

Writing reports for the courts and giving evidence in the context of the counselling professions in England and Wales

Good Practice in Action 083 Legal Resource

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Context

This resource is one of a suite prepared by BACP to enable members to engage with the current BACP *Ethical Framework for the Counselling Professions* in respect of writing reports and giving evidence in court.

Using the Legal Resources

The membership agreement with BACP establishes a contractual commitment by members to abide by the *Ethical Framework for the Counselling Professions*, which includes a responsibility for members to keep the skills and knowledge relevant to their work up to date.

The Legal Resources cannot constitute legal advice or guidance in specific cases, nor are they sufficient on their own to resolve legal issues arising in practice. The Legal Resources do not give a full statement of the law. They are solely intended to support good practice by offering general information on legal principles and policy applicable at the time of writing. The Legal Resources are intended for information purposes only and are not a substitute for professional advice. BACP and the author accept no responsibility for and accepts no liability as a result of any person acting or refraining from acting on the basis of the Legal Resources.

Practice issues and dilemmas are often complex, and may vary depending on clients, particular models of working, the context of the work and the therapeutic interventions provided. We therefore strongly recommend consulting your supervisor, and also, wherever necessary, a suitably qualified practitioner or lawyer. Some professional insurers will provide legal advice as part of their service.

BACP and the author make no representation or warranty as to the completeness or accuracy of the information contained in the Legal Resources. References in this resource were up to date at the time of writing but there may be changes in particular to the law, government departments, government policies and guidance, websites and web addresses.

Organisations and agencies may also change their practice or policies, so please be alert for any changes that may affect your therapy practice.

In this resource, the words 'counselling,' 'therapist' and 'therapy' are used to refer specifically to counselling and psychotherapy.

The terms 'practitioner', 'counselling professional', and 'counselling related services' are used generically in a wider sense, to include the practice of the counselling professions, including counselling, psychotherapy, coaching, professional mentoring and pastoral care.

Introduction

There are several different types of court cases, including criminal proceedings (criminal charges brought by the Crown); public law proceedings e.g. child protection cases; private law family proceedings (i.e. private law cases relevant to children and family issues, e.g. divorce, family financial matters, child arrangements (e.g. residence and contact) and civil proceedings, for example civil claims made against others for breach of contract, or claims made in the law of tort for personal injury – e.g. harm caused by negligence; claims for damage to property; or damage to reputation for example in slander and libel actions.

Some witnesses may be specifically appointed by the court in advance of a hearing to provide written evidence and to attend and give their opinion as expert witnesses. Others may be called to give evidence as a professional witness (see 1 and 2). There are several guidance documents mentioned in this resource which are publicly accessible, and essential reading for any expert witness. Although not all counselling practitioners will be regarded as 'expert witnesses' the principles in these guidance documents can be useful.

The procedural rules may vary slightly from court to court (with procedural differences in the criminal, civil and family courts), but the general principles leading to the provision of clear, cogent and effective evidence are, essentially, very straightforward – they create the basic framework of good sense and fairness underpinning the use of expert and /or professional evidence in all aspects of the judicial process.

The Department of Justice has published general guidance on the procedural rules, including what is regarded as expert evidence in different cases, instructing experts, and what is required by the courts, see www.justice.gov.uk/courts/procedure-rules.

For those working with children, of interest may be the Royal College of Paediatrics and Child Health's publication *Expert Witness Guide* at: www.rcpch.ac.uk/resources/expert-witness-guidance.

In May 2019, *Acting as an expert or professional witness – Guidance for healthcare professionals* was published by the Academy of Medical Royal Colleges for those professionals legally recognised as healthcare professionals, who act as expert witnesses, and has been endorsed by the majority of healthcare professional organisations in the UK. It is available at: www.aomrc.org.uk/reports-guidance/acting-as-an-expert-or-professional-witness-guidance-for-healthcare-professionals. Even if as a practitioner, you are not legally categorised as a healthcare professional, the parts of the guidance which may be relevant to your work are generally useful.

The Crown Prosecution Service (CPS) on 9 October 2019 published *Expert Evidence* which is a resource for expert witnesses in criminal cases, at: www.cps.gov.uk/legal-guidance/expert-evidence. It is also a very useful general resource for professional witnesses in criminal cases.

In Scotland, updated 20 September 2022, the Crown Office and Procurator Fiscal Service have published the *Expert Witness Guide. The role of the expert witness and disclosure*, available at: www.copfs.gov.uk/for-professionals/expert-witness-guide.

1 Am I regarded by the court as an ‘expert’ witness, requiring my ‘expert opinion’ or as an ordinary professional witness, giving statements of fact?

Expert evidence is **admissible to furnish the court with information which is likely to be outside the experience and the knowledge of a judge or jury** (Criminal Practice Direction V Evidence 19A Expert Evidence).

