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**CHILDREN FIRST**  
Safeguarders Panel

# **GUIDANCE FOR LEGAL ADVICE AND REPRESENTATION, AND EXPERT WITNESSES**

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## Purpose

This Guidance is to help Safeguarders who are considering the need for legal advice or representation by a solicitor or counsel or the services of Expert Witnesses, and wish to request the necessary financial assistance from the Scottish Government. This Guidance supplements that provided for Safeguarders in the [Practice Note for Safeguarders on Court, \(Page 20-23\)](#).

## Background and Context

Section 30(1) of the [Children's Hearings \(Scotland\) Act 2011](#) (the “2011 Act”) provides that a Children’s Hearing must consider whether to appoint a person to safeguard the interests of the child to whom the Children’s Hearing relates (a “Safeguarder”). Section 31(2) of the 2011 Act provides a similar duty on the Sheriff to consider appointing a Safeguarder.

Once appointed, the role is a personal appointment and cannot be performed by anyone other than the appointed Safeguarder, who has been appointed to perform the function defined in section 30(1) of the 2011 Act: safeguarding the interests of the child.

A Safeguarder will be able to appear in proceedings at the Sheriff Appeal Court in accordance with Chapter 30 of the [Sheriff Appeal Court Rules](#). Where a Safeguarder is a party to proceedings they may appear in the Sheriff Appeal Court or in the Court of Session. In practice, most courts will wish to know if a Safeguarder has anything to say, whether a party or not and Safeguarders have attended and contributed at Court of Session hearings without representation. Rule 3.9 of the [Act of Sederunt \(Child Care and Maintenance Rules\) 1997](#) states that in Sheriff Court proceedings ‘a Safeguarder may appear personally in the proceedings or instruct an advocate or solicitor to appear on his (sic) behalf.’

This guidance sets out the matters to be considered where Safeguarders (whether themselves solicitors or not) may be authorised to receive financial backing for legal representation in court proceedings where this is required for exceptional or unusually complex cases.

A Safeguarder is not required to be legally qualified to perform their role at court. The rationale for a Safeguarder being represented in court by a solicitor or counsel should be because the Safeguarder needs the expertise of a legal professional to represent them in the manner of the normal client-solicitor relationship. Safeguarders will not normally require the advice or support from a solicitor/counsel, other than where it is reasonable and necessary in the circumstances of an exceptional or unusually complex case (as set out below). Where a Safeguarder has instructed legal representation in court proceedings, the Safeguarder remains personally appointed as Safeguarder and that role cannot be delegated to a solicitor.

All requests by the Safeguarder for legal assistance, representation or appointment of Expert Witnesses should be directed to Children First Safeguarders Panel Team: [safeguarderspanel@children1st.org.uk](mailto:safeguarderspanel@children1st.org.uk)

There is a distinction between circumstances where the Safeguarder may require to engage the services of a solicitor/counsel to seek advice or represent them in court and the situations where the Safeguarder forms the view that **the child** needs representation. If a Safeguarder forms the view the child requires representation, the Safeguarder should signpost the child to the Scottish Legal Aid Board (SLAB) and/or Law Society so that the child can access legal representation.

## Factors the Scottish Government consider in cases where a Safeguarder may require legal advice or wish to instruct a solicitor or counsel to represent them

### Request for Advice only

There may be occasions where Safeguarders require legal advice (but do not require representation). This is likely to be in cases that are complex procedurally or cover difficult or novel points of law.

### Request for Representation from solicitor/counsel

There may be occasions where Safeguarders require legal representation from a solicitor/counsel. This is likely to be for exceptional or unusually complex cases. For example, cases that are complex procedurally or cover difficult or novel points of law.

The rationale for a Safeguarder being represented in court by a solicitor or counsel should be because the Safeguarder needs the expertise of a legal professional to represent them in the manner of the normal client-solicitor relationship. The fact that other parties involved in proceedings are legally represented would not of itself result in representation being approved for a Safeguarder.

