

Instructing an Expert

A toolkit for lawyers and expert witnesses
in criminal cases involving children

INTRODUCTION

LAWYERS

This toolkit will walk you through how to instruct an expert witness

EXPERTS

This toolkit will show you how to comply with the law around expert witnesses



This advice is specifically focused on criminal cases involving children

THE RULES

**CRIMINAL
PROCEDURE RULES
(CRIMPR)**

**CRIMINAL PRACTICE
DIRECTIONS
(CRIMPD)**



The rules around expert evidence can be found in

CHOOSING AN EXPERT

Requisite
expertise?



Concise +
clear
writing?



Experience
in court?

Registered
with regu-
latory
body?

CV? Summary of
experience? Work
peer reviewed?

Disciplinary
procedures
or bad
publicity?

APPROPRIATE EXPERTS

Take instructions from both sides

Must be able to live up to proof beyond their report.

Have mental flexibility and be willing to update their view in the light of new evidence

Are capable of resisting undue pressure from lawyers and steering a neutral path

Experts have specific expertise - check your expert is an expert in the area you need.

Understand that their duty is to the court and not to those instructing them

Ask to see all the evidence before deciding - based on the evidence rather than the letter of instruction.

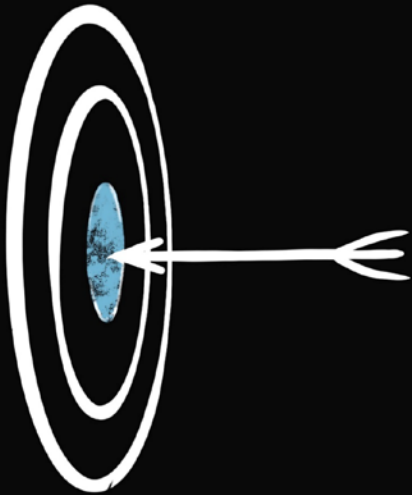
Are up to date and research aware

Explain things in simple and non-technical terms

You may need more than one expert if there are different things which need to be explained.



HOW TO ENSURE THE ADMISSIBILITY OF EXPERT EVIDENCE



It is relevant to a matter in issue in the proceedings

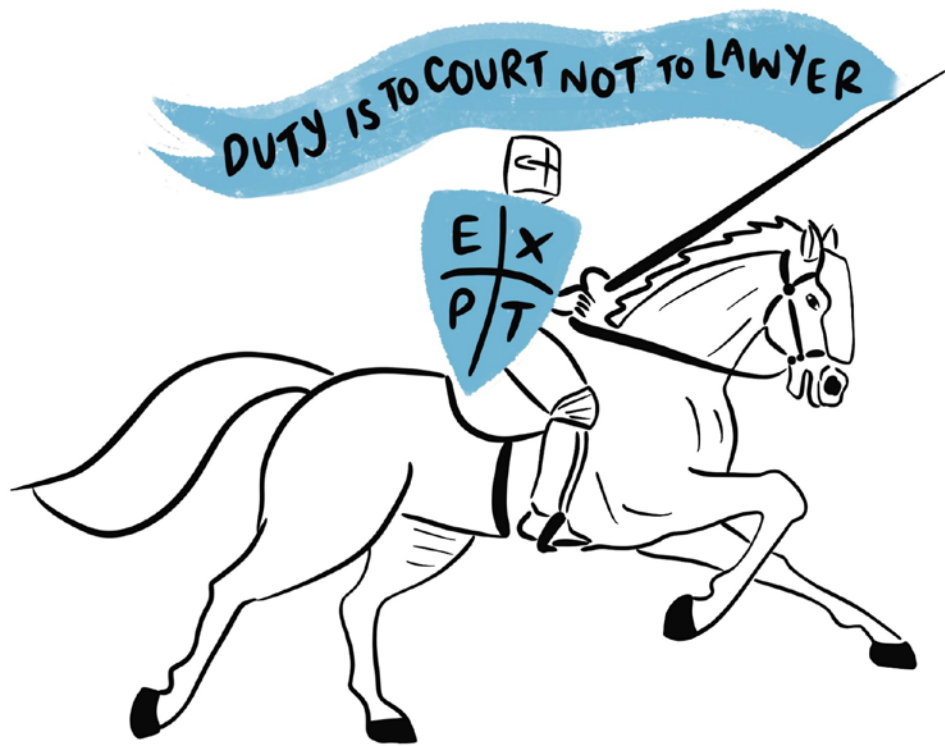


It is needed to provide the court with information likely to be outside the court's own knowledge and experience



