Leaflet for Expert/Skilled Witnesses cited by the Children's Reporter

SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

This leaflet provides guidance about the role of an expert or skilled witness. "Expert witness" is an English term, although it is now used throughout the UK. The older Scottish term is "skilled witness" but they mean the same thing. In this leaflet the terms will be used interchangeably.

The content of this leaflet is drawn from relevant court decisions and legal textbooks.
You have been given this leaflet by the Children's Reporter as they intend to call you to give evidence as a skilled/expert witness. It is important that you read it and understand the particular requirements that will be made of you as a result. We hope it will help you in your preparations for giving evidence.

You will find more general information about being a witness on **SCRA's website** and on the **Mygov.scot** website. On SCRA's website you can also see a short film aimed at children and young people and their parents/carers who are going to court.

Introduction

Under normal circumstances, witnesses must confine their evidence to facts within their actual personal knowledge. The evidence of a skilled witness is an exception to this rule. Where the evidence is of an opinion that depends on specialised knowledge, it may only be taken from someone who is skilled or expert in that area of knowledge.

It is important to remember that you are not a skilled or expert witness until the sheriff accepts you as one. For this to happen, the Children's Reporter requires to lead evidence of your qualifications, experience and expertise, in order to demonstrate to the sheriff that you have the relevant knowledge and experience to give the opinion evidence.

The same considerations apply to what is known as 'skilled evidence of fact'. A skilled witness may also give evidence based on their knowledge and experience of a subject, drawing on the work of others, such as the findings of published research or the pooled knowledge of a team of people with whom they work. An example of this would be an experienced health visitor who gives factual evidence

1. http://www.scra.gov.uk/about-scra/being-a-witness/

2. https://www.mygov.scot/court-witness/being-a-witness-going-to-court-criminal-english.pdf?inline=true

about the usual developmental checks that are carried out on young children or an experienced social worker who gives factual evidence about a standardised risk assessment tool.

It is not necessary for a witness to have recognised qualifications to be regarded as an expert. It is possible to be an expert witness because of experience in a particular field. Also, qualifications do not automatically make someone an expert.

An expert witness is not only someone who has been instructed and paid specifically for a court case. A professional working with a child can be an expert witness, provided the sheriff is satisfied that they have the relevant knowledge and experience to give their opinion evidence.

As a skilled witness, your role will be to give evidence of your opinion (and probably factual evidence as well) for the sheriff to reach a proper conclusion having heard all of the evidence. It is not your role to give an opinion on the ultimate issue being decided by the sheriff. For example, in a case in which the Children's Reporter's statement of grounds states that the child was the victim of an offence of assault resulting in him sustaining a fractured arm, whilst a suitably qualified skilled medical witness may give an opinion regarding the likely mechanism for the child's injury, it is not for the witness to give an opinion on whether this amounts to an offence of assault.

It is important that you explain the basis of your opinion; mere assertion carries little weight and such evidence has been described as 'worthless'. What carries weight is the reasoning, not the conclusion. For example, what carries weight is the reasoning as to why the skilled medical witness is of the opinion that the child's bruising was caused by a blow from an implement and not simply this conclusion.

Requirements of the evidence of skilled witnesses

In order to be admissible in court, the opinion evidence of a skilled witness must be necessary for the proper resolution of the dispute in the case such that the sheriff would be unable to reach a sound conclusion without the assistance of that opinion evidence. For example, in a case where the reporter has stated that a child's bruising was the result of an assault by her parent, the opinion of a skilled medical witness as to the likely cause of that bruising would be necessary for the proper resolution of the case by the sheriff.

In relation to 'skilled evidence of fact', the threshold is lower: in order to be admissible the evidence must be such that it will assist the sheriff to understand the evidence in the case or determine a fact in issue.

Furthermore, there must be a reliable body of knowledge or experience underpinning the evidence of the expert witness. What amounts to such reliable knowledge or experience depends on the subject matter. For example, if a skilled social worker is giving opinion evidence about the likely impact of neglect on a young child, their opinion must be based on a reliable body of knowledge (such as knowledge of relevant research) and/or experience (such as a number of years working with young children who have been neglected).

It will be for the sheriff to decide whether these requirements are met in relation to any evidence you give of your opinion or 'skilled evidence of fact'.

Duties of the expert witness

As an expert or skilled witness, you have additional duties beyond those required of an ordinary witness. These are:

- To provide independent assistance to the court by way of objective unbiased opinion in relation to matters within your expertise. As an expert witness you should never assume the role of an advocate in the case.

- To present evidence to the court that is the independent product of your work and is not influenced by the demands ['exigencies'] of the proceedings. Your opinion may be connected to the court proceedings, for example because it was requested in the course of the proceedings, or because it had an impact on them commencing. However, it should still be an independent opinion, not one given with a view to ensuring a particular outcome.

- To state the facts or assumptions on which your opinion is based, and not omit to consider material facts which could detract from your concluded opinion.

- To make it clear when a particular question or issue falls outside your expertise.

- If your opinion is not properly researched because you consider that insufficient data is available, then you must make it clear that the opinion is a provisional one.

- In the event of you considering a report from another expert, if you then change your view on a material matter (or do so for any other reason), you should communicate this change of view (through the Children's Reporter) to the other side without delay and when appropriate should communicate it to the court.

If you have any questions about the content of this leaflet, please contact the Children's Reporter who sent it to you.