## Factors the Scottish Government will consider when considering requests for legal advice and representation

The Scottish Government will take into account the whole circumstances of the case, in considering whether approval will be granted, including in particular, the following factors:

- What aspect of the performance of the Safeguarder's role can they not do without legal advice or representation?
- How will the advice or representation enable the Safeguarder to perform their role?
- Is the Safeguarder expected to do what they say they need the legal advice or representation for? Is this within their role?
- Is the Safeguarder filling a deficit from another role that is not performing their responsibilities?
- Is there an exceptional difficulty, complexity or novelty involved in the case either in fact or in law?
- The nature and amount of disputed evidence such as complex and competing medical evidence.
- Will the introduction of a solicitor or counsel to advise or represent the Safeguarder be in the best interests of the child?

In addition, the Scottish Government may consider the following:

- Whether there is any speciality, difficulty or unusual circumstances for a case of this type involved in presenting the case or in examining or cross-examining specific witnesses, report writers and parties to the proceedings.
- The forum – whether the proceedings are before a Children's Hearing or a court.
- The type of proceedings – whether appeal or first instance, and, if at appeal, whether it is before a Sheriff, Sheriff Appeal Court or the Court of Session.
- The number, age, character or expertise of the witnesses, report writers and parties to the proceedings to be examined.
- The likelihood of a child or children, or vulnerable adult, giving evidence in the proceedings and why it would not be considered appropriate for the Safeguarder to examine the child or vulnerable adult, using the vulnerable witness legislation.
- The number, nature or significance of the productions involved in the case; demonstrate how the use of the productions and/or social work records will lead to added exceptional difficulties or complexities in the preparation of the case.
- The gravity of the matters raised in the statement of grounds or in any review of the establishment of statement of grounds.
- Whether the proceedings are closely related to current civil/criminal proceedings and if the outcome of the proceedings will affect the ongoing civil proceedings.

The circumstances described should be actual and not potential.

## Factors not considered

This process will be “applicant blind”. Where a Safeguarder is themselves legally qualified, or has a particular specialism, this will have no bearing on the consideration of their request. The fact that a Safeguarder happens to be a solicitor does not mean there is a different test to meet regarding their eligibility for financial backing.

## Application Process

### Cases where a Safeguarder thinks they require legal advice or to instruct representation by a solicitor, solicitor-advocate or counsel <sup>1</sup>

There may be occasions where Safeguarders require legal advice or representation by a solicitor, solicitor-advocate or by counsel. If a Safeguarder thinks they may require any of these, the Safeguarder should check this against the factors to be considered above and if the circumstances fit the Safeguarder should complete the [Application Form](#) and send it to Children First at: [safeguarderspanel@children1st.org.uk](mailto:safeguarderspanel@children1st.org.uk)).

The application should include the case reference number, the type of proceedings and what advice or representation the Safeguarder requires. Each application will be considered on its own merits, but the factors outlined above will form part of the assessment, so the application should include this information.

When requesting **legal representation** (either for a solicitor, solicitor-advocate or counsel), the Safeguarder should give a summary of why they think representation is required within the proceedings. **Sanction will only be given for a particular part of proceedings (for example, grounds being established at proof or an appeal) and a Safeguarder will be required to apply for further sanction if it is thought that further representation is required once that part of proceedings has concluded (please see Appendix A for examples).**

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<sup>1</sup> **“Counsel”** means a Member of the Faculty of Advocates. Members of the Faculty of Advocates have rights of audience in all courts. Advocates are specially trained lawyers. As well as initially having to have trained as solicitors they have to undergo further training (devilling) and examinations before they can call to the bar. They can represent clients in the highest courts in the land.

**“Solicitor advocates”** are a type of solicitor. They are solicitors who have undergone extra training and sat extra exams in order to become specialist court lawyers. While solicitors can argue cases on behalf of clients in courts and tribunals such as the Sheriff Court, Employment Tribunals and Justice of the Peace Courts, they are not entitled to appear in the highest courts in the land - the Court of Session and High Court of Justiciary in Scotland, and the Supreme Court and Judicial Committee of the Privy Council in the UK. Solicitor advocates, because of their extra training are entitled to appear in these higher courts.

