Dear XXXX,

**Re: [case citation and number]**

 **Our client: XXX**

Thank you for agreeing to assess and prepare a report in respect of the above named.

**Representation**

**Applicant: XXX**

**Solicitor:** Name

Telephone

 Email

**Mother: XXX**

**Solicitor:** Name

Telephone

 Email

**Father: XXX**

**Solicitor:** Name

Telephone

 Email

**Child: XXX**

**Solicitor:** Name

Telephone

 Email

**Children’s**

**Guardian:** Name

Telephone

 Email

**The Nature of Your Instructions**

Pursuant to an Order of the Court made on , you are instructed to provide an expert opinion

**The reason your expert opinion is sought**

The history of our client namely………..

The experiences of the solicitors…….

The following additional information including a schedule of the issues in these proceedings…..

**Your instructions**

1. Please undertake a cognitive assessment of XXXX with a view to ascertaining whether they suffer from any learning difficulties or learning disabilities and if so, confirm the extent of those difficulties/disabilities and advise as to their overall level of functioning including any strengths. Please also assess and comment on their level of cognitive understanding of the issues within these proceedings
2. In the event that you do identify any learning difficulties/disabilities we would request that you advise us as to:
	1. How information should be given to them, taking into account the findings of their cognitive assessment,
	2. The most appropriate way for them to work with professionals (including not only their appointed legal representatives but also other professionals involved in the case including social workers undertaking any parenting or other assessments) to maximise their chances of engaging and understanding what is expected of them, and
	3. Whether it is necessary for a parenting assessment ~~should~~ to be undertaken on a PAMS/Parent Assess based approach.
3. *Only where relevant and necessary:* [Please consider if XXX has litigation capacity as defined by the Mental Capacity Act 2005. (If they do not please complete the attached form which has with it guidance notes setting out carefully the legal test required (Appendix) A). If they have litigation capacity, you do not need to complete the form).]
4. You will note Part 3A of the Family Procedure Rules requires the court to consider participation directions. It is supplemented by Practice Direction 3AA. Both are attached at Appendix B. They make clear that the aim is to achieve a fair hearing for vulnerable parties by providing for appropriate measures to be put in place to ensure that the participation of parties and the quality of evidence of the parties and other witnesses is not diminished by reason of their vulnerability. This can include an advocate, a supportive friend being present as well as different methods of giving evidence including it being pre-recorded with agreed questions. FPR PD3AA identifies a wide range of possible steps which can support a party participating or giving evidence short of the instruction of an intermediary.
5. The parent will be represented throughout the proceedings at public expense by experienced lawyers, trained in the methods of the Advocates Gateway (<https://www.theadvocatesgateway.org/>). They will spend time together and develop a professional relationship. In particular, please note [Toolkit 13](https://www.theadvocatesgateway.org/_files/ugd/1074f0_48a0c6b6fca942fc819255e4104ac9de.pdf), Vulnerable witnesses and parties in the family courts.
6. Taking account of these matters please advise:
	1. What steps can be taken by the party’s legal representative to assist the party in being able to understand and participate in the proceedings, both in and out of court,
	2. What steps can the court take to assist the party in being able to understand and participate in the proceedings during court hearings,
	3. In the event that the party is required to give evidence during a court hearing, what steps should the questioner take to ensure the party is able to understand and respond to questions appropriately (e.g. using particular aspects of The Advocates Gateway referred to above; having regular breaks; question to be put in short sentences; questions to avoid preamble or complex language, party being asked to give their answers in short sentences).
7. Where necessary the court can appoint an intermediary to support the parent. This will only be done where other adaptations will not sufficiently meet the need to ensure that the parent can effectively participate in the hearing / triaI. Intermediaries will only be appointed where there are compelling reasons to do so. An intermediary will not be appointed simply because the process “would be improved” or on a “just in case” basis. It will be exceptionally rare for the court to order that an intermediary will be appointed for a whole trial. As noted by The Honourable Mr Justice Williams in the case of X & Y (Intermediary: Practice and Procedure) [2024] 906 (Fam) [para. 11]:

*“In considering whether [an intermediary] is necessary the court will wish to consider what other steps can be taken to ensure fair participation. FPR PD3AA identifies a wide range of steps which can support a party participating or giving evidence short of the instruction of an intermediary. It should not be the default position that a witness or party who is identified as vulnerable and needing measures to be taken to support their participation or giving of evidence requires an intermediary. Only if their fair participation cannot be achieved by other measures will an intermediary be necessary. A spectrum exists. The other measures may include those identified in PD3AA para 4.1 and 2 and para 5.3-5.7. A major component of the role of Legal representatives (solicitor and counsel) is to ensure their client understands the proceedings and their role in them, putting their views to the court, ensuring their client is able to give them instructions in advance of court and in court and enabling them to attend court without significant distress. Only if the court is satisfied that the usual support a legal team (adopting the use of the tools available) and other measures available to the court will not enable the party to participate fairly will it be necessary to provide for an intermediary. The tailoring of language and the use of the tools identified in the Advocates Gateway will often be enough to enable fair participation. Only in cases where the court is satisfied that a party or witness cannot give evidence fairly even with the adoption of all the other measures available (see PD3AA 5.3-7 and the Advocates Toolkit Vulnerable Witnesses and Parties in the Family Courts) will it be necessary to appoint an intermediary.”*