The court ultimately decides who it will regard as an expert witness. Professional witnesses cannot unilaterally declare themselves ‘experts’ even though they may regard themselves as experts in their field, and their name may be included on an expert witness register. The way that the court decides on expertise is based not only on qualifications and experience, but also on the professional witness’s specific experience of the issues before the court, so in some cases, a person who may be quite newly qualified, but who knows a good deal about a specific matter, might be treated by the court as an expert on those specific issues relevant to a particular case. Usually we, as counselling professionals, will not generally expect to be treated as experts by a court unless we have a particular specialist qualification and/ or expertise in a topic.

The general rule is that witnesses should only testify in relation to matters within their knowledge. Evidence of opinion or belief is inadmissible. However exceptions have been made by statute and at common law in relation to expert evidence.

Expert witnesses have certain privileges in court. They are allowed to express an opinion to the court, and Section 30 of the Criminal Justice Act 1988 states that an expert's report is admissible as evidence of fact and opinion, whether or not the expert attends court to give oral evidence. If it is not proposed to call the expert witness, the leave of the court must be obtained prior to introducing it.

An expert witness is allowed to sit in court and hear the other evidence. An ordinary professional witness (i.e. not an expert witness) must wait outside court until called, and cannot hear the evidence given by others, (a perceived protection against contamination of their evidence).

As witnesses, practitioners should not give an opinion unless specifically invited by the court to do so, and even then, we must be very careful to stay within our range of expertise. The court will not be impressed, and will be critical if we give an opinion which we are not sufficiently qualified or experienced to provide, this might also lead to professional complaints or disciplinary proceedings as it is contrary to the principles of working within our expertise expressed in the *Ethical Framework for the Counselling Professions* (BACP, 2018).

2 What responsibility do I have to those who commission my report and pay me?

In any form of court proceedings, the duty of a witness is to the court, and not to be partisan in any case. An extract from the civil guidance relating to experts makes this clear, and the same legal and ethical principles apply to us as professional witnesses in all cases:

'It is the duty of experts to help the court on matters within their expertise. This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.'

2.1 How much should I be paid for report writing and giving evidence?

Remuneration is a thorny issue for many practitioners. How do we value our time and expertise?

Privately paid cases are subject to contract between the witness and the person instructing them. This will usually be a solicitor, or a party to a case acting 'in person' (i.e. without representation by a lawyer). Fees are usually negotiated and agreed privately, and will vary from case to case. Expect to be paid for your time in court, and also the time taken in writing your report. Often there are long waiting times in court, for which you might also wish to be paid.

In legally aided cases, those instructing the witness are advised to get 'prior authority' from the court and/or the Legal Services Commission for paying the witness an agreed fee, or there is a risk that the fee may be reduced on taxation of the bill at a later stage. Government Guidance: *Expert witnesses in legal aid cases* was last updated in 2020, and has information about instruction and also fees, but given the recent and proposed changes in legal aid, it might now be rather outdated. It applies to all forms of court proceedings, and is available at www.gov.uk/guidance/expert-witnesses-in-legal-aid-cases.

3 I have been asked if I can provide a report for court, how might I respond?

3.1 Solicitors or the police request information

If a request arrives from a lawyer or the police asking for disclosure (in standard lawyers' letters the wording may ask for 'all notes and records' relevant to the work with the named client) then, if they have attached a signed client consent form, the client's consent legally authorises the practitioner to disclose the information requested. However, clients may not be fully aware of the relevant court procedure, and sometimes not all the notes are relevant to the case. Certain parts of the client case records may cause the client emotional pain or anxiety if disclosed openly in court, and could be redacted, or the court can make directions before the case is heard, allowing only the parts of the records directly relevant to the issues in the case to be used in evidence.

Sometimes to avoid sensitive evidential material being lost or misused by a party to the case, the court has the power to make a direction limiting either the extent of the record to be admitted in evidence, and/or limiting accessibility to the records. It may for example direct that copies of the client record are provided only to the parties' lawyers, either for the lawyers attention only; or for clients to read in their lawyer's office, but that the records are not to be copied or taken away by the client.

As an alternative to the provision of a full client record, the court can accept a practitioner's offer of writing a report for the court. Often a report is welcomed by the court, practitioner, and client. A well-structured, cogent report is often much easier to use in evidence, and provides the practitioner with the opportunity to discuss the content of the report with the client and to prepare the client for the disclosure of the information to the court. In either case, it is possible that the practitioner will be asked to attend court to give evidence about the notes or their court report and so may have to answer questions about the evidence they give.

In compliance with the data protection law, practitioners may wish to be assured that their client has understood the exact parameters of the consent he or she has given for disclosure of their records, or writing a court report.

The UK-General Data Protection Regulation (UK-GDPR) requires that consent is 'freely given, specific, informed and unambiguous'.

Before responding to a request for notes, therefore, if there is sufficient time and opportunity to do so, it may be very helpful to take the time to discuss with the client which parts of the records are relevant to the case, and whether a court report has been requested.

