

Giving Evidence in Court

South Lanarkshire Child Protection Committee

A Practical Guide to Getting it Right



SLCPC Multi-Agency Court Skills Guidance for Professionals (2020)

www.childprotectionsouthlanarkshire.org.uk

INFORMATION ABOUT GOING TO COURT

A useful multi-agency guide for professionals working in the field of Child Protection. Please always refer to single agency guidance on this topic in the first instance.

GETTING A CITATION

➤ **KNOW WHY YOU ARE GIVING EVIDENCE AND FOR WHOM**

In both civil and criminal proceedings, any of the involved parties (i.e. pursuer, defender, Procurator Fiscal, the accused person's defence counsel, Authority Reporter) can call witnesses. You may even be called to give evidence by the side opposing your views. You will receive a court citation, which is the summons sent to witnesses obligating them to appear in court. Please note it is not acceptable, thereafter to book holidays / days off. If you are aware that you may be called to give evidence in any forthcoming proceedings, it is worth notifying the relevant people of any annual leave you have booked. Be aware that you can be asked to attend court if you are on leave but not abroad.

➤ **PREPARE FOR PRECOGNITION**

Opposing sides (criminal / civil) can interview each other's witnesses prior to attendance in Court, with the purpose of establishing the evidence witnesses are likely to give in Court. This is called precognition. Precognition agent or officer acting on behalf of any 'side' will arrange to take a statement. Precognition statements are not admissible as evidence and you can't be cross-examined on them. It is worth noting that where there is more than one party involved (e.g. two parents are represented separately in a Children's Hearing Proof Case) you may have to undertake the precognition process for multiple agents. It can be helpful to co-operate with agents and provide a precognition statement as, on occasion; this can assist in cases being settled out of court. It is vital that you are adequately prepared for precognition and that you conduct yourself in a professional manner. It is worth remembering that the agent who requested the precognition may later be cross-examining you in court and is unlikely to be as friendly as in your first encounter! Likewise, the Reporter will be better able to present Proof cases or Appeals if you have been able to provide clear and detailed information prior to a court hearing.

You should have your file accessible and well prepared before it happens. Make sure you are familiar with the content of your file.

Please note that a witness may be asked to provide a report (or write a chronology) and this may be lodged in court and used in evidence. Therefore, whilst that witness may not be able to rely on one prepared for their own benefit, they will be able to rely on the one lodged at court.

➤ **ENSURE YOUR FILES ARE UP-TO-DATE AND WELL ORGANISED**

Always remember that your file may be used as evidence in court, and that solicitors (and therefore families) can seek to have unrestricted access to your files. It is essential that they are in order and that you know where to locate documents, case notes, letters etc. Depending on the nature of the evidence you are giving, you may find it helpful to mark relevant documents with post-it tabs in order to be able to locate them. It is worth noting that it is not acceptable to compile a summary report or notes to use in court. You are expected to rely on your knowledge of the case and to only use the original content of your file, with the court's permission, to assist you. Your files may be requested by an agent by means of a court order. Evidence from them may then be used in court. If this is the case you should ensure that you copy any documents you will need to prepare to give evidence as you will not have access to your files thereafter.

If your files (paper or otherwise) are not being used as evidence, it can be helpful in some cases to take them with you to court. Please always check with your own agency before doing so. You may not need to refer to them (or any notes you have taken) but if you do, a clearly marked file will prevent you from wasting court time searching for the relevant document. Most records are now electronic and you will not have access to these. You should be aware that you may also be asked to speak to other people's records, as well as your own.

Please note it is not usual to be able to refer to case notes in court unless these are contemporaneous. If you need to refer to them it is safer to have them lodged in evidence. Always discuss this with legal services or information governance within your own agency first.

➤ **FAMILIARISE YOURSELF WITH THE FILE / RECORDS LODGED**

Don't concentrate on trying to memorise dates but make sure that you have a sound knowledge of what decisions have been taken and why. Knowledge of the basic chronology of events as well as recalling significant incidents will be necessary. You may be asked to account for your assessments and actions and therefore you may wish to think about any weaknesses / gaps in the case and how you might respond to being cross-examined about these.