1. After implementation of any adaptations you have recommended, do you consider it necessary for the parent to also have the assistance of a Court funded intermediary. If so, please confirm your reasons and clearly identify the additional matters or elements that cannot be addressed by their advocate or the court.
2. [We would point out that XXXXX does not speak fluent English. Therefore, appropriate tests should be administered in recognition of this. XXXX will need an interpreter present when the test is being undertaken, which will be arranged by our firm]

**Factual Issues**

Unless you have been specifically asked to do so, you should please avoid expressing a view regarding factual disputes as this, of course, the province of the Judge at the final hearing. Where appropriate, it will be of assistance if you are able to express your opinion on the basis of alternative findings of any factual dispute.

**Timetable**

Your report is due to be filed by . If at any time there arise any difficulties in being able to file your report, would you please advise the lead solicitor as a matter of urgency. It is crucial that you are able to comply with the time limits as the subsequent timetable for the filing of statements and reports and the final hearing may be dependent upon the receipt of your report by the due date.

**Duties to the Court**

We would respectfully remind you when answering questions in this letter of instruction and in relation to all other aspects of your assessment you do, of course, have an overriding duty to the Court which takes precedence over any obligation to those who may be instructing you or paying your fees. Whilst, of course, it is expected you may have discussions with some of the professionals involved, it is essential both to your role as independent expert and to the parties’ perception of your independent status, that there are no informal recorded discussions or undisclosed correspondence with any professional or any of the lay parties involved in this case. If documents are exchanged from one party, please copy them all to the other parties. If possible, communication is best by letter or e-mail.

**Confidentiality**

Court papers in Children Act 1989 proceedings are confidential and cannot be disclosed without the court’s permission. This confidentiality also attaches to the substance of those papers. It is therefore most important that you should respect the confidentiality in relation to the information and papers disclosed to you in these proceedings. If you

believe it necessary or useful for you to discuss the papers or their substance with another colleague or expert, please inform your lead solicitor who, having consulted with other legal representatives, will seek the court’s permission.

**Cost of Your Report**

The fees for your instruction will be shared equally between the parties. The mother, father and child have the benefit of Legal Aid and the costs are considered by the court to be a reasonable and necessary disbursement on their respective Legal Aid certificates.

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

On receipt of your invoice the legal representatives for the publicly funded parties are entitled to and should promptly make a claim for payment on account of your fees to the Legal Aid Agency. Promptly upon receipt of such payment on account they should make this payment on account to you. Such payments on account may, however, be recouped by the Legal Aid Agency 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 the Court or the Legal Aid Agency. If your fees are reduced on assessment we will notify you within 7 days of receiving notification from the Legal Aid Agency 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 or those representations, or the supporting documentation as the case may be.

In accepting this instruction you therefore agree that if your fees are subsequently reduced by the Court or the Legal Aid Agency 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.

Please bear in mind that although we, as the lead solicitors in instructing you, will do our best to assist you in obtaining prompt payment, we can only be responsible for the share of your fees attributable to our client. The other Solicitors involved in this instruction to you are responsible likewise only for the share attributable to their client.

It is also important that during the course of your assessment you inform us immediately if you are likely to exceed your costs estimate. There are two reasons for this. First, the Court Order giving permission to instruct you has set a limit on the amount you can be paid, of £93.60 per hour (the Legal Aid benchmark rate) and you are limited to 25 hours’ worth of work. If on consideration of the full letter of instruction, or subsequently you think that you may have to exceed your estimate, an application to the Court will need to be made by us as the lead Solicitor. This application needs to be supported by a breakdown of the work done to date and fees incurred, and of the work, which remains to be done together with an estimate of those fees. Second, all Legal Aid Certificates have a cost limitation and we need to make an application to the Legal Aid Agency for any extension of this if it appears that the aggregate of the fees which are to be incurred in this case is likely to exceed the current costs limitation. If you exceed your fee estimate without prior notification to us your fees may therefore not be met in full.

In addition, there are terms in the 2007 Unified Contract under which the publicly funded legal representatives must operate. In accordance with these if your fees are to exceed £250.00 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 Legal Aid Agency to audit your records, if necessary.

There is also certain work for which the Legal Aid Agency will not pay and limits on certain hourly rates.

The Legal Aid Agency 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 £40.00 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.

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

Should you require any further information, please do not hesitate to contact, the lead solicitor at this office.

Yours sincerely

XXXX

**Appendix A**

**…………**

**Appendix B**

**…………**