Furthermore, explain to the client what might actually happen to the disclosed information, ensuring that the client knows who is likely to see their disclosed records or report. The informed practitioner might perhaps also discuss how the client (or they) might seek an appropriate direction from the court if the client is concerned about the effect of disclosure. The police or Crown Prosecution Service (CPS) or the client's lawyer may provide this information if required.

Beware too, of any request for an 'off-the-record' conversation about a client, even if the client has consented to disclosure of their information. Ethically, disclosing information about a client should not be 'off the record' in the interests of trust, openness and transparency. Any disclosure of client information should be lawful, that is, made with client consent, made in accordance with statute, made in compliance with a court order, or justifiable in the public interest, and also then properly documented (see GPiA 014, and GPiA 069).

For further information about how to respond to a lawyer's request for therapeutic notes can be found in *Therapists in Court* (Bond and Sandhu, 2005) and in (Mitchels and Bond 2021).

3.1 (a) Pre-trial therapy records

Please note that if a therapist is working with a client in pre-trial therapy in a criminal trial, the Crown Prosecution Service (CPS) has issued new guidance for investigators and CPS (CPS 2022).

It is available at www.cps.gov.uk, and for a more detailed discussion of working in this arena, please see GPiA 128, *Working with the Crown Prosecution Service Pre-trial Therapy Guidance (CPS 2022) in therapy with adult and child witnesses in the criminal courts in England and Wales*.

3.2 Client asks for a report for court

Where the client personally or through their solicitor requests a report for a court, as there is client consent, there is no ethical problem of consent for the practitioner, provided that the client understands that the practitioner must tell the truth in the report. The client should also fully understand the consequences of providing a report to the court, who will see it, and how it may be used.

3.3 Power of the court to request a report

Counselling practitioners should agree the boundaries of confidentiality with the client in negotiating the therapeutic contract, which would include disclosures required by law. Where the court orders a report, there would be no ethical problem of consent for disclosure, since the practitioner has a legal responsibility to obey the court order. However, a practitioner may in some circumstances, seek to persuade the court that there are grounds to ask the court to give a direction that either the whole substance or specific parts of the counselling records or report are not relevant to the case, and should be withheld (i.e. not produced in evidence in court).

Failure to obey a court order may be regarded as contempt of court and punishable by a fine, or even in some cases, by imprisonment.

3.4 Negotiating the content of a report for court

The duty of the professional or expert witness is, exclusively, to provide truthful, accurate, impartial evidence to the court. The court is in control of the documentary and oral evidence before it. While the court may give directions about the content and use of a report submitted in evidence, the client cannot dictate what is written in a report, or require removal of specific information, but a report at least allows the practitioner to present the client information in an honest, but appropriate way.

4 Writing a report for court

4.1 Headings and structure

- Heading (the formal title of the case and court reference number if known)
- Use sub-headings and paragraph numbers for easy reference (as page numbers may vary if a report is printed off or reproduced)
- Where possible, ask for a list of issues which the court wants addressed in the report, and keep to the facts on which you are asked to report
- Make the report follow a logical progression and link any comments or conclusions to any relevant earlier paragraphs
- A non-expert report should be purely factual. A common problem is a failure to distinguish properly between fact and opinion or between facts, allegations and assumptions
- Do not go beyond the remit of your instructions, and stay within the limits of your qualifications and expertise
- A summary can be useful, where appropriate
- Include a *brief* resume of qualifications and relevant experience
- List the documents with which you have been supplied by the client or court in order to produce the report (the court may want to know what you have seen/not seen)
- Try to avoid jargon words, or if they must be included, give an explanation

- Academic references are often unnecessary, (especially for non-expert witnesses) and unless essential to the report, they are best avoided as far as possible because they may generate awkward questions on sourcing, sampling, interpretation, application, etc.
- Use double spacing
- Check spellings.

While we are not necessarily experts, the format for court reports is basically similar for a professional witness.

There are model forms of experts' reports easily available (for a small fee) from various organisations including: the Academy of Experts (www.academyofexperts.org); Expert Witness Institute (www.ewi.org.uk); and the Institute of Expert Witnesses (www.iew.org.uk) which have separate templates complying with the relevant Civil, Family and Criminal Proceedings Rules.

The Ministry of Justice produced a model template for expert reports in civil claims, now 10 years old (can be downloaded at www.judiciary.gov.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-2014-amended-dec-8.pdf).

4.2 Organising the content of a report

Reports for court should be clear, concise, non-partisan and comply with the principles of the *Ethical Framework for the Counselling Professions* (BACP, 2018).

The report can be divided into sections if appropriate, with suitable headings.

Heading:

In the ...Court. Name of case/parties, court reference number etc.

Information about the author of the report

The court will want to know some information about the author of the report, so it is helpful to say at the beginning that the report is made by... and then (briefly) set out your relevant qualifications and experience, or alternatively you can include this information about you in a brief appendix.

