting, if one is necessary.

Once the estimate of your costs has been received, an appropriate authorisation may be sought by me. If you anticipate that it will be necessary to go beyond your estimate, which in effect will become a ceiling for your costs, please contact me as a matter of urgency with a new estimate so that the appropriate further authorisation may be sought. Please note that if I do not hear from you with a request to increase the estimate, then I cannot guarantee that the additional payment will be agreed by the Court/Legal Aid Agency. It is therefore very important that you let me know if you consider that the estimate will be exceeded.

There is another reason why giving us costs estimates is very important and why you must let us know if your costs estimate will be exceeded. This is because we have costs limits on our Certificates and the total costs in the case cannot exceed those limits. We can apply to extend them and will do so when we know your fee estimate. However, if the estimate is exceeded and we are not informed about this, then we will not be able to exceed the cost limit sufficiently and your costs may not be covered.

With regard to the estimate of your fees for the assessment, I should add that the Legal Aid Agency or the Court will decide through the process of detailed assessment of publicly funded costs, whether your costs are reasonable. The Legal Aid Agency and the Court have the power to reduce expert’s fees. You will be given an opportunity in the event that the Court or the Legal Aid Agency considers your fees should be reduced to make representations in relation to your fees. In the firm’s experience, it is unusual for the Legal Aid Agency or the Court to reduce an expert’s fees but if they were to do so, it would be necessary for us to seek reimbursement from you of any overpayment made on account.

Please let me know if you charge a cancellation in respect of an appointment or Court appearance. If you do, please let me know the deadline after which the cancellation fee applies. If you do not inform me of a cancellation fee in response to this letter, it will be assumed by the instructing parties that none applies. I am also obliged to point out to you that any cancellation fee will also be subject to assessment by the Court/Legal Aid Agency who may take the view that if an appointment/Court appearance is cancelled, you should take steps to mitigate your own loss.

**Records**

As Client Name Here is publicly funded, in accordance with the Legal Aid Agency’s requirements under the Civil Contract Standard Terms 2013, I am obliged to ask you to maintain full and accurate records of your time spent in connection with your assessment and the preparation of your report. It is also necessary for experts to agree that they will permit the Legal Aid Agency to audit their records on reasonable notice. Accordingly, please note that in accepting these instructions in this case, you are agreeing to time record and permit verification. There are important terms about keeping records of time in the various LAA contracts in operation and the standard terms of those contracts. In order to comply, it is a term of your instruction that if your total fees are to exceed £2500 you must keep accurate records of all the time spent on the work for which you have been instructed and of the work done. You must also permit the LAA to audit your records if necessary.

**CRB checks**

Where you (or any person working with you) is likely to work or come into contact directly with a child in carrying out your instructions, you and/or the other person working with you must have been appropriately checked by or be registered with the Disclosure and Barring Service (which merges the Criminal Records Bureau and Independent Safeguarding Authority). It is agreed that your lead solicitor is entitled to ask for confirmatory evidence of the appropriate checks/registration from you and that you will provide this promptly if so requested.

**Media Access to Hearings**

Accredited members of the press can now attend most family hearings as of right, either in Family Proceedings Court, County Court or High Court. The press do not need to give notice of their intention to attend. The press are not entitled to attend adoption hearings or hearings which link applications for care and placement orders although the press can apply to attend these hearings.

The Court can be asked to exclude the press from the Court where:-

a) It is necessary in the interest of a child concerned in, or connected with, the case.

b) A party or witness (or a person associated with the party or a witness) needs to be protected – for example where a witness’ safety may be at risk if the media attended Court.

c) The case may be disrupted if the media is present e.g. if there is not enough room in Court.

d) Justice may otherwise be impeded or prejudiced e.g. where there is a risk that a witness will not give full or frank evidence because the media is present.

The rules on disclosure of children proceedings remain unchanged and material identifying the child or the detail of the case can only be disclosed with the leave of the Court which would necessitate a Court application.

If you are concerned about giving evidence at a hearing which the press may attend then please raise this with me.

If you have any further queries, please do not hesitate to contact me.

Yours sincerely

**Your Name Here**

**SOLICITOR NAME HERE**