The witness is competent to give that opinion

THE DUTY OF EXPERTS

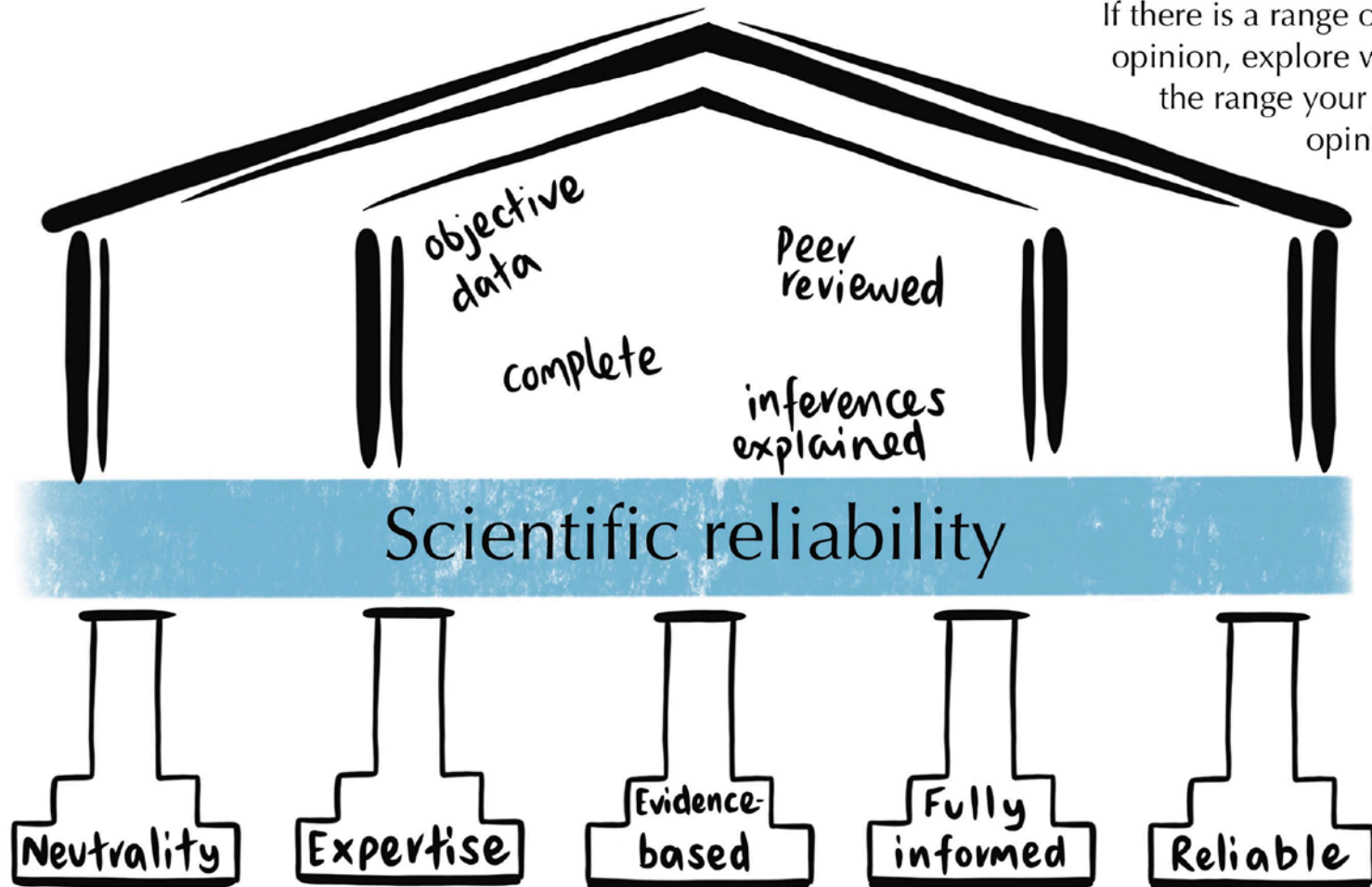


The court's duty is to achieve justice.