Context of the report

Set out the context and basis of the therapeutic case work, which may include for example, name of client, relevant referral details, and any relevant background to the therapy.

Therapeutic casework

This may include dates that the client was seen (or the period of working with the client, i.e. from date... to date...), session length, venue, modality used, etc.

Then set out the salient parts of the client work relevant to the case, in numbered paragraphs.

Summary (if appropriate) and any agreements or recommendations for the future treatment of the client.

Appendices (as appropriate for the case)

List the documents with which you have been supplied by the client and/or the other parties or the court and which you have read or considered, in order to produce the report. The court may want to know what you have seen/not seen. Academic references are often unnecessary, (especially for non-expert witnesses) and unless essential to the report, they are best avoided as far as possible because they may generate awkward questions on sourcing, sampling, interpretation, application, etc.

4.3 What should I include/omit?

The key here is to obey the directions of the court as to the specific issues to be addressed in the report. These will often be included in a 'letter of instruction' from one lawyer, or jointly from two or more lawyers, or in a direction (order) of the court, so it will be clear what is to be covered. If there is no letter of instruction or direction, either ask for one, or use professional discretion and try to address in the report the specific issues which are relevant to the case.

It is acceptable to omit from a report those issues which are not relevant to the case, but also be aware that more information may be required. However, if the court or parties then ask for additional information, in situations where there are parts of the counselling records that are not directly relevant to the issues in the case, and if the client would not wish irrelevant personal data from the records to be disclosed, it is possible to seek a direction from the court to omit such material from the report or from the records to be produced in evidence.

4.4 Discussion of the final draft of the report with the client, before filing it with the court

It can be helpful and enhance the therapeutic relationship of trust, to show the court report to the client in advance of filing it with the court, so that the client is aware of all that is written in it and has a chance to discuss this with you. If a client feels that any issue is incorrectly stated in the report, they have a chance to challenge this beforehand, and they can negotiate and hopefully agree with you on mutually acceptable wording.

As a counselling practitioner, you have a legal and ethical responsibility to give truthful and accurate evidence to the court and so a report may have to include something which the client would prefer to be omitted. In discussion of the report, you have an opportunity to help the client to accept the practitioner's legal responsibility to the court, and to prepare therapeutically for any practical or emotional consequences of that necessary disclosure.

5 Presenting information in court – dos and don'ts

When you enter a court building, you are likely to be security screened. Courts are usually numbered, for example, Courts 1, 2, etc. Make sure you know the listing number and name of the case before going to court. The court documents, instructing solicitors or the client should have that information. Cases will be listed in a notice somewhere in the public area, sometimes by case name or by case reference number, indicating the number of the court in which they will be heard.

Criminal and private family law cases are listed by name. Confidential adoption and child protection cases are listed by the name of the local authority and/or a reference number.

The court ushers, known as 'macers' in Scotland (often recognisable by wearing black gowns and carrying clipboards), are a reliable source of information, and they will ask for the names of the lawyers, parties and witnesses in each case as they arrive at the court.

The ushers will need to know where to find you when required to give evidence, so always let them know where you are, particularly if you are going out of the building to renew the car park fee, or heading off to the canteen, etc. Be prepared for a long wait outside court before giving evidence.

Be aware of the need to maintain confidentiality at court, so avoid getting drawn into inappropriate social conversation, or talking about the case in public places outside the courtroom.

Ordinary witnesses of fact in criminal and civil cases usually have to wait outside the courtroom to prevent them being influenced by hearing what others say. In family cases, some witnesses may be invited to sit in court. Expert witnesses may be allowed to sit in to hear the evidence of other experts, or of factual matters, but this is strictly by permission from the court.

The lawyer/advocate representing the party who has instructed you may wish to seek permission for you to sit in during all or parts of the other evidence, but this will depend on how you are regarded by the court (i.e. as an expert or a professional witness), the nature of the evidence you are to give and the type of case being heard.

Switch off pagers and mobiles before entering the courtroom. Try to have as little unnecessary stuff with you as possible. If you have to take coats, bags etc., into the courtroom, find somewhere to put down any unnecessary items, and go into the witness box with your report, and if required, your set of case notes for reference. Being calm and physically uncluttered as you walk to the witness box helps with maintaining confidence.

In the witness box, after taking the oath or affirmation, it is courteous to remain standing until invited to sit. Behave with dignity and no matter how irritating or irrelevant the questions might seem to be, always remain calm and courteous in reply. Do not venture an opinion unless the court specifically asks for it. If asked a question beyond your training or expertise, it is acceptable to reply 'I am sorry but I cannot answer that question, as it is outside my expertise'.

Be brave and honestly say 'I do not know' if asked something you that you really do not know.

Witnesses (especially in the more adversarial criminal cases) may occasionally have to tolerate sarcasm, and sometimes apparent obtuseness from advocates or self-represented defendants, but resist the urge to respond with defensiveness, or a show of skill.