➤ **KNOW WHERE THE COURT IS**

Make sure you know which court you are to attend and allow plenty of time for your journey. Depending on which court you are required to attend, parking can be problematic. If unsure, make sure you visit beforehand to check out where you can park. Any trip to Court will require you to have plenty of loose change for the parking meters. It's worth paying for a few hours because once you're in the stand there's no hope of being excused to feed the meter!

➤ **DRESS APPROPRIATELY**

It is suggested that people form an impression or opinion about someone within the first 90 seconds of meeting them. Once an impression has been formed people look for evidence to validate that impression. You want to appear as a professional and credible witness and the first impression you make will have a powerful effect on how you are perceived. If you want to create a positive and professional image you have to dress appropriately for court. It can be helpful to dress similarly to the other professionals who attend court every day.

➤ **REHEARSE**

It can be extremely helpful to anticipate some of the questions you might be asked (particularly how a cross-examiner might try to undermine your evidence) and to mentally rehearse your responses. For example, a cross-examiner might attempt to suggest that your evidence is merely opinion and not fact, or that you are not qualified to make decisions about children because you are not a parent yourself.

➤ **QUALIFICATIONS**

You will be asked for your qualifications and / or training and your experience in previous and current posts.

➤ **RESILIENCE IN THE FACE OF ADVERSITY**

By far the most anxiety provoking aspect of giving evidence is the adversarial nature of being cross-examined. The job of the cross-examiner is to put his client's case and to try to discredit your evidence. Their role is not to establish the truth or so discover facts but to attempt to undermine your evidence. This will often also include attempts to undermine and discredit you as a professional witness. Your resilience in the face of this adversity can be promoted by arming yourself with some of the following skills:

1. Always Address the Sheriff

Always address your answers to the Sheriff and as "My Lord" or "My Lady". You can do this by angling your feet towards the Sheriff the whole time you are in the witness stand. This means that you are forced to angle your body towards the questioner and will naturally return to face the Sheriff with your answer. This technique empowers you, the witness, in the following ways:

- *You break eye contact with the questioner.*
- *You limit interruptions from the questioner.*
- *You send a non-verbal message to the questioner that you are an experienced witness and thereby lessen the potential for being intimidated or interrupted.*
- *You allow yourself time to compose yourself and answer any questions.*
- *You better enable the Sheriff / Jury to hear what you have to say.*

Occasionally, you are required to give evidence in the Sheriff's chambers and not in a traditional court setting and will be sitting at a table. This technique can still be applied.

2. Don't React Emotionally

Cross-examiners will attempt to unnerve you and may try to get you to respond emotionally as this will undermine your professional credibility. It is of utmost importance that you maintain a professional calm. Cross-examiners may try to challenge your experience, your qualifications or your personal life.

For example:

- *'You only qualified three months ago, is that correct?'*
- *You are a new depute at the school and therefore don't really know the child do you?'*
- *'You are only a Support Worker, not a Social Worker are you not?'*

They may make comparisons between you and other workers in the field:

- *'Is it not true that the child's previous social worker did not find it necessary to remove the children from home under similar circumstances?'*
- *'In the minute of the Child Protection Case Conference discussion you noted that this child appeared very well cared for, yet you claim in your written report that there is evidence of neglect. Is that still your opinion Nurse?'*
- *Records show at the last core group meeting that you disagreed with the assessment by CAMHS. Do you think you know better because you are an educational psychologist?'*

Cross-examiners may also magnify the differences between professionals' assessments. The best way of dealing with this is to highlight the similarities of opinion, whilst acknowledging that there may be some differences. They may attempt to show that you are personally biased in your opinion, asking questions such as:

*'You believe that **anyone** who has a mental health difficulty can never be a good parent, do you?'*

It is extremely important that you remain calm and give a professionally reasoned response. Be clear and only answer the question that you've been asked. Try not to be defensive as this will make you a less credible witness.

3. Use Your Voice

You can use the intonation in your voice to draw attention to particular parts of your evidence which you believe are of particular importance. For example, using an emphatic voice intonation, combined with the use of the Sheriff's title (i.e. My Lord) can draw attention to points of note in your evidence. For example:

'My Lord, I believe this incident was crucial to the decision which was taken to remove the child from her mother's care'.