The expert's duty is to help the court do this.

EXPERT CREDIBILITY

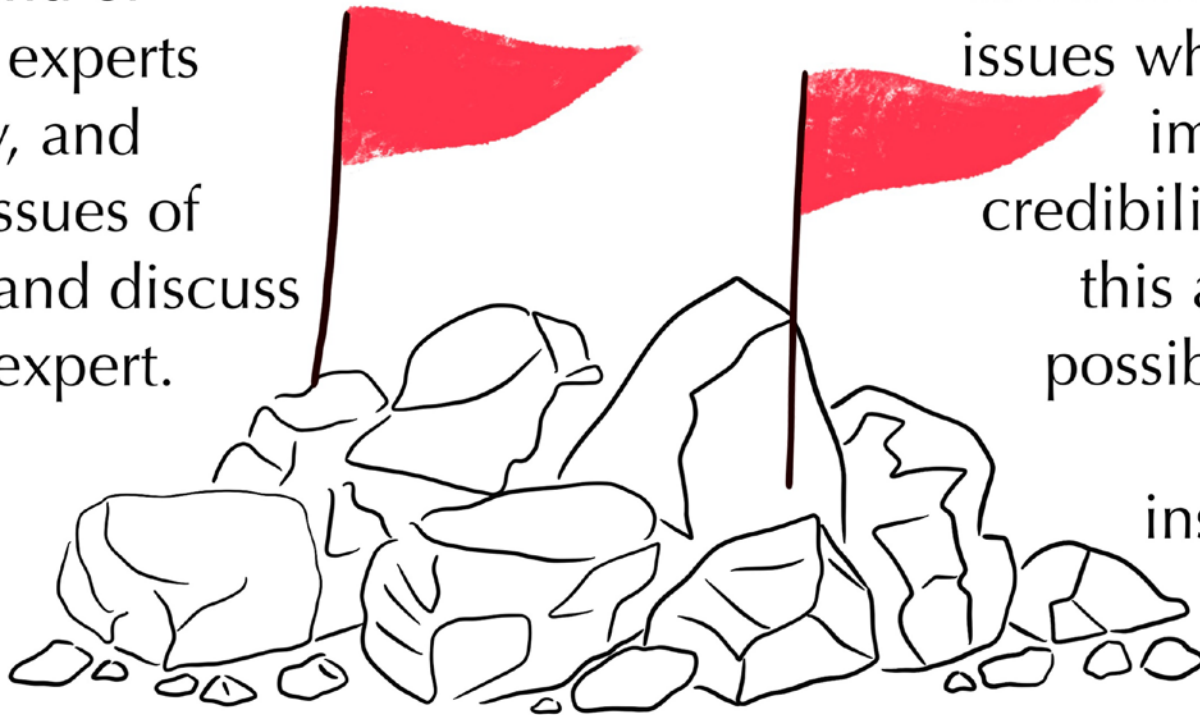
If there is a range of expert opinion, explore where in the range your expert's opinion lies.



POTENTIAL RED FLAGS

Lawyers: examine the background of potential experts thoroughly, and explore issues of concern and discuss with the expert.