Remember that you are the professional in your field of work and that the court is usually respectful and genuinely interested in hearing what you have to say. If you can justify your professional therapeutic actions as a practitioner, then there should be nothing to fear in court.

Sometimes advocates might try to interrupt you when you are mid-way through saying something, but it is difficult for an advocate to interrupt a witness who is speaking directly to the court. Make a habit of listening to the question and then turning physically around to face the magistrates or judge and direct your answer to them, and not to the advocate who asked the question. It would be very discourteous for an advocate to try to interrupt you whilst you are speaking to the court.

If you are interrupted before saying all that you wanted, it is acceptable to say to the advocate something like 'I am sorry, but I had not quite finished... may I answer your new question in a moment?' and then return to face the court and answer the unfinished point before going on to the next question.

Speak clearly and slowly enough for the judge and others to take notes of the points they need to record. Do not rush evidence; take time to think before answering questions. Be prepared to refer to notes or records before answering. Be accurate and concise. If the answer is not known or unclear, do not be afraid to say so.

Cross examination provides an opportunity to reconsider, correct or modify previous evidence.

Make sure that all notes and records are kept in a folder or easily accessible, and that you know where to find everything, so that you don't have to scabble around in a file looking for something, or worse still, drop all the papers in a heap on the floor! Advocates and others may ask to see your case notes and records in court. Disclosure of these is a matter for the court to decide. If reluctant to disclose notes, or in doubt, seek directions from the judge or magistrate.

Professional witnesses should demonstrate their independence by non-partisan behaviour. It is wise to consult the instructing lawyer first about any request to confer with another party or witness. During an adjournment, for example, for lunch, the court does not permit discussion by anyone with a witness when they are still in the process of giving evidence.

Witnesses should not leave the court building until the court has given consent for their release. Ask for the court's consent to be released at the end of giving your evidence, then if the court might need you to come back again, you will either be asked to stay (in this case you should expect to be paid for your extra time) or the court will make arrangements to contact you if necessary. Try to make a calm, unhurried exit, picking up notes efficiently, and leaving with dignity. Bring your work diary; if the case is adjourned it is helpful to know dates that you are available for future hearings.

About the author

Dr Barbara Mitchels, PhD, LL.B, BACP Registered (Snr Accred), is a Fellow of BACP and has a counselling and supervision practice in Devon. Also a retired solicitor, Barbara provides professional consultancy, resources and online CPD workshops in ethics, law and therapy related professional issues. See www.therapylaw.co.uk.

References and useful sources of information

Note:

- *UK Government* publications available from the Stationery Office (TSO, www.tsoshop.co.uk), PO Box 29, Norwich NR3 1GN. Tel: 0870 600 5522; Email: customer.services@tso.co.uk.
- *The Department for Education* (www.education.gov.uk), formerly Department for Children Schools and Families, publishes policy regarding children's services in England.
- *The Ministry of Justice* (www.justice.gov.uk) publishes policy regarding the courts and tribunals in England and Wales.
- *Northern Ireland Government* publications are available from the Department of Health, Social Services and Public Safety (www.dhsspsni.gov.uk).
- *Welsh Government* publications, see (www.wales.gov.uk).

Academy of Medical Royal Colleges (2019) *Acting as an expert or professional witness – Guidance for healthcare professionals*. available at: www.aomrc.org.uk/reports-guidance/acting-as-an-expert-or-professional-witness-guidance-for-healthcare-professionals (accessed 10 October 2023).

British Association for Counselling and Psychotherapy (BACP) (2018) *Ethical Framework for the Counselling Professions*. Lutterworth: BACP.

BACP (2018a) *Professional Conduct Procedure*. Lutterworth: BACP.

BACP (2018) Good Practice in Action 014 Legal Resource: *Managing confidentiality in the counselling professions*. (Mitchels, B.). Lutterworth: BACP.

BACP GPiA 053 Legal Resource: *Understanding the children's hearing system in Scotland*. (Driscoll, M.). Lutterworth: BACP.

BACP GPiA 058 Legal Resource: *Sharing records with clients, legal professionals and the courts in the context of the counselling professions*. (Mitchels, B.). Lutterworth: BACP

BACP GPiA 105 Legal Resource: *The United Kingdom General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions*. (Mitchels, B.). Lutterworth: BACP.

BACP GPiA 128 Legal Resource: *Working with the Crown Prosecution Service Pre-trial Therapy Guidance (CPS 2022) in therapy with adult and child witnesses in the criminal courts in England and Wales* (Mitchels, B.). Lutterworth: BACP.

Bond, T., Sandhu, A. (2005) *Therapists in Court: Providing Evidence and Supporting Witnesses*. London: Sage.