4. Don't be Manipulated by "Yes" or "No" Questions

Cross-examiners can sometimes use very short closed questions which seem only to require 'yes' or 'no' answers. This technique is used to misrepresent your evidence by not allowing you to give a fuller account of a situation. If you have anticipated the path the lawyer is trying to lead you down, you can counter this by saying:

'My Lord, I can see it is being suggested that I am prejudiced against Mrs A because I was previously responsible for removing her children from her care, however, what I would say is that...'

The other effect of asking short questions is that the pace and aggression of the cross-examination can increase and you may not be as clear or as considered in your responses. It is important, as before, to remain calm and speak slowly and clearly. Taking a breath before answering can help keep control of the pace.

5. Don't be Undermined by Discrepancies in your Evidence

Solicitors may try to undermine you or make you look less credible by asking questions, which lead you into identifying a discrepancy in your evidence. This technique can be very successful in its aim of flustering a witness and undermining their credibility. It can be helpful to admit minor inaccuracies, while alerting the court that you stand by the substance of your report. For example:

'Ms Anderson, you have in front of you a report that you prepared for the Children's Hearing in June, is that correct'

'Yes'

'You have prepared this report in a professional manner?'

'Yes'

'...And in a competent manner?'

'Yes'

'....And you stand by what you have written in this report?'

'Yes'

'And yet in this report you state that you visited my client at home on 21st April, when you have stated in the court today that you interviewed her on 23rd of that month'

YOU MAY FEEL LIKE SAYING: *'Um....er....????'*

BUT YOU SHOULD SAY: *'My Lord, it seems that I may have made a minor error within my report in relation to the date of that visit but I stand by the assessment I made at that time and the important points I identified in my report'.*

6. Don't be disarmed by attempts to provide other possibilities to explain your evidence.

A cross-examiner may try to get you to agree that there are other possibilities to explain away your evidence:

'You say that the child was upset and behaved badly after contact with his mother because the contact was detrimental to his emotional wellbeing. Would you not say that this child was so upset because he misses his mother and does not want to leave her after contact?'

A straight 'no' risks making you look a bit arrogant and, without evidence to back up your opinion, you leave yourself open to further attack from the cross-examiner. A 'yes' answer, although you are agreeing that there is a possibility of alternative explanations, will allow the cross-examiner to tell the court that you have agreed that Child X misses his mum and is upset at her leaving. The trick is to be open to the possibility of their explanation, while underlining the probability of yours:

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'My Lord, although it is possible that the child misses his mother and that this is what causes him to be upset, it is not very probable (or, it is improbable). There are several reasons for this and they are...'

7. Back up your opinion with facts

You are entitled, as a professional, to give an opinion, but this should be based on fact. Your evidence will always be stronger, and more resilient in the face of scrutiny, if you give a clear unemotional account of facts. When you are giving an opinion, as professional witnesses will often be asked to do, ensure that you explain what facts you are taking into account:

'I have said that I do not think Mr S has the parenting capacity to meet this young child's basic care needs. On one occasion when I visited the home I observed the child to be crying and complaining of hunger. I observed Mr S to respond by shouting at the child. When I discussed this with Mr S, he admitted that the child had had nothing to eat since the previous evening at 4pm. The time of my visit was 3pm the next day. In addition, on another home visit....'

Your evidence is stronger when it is direct – from your observations or discussions. This account is also factual and detailed and is therefore less open to being misrepresented. If despite your best efforts, you can't explain your point adequately in response to being cross-examined, try not to worry. One of the purposes of re-examination is to allow for clarification of issues.

WHAT HAPPENS AFTERWARDS?

➤ DE-BRIEF

It can be of enormous benefit to 'de-brief' after giving evidence. Make sure you sit down with your manager or a close colleague as this can be helpful in thinking about your experience and can help you to de-stress. A difficult experience in court can have a huge impact on workers and it is important that you have the opportunity to reflect upon your experience and the feelings that it may have left you with. You can also think about how to improve on your witness skills.

