



CHILD TESTIMONY

Dr Sarah Krähenbühl explains what psychological expert witnesses can and cannot do in respect to children's testimony

One police interview video shows a girl, 5 years old, who refuses to sit still, chatters happily and only occasionally answers the questions asked; another shows an older boy who answers in monosyllables and displays no emotion throughout the interview. In both videos, the interviewers do their best; they continue asking questions, try alternative techniques, remain patient but are clearly aware of the limited time available...

These examples are fictional but quite typical. They show the problems faced by all involved: the interviewers having to elicit testimony; the other legal professionals; and ultimately by the court. All have to decide what evidential value such testimonies have.

Value of the testimony

How could an expert help in such a situation? During my work as an expert witness for both the Family and Criminal Courts, I have come to realise that there is a lack of understanding and awareness of the role of the expert witness and what he/she can and cannot do in the assessment of children's testimony.

Who is an expert and what is expected of them?

All experts, however experienced they seem to be, still need to:

- demonstrate detailed, up-to-date understanding of relevant research, theory, and of the processes through which testimony is elicited;
- be in command of the 'tools of the trade', which include specific techniques to assess cognitive functioning of memory, language ability, emotional and developmental levels;
- be clear that their overriding duty is to the court; they must therefore apply their knowledge to the facts that are presented and be scrupulous in reporting alternative points of view; and

- present their assessment with confidence in a form and manner that is in accordance with legal proceedings.

Psychologists and psychiatrists and their differing roles

A psychologist's expertise focuses on psychological theories about behaviour while a psychiatrist's expertise utilises medical models about mental health and illness. Within the range of psychologists there are those with Health Professions Council 'protected' titles, such as 'Clinical', 'Forensic', 'Health'; others may have the title 'Chartered' through British Psychological Society registration. All psychologists are governed by the BPS code of conduct and ethics. There is considerable variation in areas of expertise and type of assessment provided. For example, a clinical psychologist may be a specialist in child developmental delay or attachment, and a forensic psychologist may be a specialist in risk assessments.

A child's testimony and measuring its value

The quality of the testimony elicited through application of these protocols varies considerably, and often concerns regarding the quality of interviews lead to the request for an expert witness assessment. Such a request is presented with instructions, such as to:

- "examine the questioning strategy of the interviewing officers and the inconsistencies within R's evidence",
- "report on whether the victim is competent and able to give evidence",
- "evaluate the weight to be given to each child's interview; whether it is credible or whether there are features that may cause concern for credibility",
- "assess: Does the child have the ability to fully understand the offence against him; can the child follow the court

proceedings and instruct those representing him; how much weight can be added to the admissions made in the interviews”,

...and finally, often,

- “comment on any other matter”.

In order to address these points as an expert witness, I typically consider the implementation of interviewing strategy, the spontaneity of the allegations made, the amount and form of detail described, the internal consistency of central and peripheral details, contextual factors, and features presented that are supportive (or otherwise) of authenticity, i.e. that the account represents recall of actual experience rather than being a fabricated, elaborated or coached account.

The stages of the investigative interview

Interview protocols generally include flexibility in implementation according to the individual child. In legal proceedings there is concentration on the evidentially significant information. However, the process through which that information was elicited can have a considerable impact on the credibility, reliability and veracity. As an expert witness, I would consider all aspects of the different stages of the investigative interview, specifically:

- Rapport building, assessment of developmental and cognitive abilities, presentation of ground rules and discussion of truth and lies;
- Free narrative, facilitation and development;
- Questioning, question formats used, question repetition, focus; and
- Closure, quality of the evidential summary, practice and the associated likelihood of further co-operation.

Other relevant information

While the investigative interview is central to my expert assessment, to provide the full ‘picture’ I generally need to

Two examples of testimony assessment

1. Whilst at school a young boy made an allegation of serious sexual assault against his father. This allegation was heard by a classroom assistant, the class and head teachers, all of whom subsequently spoke to him. The classroom assistant then discussed the incident with the child, his mother and a social worker at the child’s home. In my assessment of this case I had to consider the impact of these repeated ‘interviews’, the developmental understanding of specific terminology, the possibility of inadvertent coaching, and the effect of familiarity with ‘interviewers’ on spontaneity of recall.
2. X was accused of a serious sexual assault on his younger brother. X was cautioned, interviewed and admitted his guilt, with his grandfather present as his Appropriate Adult. However, the contextual information gave rise to concerns - X had a mild learning difficulty with particular difficulties in receptive language, and his grandfather had been involved in an allegation of physical assault (not substantiated) against X who was reported to be ‘terrified of him’. Awareness of this contextual information led to particular attention regarding X’s interaction with his Appropriate Adult, the language used to caution X and to elicit his evidence, as well as an assessment of interview protocol implementation in more general terms.

examine contextual information from the case bundle, such as social work reports, school records, medical reports and so forth, to establish whether there may be issues that may affect the child’s participation. This information, whilst not directly involved in the investigative interview will greatly help to promote understanding of the quality of the interview itself.

Studying the interviews

One area to which I give particular attention relates to the recognition that the formal investigative interview is often the latest in a series of ‘interviews’. The initial disclosure, conversation(s) with family/peers, discussions with professionals, pre-interview meetings with police officers, and the replaying of the event in one’s own mind are all types of interviews, and will affect the testimony given in the formal investigative interview.

Individual abilities

I need to consider a child’s cognitive abilities and developmental stage in respect to the concepts, vocabulary, and syntactical complexity of the interviewer’s language, the expected level of responses, the possibility of communication difficulties, interview length and timing. I may suggest that the court consider provision of a Registered Intermediary to conduct an assessment of communicatory needs to facilitate future proceedings.

Competency, veracity and credibility

The definition of competency has been greatly clarified following *R v B* [2010] EWCA Crim 4. However, an assessment of competency is not as simple as it appears for consideration has to be given to the opportunity afforded to the child to demonstrate competency; accordingly, I assess whether the questions asked were appropriate to the child’s developmental/cognitive level.

As an expert witness I have research-based ‘tools of analysis’ that can provide support (or not) for the authenticity of the child’s account and allow for consideration of the possibility of coaching, fabrication and/or elaboration. One such tool includes Criteria-Based Content Analysis: CBCA establishes the presence of particular features in the child’s testimony that are supportive of authenticity i.e. that the child is providing recall of an experienced event. For example, one feature of ‘accurately reported details misunderstood’ may be indicated when a young witness describes a sexual act but misunderstands the nature of that action and describes ejaculation as “weeing yoghurt”.

What expert witnesses cannot do

Ultimately, expert witnesses can only provide an opinion based on their expert knowledge and experience. They cannot, nor should they attempt to, state which, if any, parts of a child’s testimony are ‘true’. The expert witness can demonstrate how the testimony was elicited, can provide hypotheses as to possible impacts of factors affecting testimony, and will provide details or opinion guided by theory and research on the veracity, credibility, reliability and authenticity of the child’s testimony. The final decision, however, with respect, is not for the expert witness to make. ●



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