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British Psychological Society (BPS) *Code of Ethics and Conduct* (2018) at www.bps.org.uk/node/1714; and Practice Guidelines (2017) at www.bps.org.uk/guideline/bps-practice-guidelines-2017 (both accessed 30 August 2023)

British Psychological Society. Available at www.bps.org.uk

ChildLine

ChildLine is the UK's free, national helpline for children and young people in trouble or danger: www.childline.org.uk

Crown Prosecution Service (England and Wales) (CPS) has headquarters in London and York and operates under a structure of 42 areas in England and Wales. London Office: 7th Floor, 50 Ludgate Hill, London, EC4M 7EX. Tel: 020 7796 8000, Fax: 020 7710 3447.

Crown Prosecution Service (CPS) *Legal guidance online facility* at www.cps.gov.uk/legal/index.html (accessed 30 August 2023).

The Crown Prosecution Service (CPS) (2019) *Expert Evidence*. (a resource for expert witnesses in criminal cases) available at: www.cps.gov.uk/legal-guidance/expert-evidence, (accessed 10 October 2023)

Crown Prosecution Service (England and Wales) *Pre-Trial therapy Legal Guidance* (26 May 2022) www.cps.gov.uk/legal-guidance/pre-trial-therapy (accessed 10 October 2023)

Crown Office and Procurator Fiscal Service Scotland (updated 16 August 2023) *Expert Witness Guide*. Available at: www.copfs.gov.uk/for-professionals/expert-witness-guide (accessed 10 October 2023).

Department for Education (2015, updated 2018) *Information sharing – advice for safeguarding practitioners*. Norwich: TSO. Available at: www.gov.uk and at www.gov.uk/government/publications/safeguarding-practitioners-information-sharing-advice (accessed 30 August 2023).

Department for Education (2015) *Child abuse concerns: guide for practitioners. What to do if you are worried that a child is being abused*. Norwich: TSO. Available at: www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused--2 (accessed 10 October 2023).

Department for Education (2018, updated July 2022) *Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children*. Norwich: TSO. Available at: www.gov.uk/government/publications/working-together-to-safeguard-children--2 (accessed 10 October 2023).

Department for Education (2018a) *Working together to safeguard children: Statutory framework: legislation relevant to safeguarding and promoting the welfare of children*. Norwich: TSO. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722307/Working_Together_to_Safeguard_Children_Statutory_framework.pdf (accessed 10 October 2023).

Department of Health (updated June 2022) *Care and Support Statutory Guidance* available at www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance (accessed 10 October 2023).

Department of Health (2020) *The Mental Capacity Act 2005 Code of Practice* (2007) www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf (accessed 10 October 2023).

Department of Health (2015) *Mental Health Act 1983: Code of Practice* available at: www.gov.uk/government/publications/code-of-practice-mental-health-act-1983 (accessed 10 October 2023).

Department of Health (2020) *No Secrets: guidance on protecting vulnerable adults in care*. www.gov.uk/government/publications/no-secrets-guidance-on-protecting-vulnerable-adults-in-care (accessed 10 October 2023).

Department of Health (2013, updated 2020) *Caldicott Review: information governance in the health and care system* April 2013 www.gov.uk/government/publications/the-information-governance-review (accessed 10 October 2023).

Department of Health (DH, 2010 and subsequently amended in 2013 and 2020) *Caldicott Guardian Manual*, see www.gov.uk/government/publications/the-caldicott-principles (issued on 8 December 2020) (accessed 13 September 2023).

Department of Health (2009) *Guide to Consent for Examination or Treatment*. www.gov.uk/government/uploads/system/uploads/attachment_data/file/138296/dh_103653__1_.pdf (accessed 10 October 2023).

Department of Health (DoH) (2010) Supplementary Guidance www.gov.uk/government/publications/confidentiality-nhs-code-of-practice-supplementary-guidance-public-interest-disclosures (accessed 10 October 2023).

Department of Justice has published general guidance on the procedural rules, including what is regarded as expert evidence in different cases, instructing experts, and what is required by the courts, see www.justice.gov.uk/courts/procedure-rules (accessed 10 October 2023).

General Medical Council

178 Great Portland Street, London W1W 5JE.
General Enquiries Desk: 020 7580 7642
www.gmc-uk.org

General Medical Council *Good Medical Practice*. London: GMC. Available at: www.gmc-uk.org (accessed 10 October 2023)

Please note that embedded in this updated on-line guidance document, are web links to all of the GMC's current additional subsidiary guidance, for example, papers on *Confidentiality and Consent*

Hands On Scotland

A new NHS website resource for anybody working with children and young people. www.handsonscotland.co.uk

IACP (2018) *Code of Ethics and Practice* (Information Sheet 7). Wicklow: Irish Association for Counselling and Psychotherapy. Available at <https://iacp.ie/iacp-code-of-ethics> (accessed 10 October 2023)

Information Commissioner's Office

<https://ico.org.uk>

Mahmood, S., Doughty, J. (2019) *Child Care and Protection* (6th Edition). London: Wildy, Simmonds and Hill.