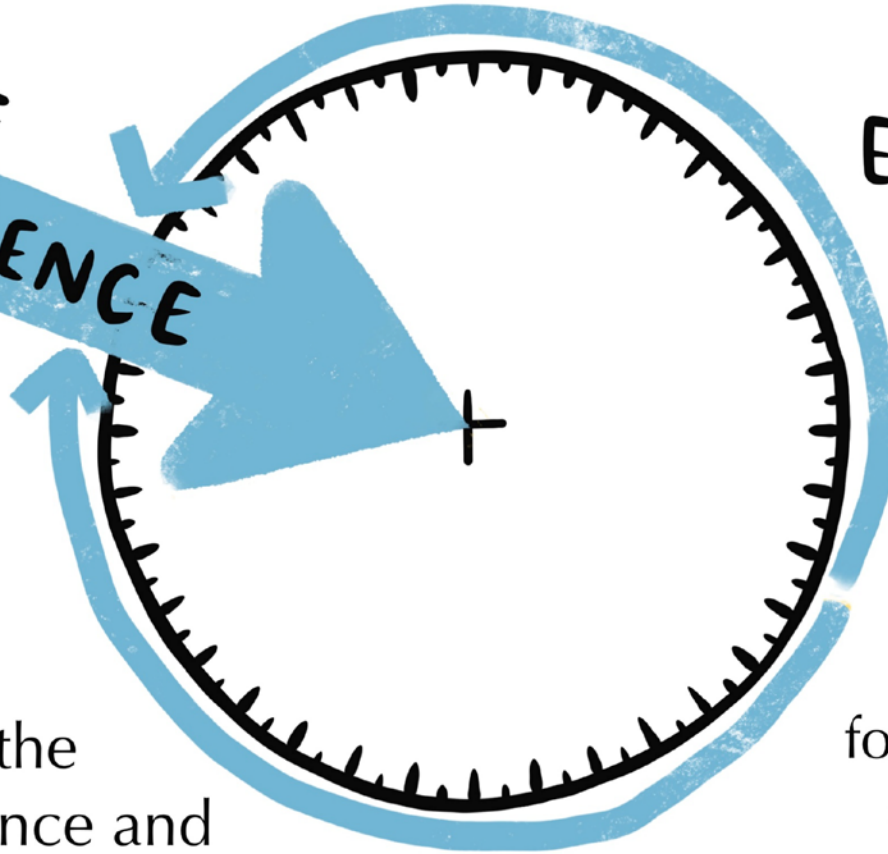
Experts: be honest about any possible issues which could impact your credibility, and do this as early as possible, before accepting instructions.



Leave no stone unturned!

DISCLOSING EVIDENCE

PROVIDE
THE EVIDENCE



Lawyers need to provide all the relevant evidence and keep under review.

EXAMINE ALL
OF IT - 360°



Experts need to ask for lawyers to provide complete disclosure of the evidence they will need.

LETTER OF INSTRUCTION

Provides the legal team with proof of their steps and requests.

Sets out the issues that need to be addressed.

Should include the materials listed below.

Lists of background and evidence provided.

May be disclosed to the other side.



EXPERT REPORT

Give details of the expert's qualifications

Set out the facts

State an understanding of duty to the court and provide declaration of truth

Name who carried out tests or experiments

Give a statement the expert understands their duty to the court and has complied with it

Give details of any literature relied upon

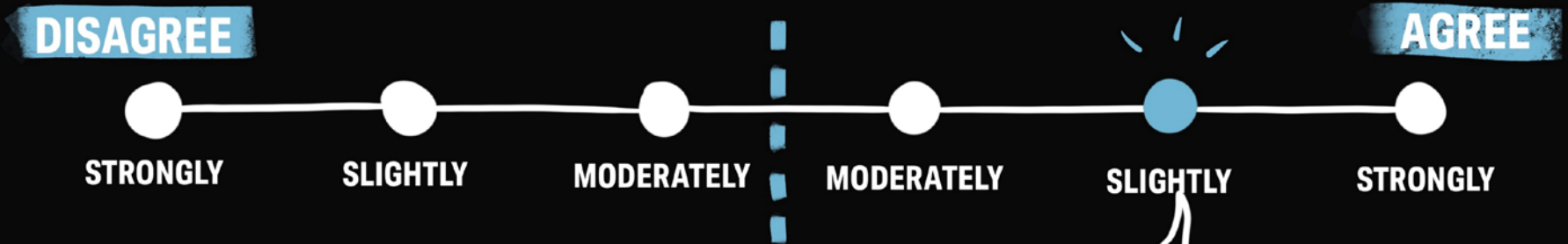
Summarise findings

Make clear which facts are within the experts own knowledge.