The request for legal advice/representation should include:

- Full reasons as to why representation by solicitor and/or counsel is considered appropriate.
- A detailed explanation of the background and any complex, novel or unusual issues.
- A detailed explanation of the relevant circumstances that actually arise in the case, rather than a broad reference to the proceedings being complex, difficult or novel.
- What stage have proceedings reached?

Once the Safeguarder has sent the application to Children First, the application and recommendation will be sent to the Scottish Government. The Scottish Government will look at all of the information and advise Children First of its decision. The Scottish Government may request additional information where necessary and will direct any further requests to the Safeguarder through Children First.

Children First will aim to inform the Safeguarder within 5 working days of Children First's receipt of the request, however, more complex cases may take longer. When making an application, the Safeguarder should advise Children First and the Scottish Government if the request is urgent and requires to be processed in a shorter timescale.

**Any decisions given at this stage are decisions in principle. The Scottish Government will thereafter need to agree a detailed estimate of fees and expenses before a Safeguarder can engage the services of solicitor and/or counsel** – see below and Appendix C. Consideration will be given to decisions being made in shorter timescales in emergency/time sensitive situations.

## Cases where a Safeguarder wishes to instruct counsel

If a Safeguarder wishes to instruct counsel but there is not a solicitor in place, the Safeguarder would firstly have to make an application via Children First for authorisation to instruct a solicitor. Even if a Safeguarder is legally qualified they would need to instruct a solicitor to instruct counsel. The role of Safeguarder cannot be performed by anyone other than the appointed Safeguarder, who has been appointed to perform the function defined in section 30(1) of the 2011 Act: safeguarding the interests of the child. Safeguarders are appointed on an individual basis under the terms of the Act.

If the Scottish Government approves in principle the Safeguarder's application to instruct a solicitor, it would be for the solicitor to advise the Safeguarder if, following a review of the case, that they thought that counsel may be required. If there is already a solicitor in place, it may be that the solicitor identifies a perceived need for counsel and advises the Safeguarder of this. The Safeguarder should discuss this with the solicitor. In either case if the need for counsel is agreed, the Safeguarder should make an application for authorisation to instruct counsel as above and submit that to Children First for consideration by the Scottish Government.

## Guidance to be followed in cases where a Safeguarder is successful in principle in their application to obtain legal advice or representation

If the Safeguarder is successful in principle in their application to obtain legal advice or representation, it is up to the Safeguarder to find their own solicitor. The Scottish Government requires that Safeguarders only use solicitors registered with SLAB to provide children's legal assistance at a Children's Hearing or in related court proceedings. A list of these solicitors can be found on the [SLAB website](#).<sup>2</sup> Once the Safeguarder has chosen a solicitor and the solicitor has had time to assess the case, the solicitor should provide the Safeguarder with an estimate of the likely number of hours that will be required and the likely fees and expenses.

For the provision of advice, the fees estimate should be accurate, but when estimating fees for legal representation it is acknowledged that it may be difficult for the solicitor to state exact fees. However, they should be able to estimate on an 'average case' basis i.e. in such proceedings, these matters tend to comprise of between x and x hours of preparation in addition to x hours of court appearance time at £x per hour. Solicitors should flag up where there is uncertainty about estimates and why that is the case. Estimates should be clear as to whether they include VAT or not. Appendix C provides some further information regarding what fees and expenses should be included in specific cases.

This information should be sent to Children First ([safeguarderspanel@children1st.org.uk](mailto:safeguarderspanel@children1st.org.uk)). Children First will forward this to the Scottish Government for their consideration. Once the Scottish Government responds to this request, Children First will inform the Safeguarder. Where no further clarification is required, estimates will be responded to within five working days. Where the request is urgent, the Scottish Government will make every effort to respond sooner.