Ministry of Justice *Guide to Coroner Services* available at www.gov.uk/government/publications/guide-to-coroner-services-and-coroner-investigations-a-short-guide (accessed 13 September 2023)

Ministry of Justice (2011a) *Achieving best evidence in criminal proceedings: guidance on interviewing victims and witnesses, and guidance on using special measures*. London: Ministry of Justice. www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf (accessed 30 August 2023).

Mitchels, B., Bond, T. (2021) *Confidentiality and Record Keeping in Counselling and Psychotherapy*. 3rd Edition. London: Sage.

Mitchels, B. (2016) *Children and Vulnerable Witnesses in Court: Handbook*. London: Wildy, Simmonds and Hill.

Mitchels, B., Bond, T. (2011) *Legal Issues Across Counselling and Psychotherapy Settings*. London: Sage.

Mitchels, B., Bond, T. (2010) *Essential Law in Counselling and Psychotherapy*. London: BACP and Sage.

NSPCC *What to do if you suspect child abuse*. <https://nspcc.org.uk/keeping-children-safe/reporting-abuse/what-if-suspect-abuse> (accessed 13 September 2023)

Official Solicitor

81 Chancery Lane, London, WC2A 1DD.

Tel: 020 7911 7127

www.gov.uk/government/organisations/official-solicitor-and-public-trustee

Office of the Public Guardian with the National Care Association (2003) *Making decisions: a guide for healthcare professionals*. London: NCA. www.ouh.nhs.uk/patient-guide/safeguarding/documents/health-workers-guide.pdf (accessed 31 August 2023)

Pattinson, S.D. (2006) *Medical Law and Ethics*. London: Sweet & Maxwell.

Public Guardianship Office

Archway Tower, 2 Junction Road, London, N19 5SZ.

Customer service helpline: 0845 330 2900, Enquiry line: 0845 330 2900

www.gov.uk/government/organisations/office-of-the-public-guardian.

Reeves, A. (2015) *Working with Risk*. London: Sage.

Reeves, A. (2010) *Working with Suicidal Clients*. London: Sage.

Royal College of Paediatrics and Child Health *Expert Witness Guide* at www.rcpch.ac.uk/resources/expert-witness-guidance, (accessed 10 October 2023).

Royal College of Paediatrics and Child Health (2008, updated 2015) *The physical signs of child sexual abuse: an evidence-based review and guidance for best practice*. London: RCPCH. (known colloquially as 'the purple book'), costs £35. Available from; rcpch@lavenhamgroup.co.uk / 01787 249 290. Cheques payable to 'Lavenham Press Ltd' and post to Lavenham Press Ltd, Arbons House, 47 Water Street, Lavenham, Suffolk CO10 9RN.

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Scottish Crown Office and Procurator Fiscal Service (updated 20th September 2022), *Expert Witness Guide. The role of the expert witness and disclosure*. Available at: www.copfs.gov.uk/for-professionals/expert-witness-guide (accessed 10 October 2023).

Scottish Executive (2003) *Sharing information about children at risk: a guide to good practice*. Edinburgh: Scottish Executive.

Scottish Executive (2003) *Guidance on interviewing child witnesses in Scotland*. Edinburgh: Scottish Executive.

Scottish Executive (2005) *Code of practice to facilitate the provision of therapeutic support to child witnesses in court proceedings*. Edinburgh: Scottish Executive. <https://webarchive.nrscotland.gov.uk/3000/https://www.gov.scot/Publications/2005/01/20535/50112> (accessed 4 June 2023).

Scottish Government (2012) *A guide to getting it right for every child*. Edinburgh: Scottish Government.

UK Council for Psychotherapy (UKCP) *UKCP professional occupational standards and policies*. London: UKCP. Available at: www.psychotherapy.org.uk/ukcp-members/standards-guidance-and-policies (accessed 31 August 2023).

United Nations (2011) *United Nations Convention on the Rights of Persons with Disabilities* 2011 (available at: www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) (accessed 31 August 2023).

United Nations Convention on the Rights of the Child (1989) (ratified by the UK in 1991) available at www.gov.uk/government/publications/united-nations-convention-on-the-rights-of-the-child-uncrc-how-legislation-underpins-implementation-in-england (accessed 31 August 2023).

Appendix A

Expert evidence – the Criminal Procedures Rules 2015 Part 19

19.1 Procedure

1. This part applies where a party wants to introduce expert opinion evidence.
2. A reference to an 'expert' in this part is a reference to a person who is required to give or prepare expert evidence for the purpose of criminal proceedings, including evidence required to determine fitness to plead or for the purpose of sentencing.

19.2 Expert's duty to the court

1. An expert must help the court to achieve the overriding objective –
 - a. by giving opinion which is –
 - i. objective and unbiased; and
 - ii. within the expert's area or areas of expertise; and
 - b. by actively assisting the court in fulfilling its duty of case management under rule 3.2, in particular by –
 - i. complying with directions made by the court, and
 - ii. at once informing the court of any significant failure (by the expert or another) to take any step required by such a direction.
2. This duty overrides any obligation to the person from whom the expert receives instructions or by whom the expert is paid.
3. This duty includes obligations –
 - a. to define the expert's area or areas of expertise –
 - i. in the expert's report, and
 - ii. when giving evidence in person;

- b.** when giving evidence in person, to draw the court's attention to any question to which the answer would be outside the expert's area or areas of expertise; and
- c.** to inform all parties and the court if the expert's opinion changes from that contained in a report served as evidence or given in a statement.