➤ **GET FEEDBACK**

Getting feedback – where possible – about your performance as a witness can build your confidence and can also remind you that the experience wasn't really quite as awful as you thought it might be!

➤ **DON'T TALK TO OTHER WITNESSES WHILE THE CASE IS ONGOING**

It is worth remembering that, while the case is ongoing, you are not permitted to discuss your evidence with other witnesses or the Reporter. This also applies when your evidence is not all heard in one day and you have to be called to a further hearing. You should therefore be careful at lunchtime and at the end of the day not to be seen talking to other witnesses at all as you never know how this might be interpreted.

➤ **REMEMBER THAT YOU ARE NOT SOLELY RESPONSIBLE FOR THE OUTCOME**

It is important to remember that you alone do not have responsibility for the outcome of the case. The court needs your evidence to enable it to come to a decision. You should think about the evidence you want the court to hear and prepare well for this.

Please refer to the quick guide on page 11/...



QUICK GUIDE

HELPING YOU PREPARE FOR COURT

ARRIVING

Please arrive at the Sheriff Court at the stated time. Bring your citation with you and report to the Reception desk. Staff will confirm your attendance with the Children's Reporter, Procurator Fiscal or legal representative.

WAITING

You will be asked to wait in the witness waiting room and will be kept informed of what is happening. You will be told when you are required to give evidence or if you are no longer required.

OATH

A court official will call your name when it is time to give evidence. Once there the Sheriff will ask you to take the oath. If you would prefer to promise solemnly to tell the truth, say to the Sheriff that you want to "Affirm". You should stand to give evidence.

QUESTIONS

The first person to ask a question will be the Reporter, Procurator Fiscal or Legal Representative. You will be asked your name, address, age and occupation. You may be asked for details of Child Protection Training you have completed and what qualifications you have. You will then be asked questions about the case. You could then be asked questions by a lawyer representing the family or by a curator representing the child. Sometimes the Sheriff will ask you questions.

ANSWERING

You should listen carefully to what you are asked. You may be asked to refer to your contemporaneous notes. Take your time to answer and say if you do not understand

or cannot answer. It is your duty to answer all questions asked truthfully and accurately.

Speak clearly and slowly.

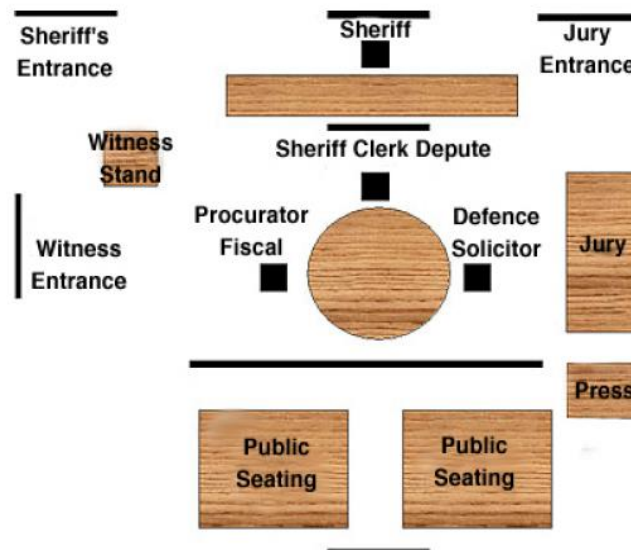
In the Sheriff Court, the Sheriff should be addressed “My Lord” or “My Lady”.

ATTENDANCE

You must attend court when you receive a citation;

- *Dress smartly – this is a professional courtesy to the court.*
- *Advise the Reporter or the agency that cited you immediately if you have any difficulty in attending. You must provide a medical certificate if you cannot attend due to illness.*
- *Know the number of the Children's Reporter (SCRA)*

A COMMON COURT LAYOUT



Please note: This does not reflect all courts and it is important to note that in social work referral proof hearings the family will be present. In Sheriff Courts this means the family may sit at the table with the Reporter and agents. (The Reporter sits where the layout shows Procurator Fiscal).

You may find it helpful to speak with the Reporter or a colleague who has seen the court before about the layout prior to you attending.