Explain the range of expert opinion and where the instructed expert sits



EXPERTS CAN EXPRESS A DEGREE OF SUPPORT



An expert can express a degree of support if the evidence provided for that conclusion based on their expertise in the field. The expert should:

- Emphasise that it is a subjective opinion;
- Make clear when there is an absence of an objective criteria
- Express degree of support in conventional language that is not designed to mislead; and
- Be prepared to explain and justify that degree of support

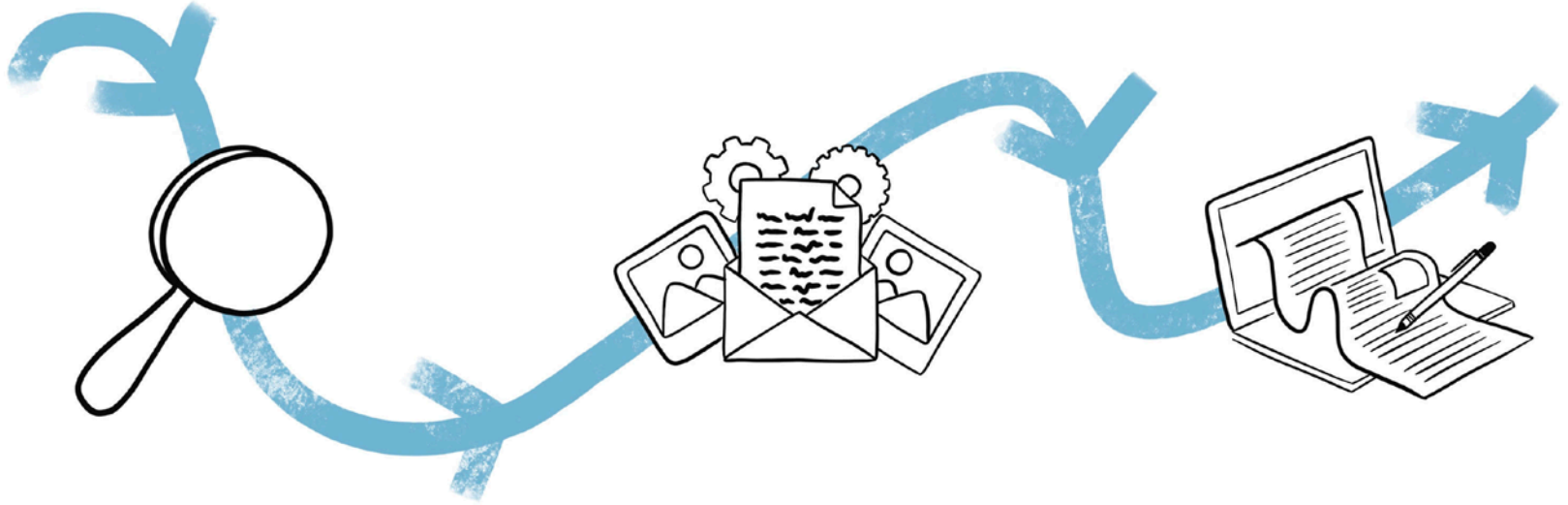


EXPERT DECLARATION

An Expert should
set out the
following
declaration:



SERVICE OF EXPERT EVIDENCE

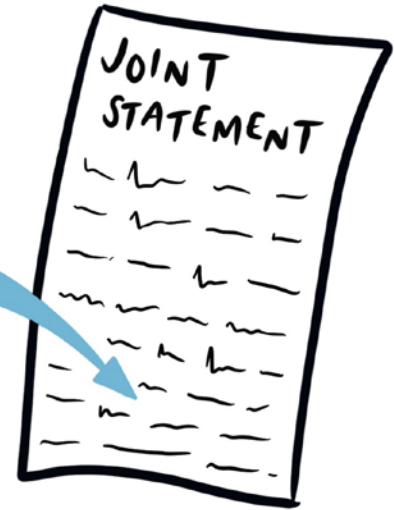


The admin matters!