19.3 Introduction of expert evidence

- 1.** A party who wants another party to admit as fact a summary of an expert's conclusions must serve that summary –
 - a.** on the court officer and on each party from whom that admission is sought;
 - b.** as soon as practicable after the defendant whom it affects pleads not guilty.
- 2.** A party on whom such a summary is served must –
 - a.** serve a response stating –
 - i.** which, if any, of the expert's conclusions are admitted as fact, and
 - ii.** where a conclusion is not admitted, what are the disputed issues concerning that conclusion; and
 - b.** serve the response –
 - i.** on the court officer and on the party who served the summary,
 - ii.** as soon as practicable, and in any event not more than 14 days after service of the summary.
- 3.** A party who wants to introduce expert evidence otherwise than as admitted fact must –
 - a.** serve a report by the expert which complies with rule 19.4 (Content of expert's report) on –
 - i.** the court officer, and
 - ii.** each other party;
 - b.** serve the report as soon as practicable, and in any event with any application in support of which that party relies on that evidence;

- c. serve with the report notice of anything of which the party serving it is aware which might reasonably be thought capable of detracting substantially from the credibility of that expert; reasonable opportunity to inspect –
 - i. a record of any examination, measurement, test or experiment on which the expert's findings and opinion are based, or that were carried out in the course of reaching those findings and opinion, and
 - ii. anything on which any such examination, measurement, test or experiment was carried out.
- 4. Unless the parties otherwise agree or the court directs, a party may not –
 - a. introduce expert evidence if that party has not complied with paragraph (3);
 - b. introduce in evidence an expert report if the expert does not give evidence in person.

19.4 Content of expert's report

Where rule 19.3(3) applies, an expert's report must –

- a. give details of the expert's qualifications, relevant experience and accreditation;
- b. give details of any literature or other information which the expert has relied on in making the report;
- c. contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based;
- d. make clear which of the facts stated in the report are within the expert's own knowledge;
- e. say who carried out any examination, measurement, test or experiment which the expert has used for the report and –
 - i. give the qualifications, relevant experience and accreditation of that person,
 - ii. say whether or not the examination, measurement, test or experiment was carried out under the expert's supervision, and
 - iii. summarise the findings on which the expert relies;

- f.** where there is a range of opinion on the matters dealt with in the report –
 - i.** summarise the range of opinion, and
 - ii.** give reasons for the expert's own opinion;
- g.** if the expert is not able to give an opinion without qualification, state the qualification;
- h.** include such information as the court may need to decide whether the expert's opinion is sufficiently reliable to be admissible as evidence;
- i.** contain a summary of the conclusions reached;
- j.** contain a statement that the expert understands an expert's duty to the court, and has complied and will continue to comply with that duty; and
- k.** contain the same declaration of truth as a witness statement.

19.5 Expert to be informed of service of report

A party who serves on another party or on the court a report by an expert must, at once, inform that expert of that fact.

19.6 Pre-hearing discussion of expert evidence

- 1.** This rule applies where more than one party wants to introduce expert evidence.
- 2.** The court may direct the experts to –
 - a.** discuss the expert issues in the proceedings; and
 - b.** prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.
- 3.** Except for that statement, the content of that discussion must not be referred to without the court's permission.
- 4.** A party may not introduce expert evidence without the court's permission if the expert has not complied with a direction under this rule.

19.7 Court's power to direct that evidence is to be given by a single joint expert

1. Where more than one defendant wants to introduce expert evidence on an issue at trial, the court may direct that the evidence on that issue is to be given by one expert only.
2. Where the co-defendants cannot agree who should be the expert, the court may –
 - a. select the expert from a list prepared or identified by them; or
 - b. direct that the expert be selected in another way.

19.8 Instructions to a single joint expert

1. Where the court gives a direction under rule 19.7 for a single joint expert to be used, each of the co-defendants may give instructions to the expert.
2. A co-defendant who gives instructions to the expert must, at the same time, send a copy of the instructions to each other co-defendant.
3. The court may give directions about –
 - a. the payment of the expert's fees and expenses; and
 - b. any examination, measurement, test or experiment which the expert wishes to carry out.
4. The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.
5. Unless the court otherwise directs, the instructing co-defendants are jointly and severally liable for the payment of the expert's fees and expenses.

19.9 Court's power to vary requirements under this part

1. The court may extend (even after it has expired) a time limit under this part.
2. A party who wants an extension of time must –
 - a. apply when serving the report, summary or notice for which it is required; and
 - b. explain the delay.