Until the Safeguarder has received a response from Children First Safeguarders Panel Team, no work must be instructed. If work is instructed without authorisation, the Safeguarder will be liable for the fees and expenses incurred. **In advance of the Scottish Government considering whether to pay the fees and expenses for legal representation Safeguarders should be mindful of their confidentiality obligations and responsibilities under data protection legislation and seek to minimise sharing case specific information and anonymise it so far as possible.**

Where the fees estimate has been agreed by the Scottish Government, the Safeguarder should ensure that the solicitor is aware of the obligation to tell the Safeguarder if the estimate is likely to be exceeded. The Safeguarder should make it clear that, unless or until this is done, and further authority granted by the Scottish Government and the limit of authorised expenditure raised, the maximum amount that the solicitor can charge will be the existing maximum limit of authorised expenditure. Any additional fees and

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<sup>2</sup> In exceptionally limited circumstances, there may be justification for the instruction of a solicitor or advocate with a particular specialism, who is not CLAS registered. This will only be considered where a case is highly complex, for example involving multiple jurisdictions.



expenses which are authorised by the Safeguarder, but not authorised by the Scottish Government, are likely to be liable for payment by the Safeguarder.

It is the Safeguarder's responsibility to let Children First know if the fees and expenses are likely to rise so that this can be considered for authorisation by the Scottish Government. It is helpful for the Safeguarder to provide updates to Children First if there are delays in procedure so as to avoid concerns as to rising costs without authorisation being sought. The Safeguarder should also let Children First know when work has been completed. Children First will inform the Scottish Government regarding any updates to fees and expenses estimates to check if these can be authorised and respond to the Safeguarder.

Schedule 3 to the Advice and Assistance (Scotland) Regulations 1996 provides the table of fees allowed to solicitors for advice and assistance ([See table of fees here](#)). These rates will be used for solicitors providing advice and representation to Safeguarders.

## Additional guidance to be followed in cases where a Safeguarder is successful in principle in their application to obtain representation from counsel.

The solicitor representing the Safeguarder will be able to recommend counsel experienced in Children's Hearings and will liaise with counsel on the Safeguarder's behalf to obtain estimates for fees.

In addition to the solicitor's recommendations, the Safeguarder may also find information regarding counsel who specialise in Children's Hearings by following [this link](#) or by contacting individual counsel's clerks by following [this link](#).

It is very important to make any potential legal representative aware that work must be carried out at legal aid rates. Counsel's estimate of their fees and expenses should be sent to Children First ([safeguarderspanel@children1st.org.uk](mailto:safeguarderspanel@children1st.org.uk)). Children First will forward this to the Scottish Government for their consideration. Once the Scottish Government responds to this request, Children First will inform the Safeguarder. Where no further clarification is required, estimates will be responded to within five working days. Where the request is urgent, the Scottish Government will make every effort to respond sooner.

However, until the Safeguarder has received a response from Children First Safeguarders Panel Team, no work must be instructed. If work is instructed without authorisation, the Safeguarder will be liable for the fees and expenses incurred.

## Payment of Invoices

The Safeguarder should advise the solicitor that where the Scottish Government has agreed the estimate, invoices must be made out to Children First and emailed to [safeguarderspanel@children1st.org.uk](mailto:safeguarderspanel@children1st.org.uk), with bank details for payment provided. Once this has been received, Children First will then email a copy of

the invoice to the Safeguarder who must check that the fees and expenses are reasonable and equate to the service supplied and email this confirmation to Children First. VAT will be payable on this as it is a service and the Safeguarder is utilising the expertise of a legal professional to represent them in the manner of the normal client-solicitor relationship. Following confirmation from the Safeguarder, Children First will pay the invoice directly to the solicitor.

## Further Guidance/Information

Appendix D gives some specific guidance regarding expert witnesses and Appendix E on fees and expenses which are of an unusually high nature.

## Appendices

### Appendix A - Examples of exceptional cases where sanction is granted for solicitor/counsel for limited purposes

**Example 1 - Where approval is granted for solicitor and/or counsel to conduct the proof, further approval is required from the Scottish Government if the Safeguarder wants a solicitor and/or counsel to conduct any preliminary/incidental and/or pre proof hearings**

For example, separate approval will be required for:

- Preliminary/pre-proof hearings.
- Case management hearings.
- Hearings to consider specification of documents.
- Applications for special measures and associated hearings.
- Hearings to consider extension or variation of an interim compulsory supervision order.
- Adjournments/deferred hearings.