JOINT STATEMENTS AND JOINT EXPERTS

The court may direct the experts on opposing sides of a case to discuss the expert issues and prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.



The Court can dictate that there is only one expert on an issue at trial for all co-defendants. Where the court gives a direction for a single joint expert to be used, each of the co-defendants may give instructions to the expert.

WAYS TO CHALLENGE EXPERT EVIDENCE

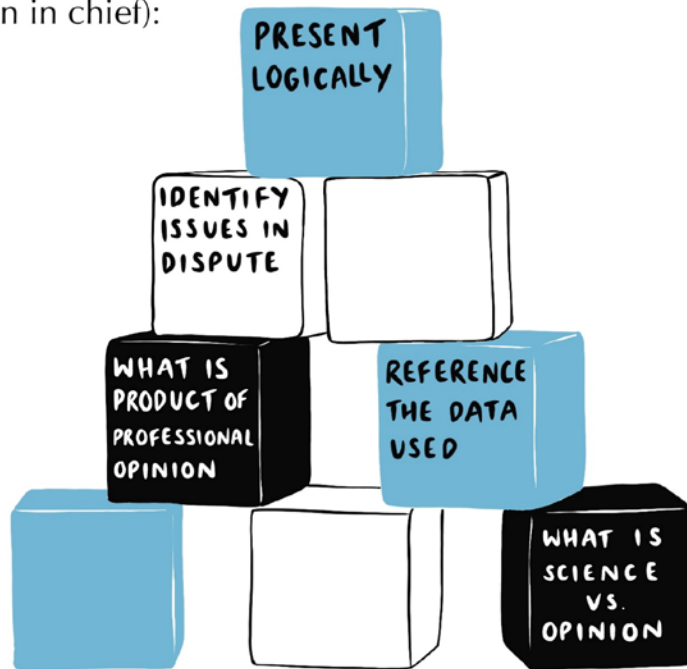


There are ways the lawyer can challenge the expert evidence in advance, and also when the expert witness is giving evidence in court.

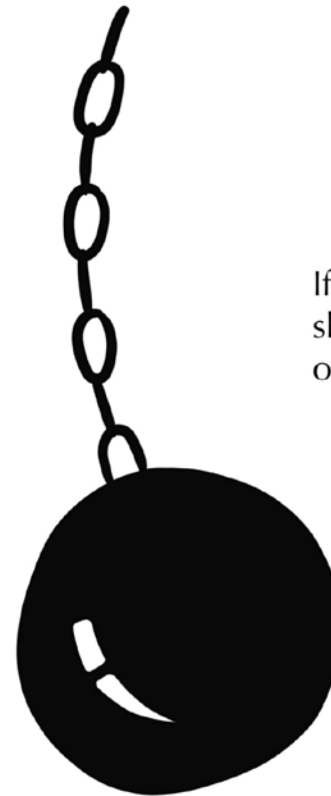
EXPERT GIVING EVIDENCE

When an expert comes to court they will be asked questions by:

The party who instructed them
(examination in chief):



The other party (cross-examination):



If possible, your expert
should be present when the
other expert gives evidence.

LETTER OF INSTRUCTION: CONTENT TO CONSIDER

Include a list of the evidence

Explain precisely the issues the expert should focus on

State clearly if there are things that you do not want discussed with the client

Explain the law succinctly and clearly

Include the funding requirements and whether private or legally aided



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Illustrated by ZuhuraPlummer.com



Youth Justice Legal Centre

yjlc.uk

The Youth Justice Legal Centre (YJLC) has been set up by the charity Just for Kids Law to provide legally accurate information, guidance and training on youth justice law. YJLC is a centre of excellence on youth justice law, providing:

- Guidance and expertise on youth justice law to safeguard children's rights in the youth justice system;
- A dedicated website with comprehensive information, legal resources and best practice guides for lawyers, judges, magistrates, youth offending teams, professionals, children and families;
- Training on youth justice issues for lawyers and non legal professionals working with children;
- Free specialist legal advice for children, their families, youth offending teams, the judiciary and lawyers.

Just for Kids Law

justforkidslaw.org

Just for Kids Law is a UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

Morrison & Foerster

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