Solicitors and/or counsel should not usually be required to conduct hearings which are routine and procedural. Such applications are unlikely to be authorised. If it is considered necessary for a solicitor and/or counsel to attend any of these hearings mentioned above, a further, separate request for sanction for a solicitor and/or counsel to conduct the hearing in question must be made (even if the hearing itself is continued /deferred). This is because it may be considered appropriate in exceptional cases for a solicitor and/or counsel to conduct one such hearing but not necessarily them all.

#### **Example 2 - Decision of Sheriff Appealed to the Sheriff Appeal Court**

If a request to engage a solicitor and/or counsel is granted for one or other or both to conduct the full proof or appeal hearing and the decision of the Sheriff is then appealed to the Sheriff Appeal Court, the following will be required:

- A fresh application for approval by the Scottish Government for a solicitor and/or counsel to conduct the appeal before the Sheriff Appeal Court.
- A fresh application for approval by the Scottish Government for the solicitor and/or counsel to conduct the disposal hearing before the Sheriff, if the appeal is successful and remitted back to the Sheriff.

#### **Example 3 - Decision of Sheriff Appealed to the Court of Session**

If sanction is granted for a solicitor and counsel to conduct the full proof or appeal hearing and the decision of the Sheriff is then appealed directly to the Court of Session, the following will be required:

- A fresh application for approval by the Scottish Government for counsel to conduct the appeal before the Court of Session.
- A fresh application for approval by the Scottish Government for a solicitor and/or counsel to conduct this disposal hearing before the Sheriff, if the appeal is successful and remitted back to the Sheriff.

#### **Example 4 - Decision of Sheriff Appeal Court to the Court of Session**

If sanction is granted for a solicitor and/or counsel to conduct an appeal before the Sheriff Appeal Court and the decision of that court is then appealed to the Court of Session, the following will be required:

- A fresh application for approval by the Scottish Government for counsel, to conduct the appeal before the Court of Session.
- A fresh application for approval by the Scottish Government for a solicitor and/or counsel to conduct the disposal hearing before the Sheriff, if the appeal is successful and remitted back to the Sheriff.

## Appendix B - Factors to be considered when requesting to engage a solicitor and/or counsel for purposes other than conducting a Children's Hearing Proof/Appeal. e.g. Obtaining an Opinion from counsel

**Requests to engage a solicitor and/or counsel for various purposes short of conducting the case itself can be made. For example:**

- Asking for an Opinion from counsel.
- Preparing a Devolution Minute and appearing at a devolution minute hearing.
- Preparing a Petition for Specification of Documents and conducting any such hearing.

### **When asking for approval for the limited use of solicitor and/or counsel**

- Give full reasons why this is considered to be appropriate.
- Give a proper explanation of the background and the complexities involved.
- Identify what exactly is the legal issue solicitor or counsel is to consider.
- Explain why this matter is so complex, novel or unusual that it appears to be appropriate to use a solicitor or counsel.

### **Requests to obtain Counsel's Opinion**

Where an Opinion from Counsel is sought, it must be explained why seeking counsel's opinion at this point is not premature and that enough information is available to enable counsel to give a meaningful opinion.

Consideration will be given to:

- What exactly is the legal issue counsel is to consider?
- Is this matter so complex, novel or unusual that it is appropriate to instruct counsel?
- Is this the appropriate time to seek Counsel's opinion?
- Is the matter so serious that it is appropriate to gain counsel's opinion?
- Will it perhaps save expense in the long run?

### **An Opinion from counsel should, where appropriate**

- Address the benefits to the Safeguarder or the child in the proceedings or the court of undertaking a particular course of work.
- Address how evidence may be agreed and such like by undertaking any particular line of work.
- Show that if any particular investigative work is proposed, it is reasonably expected to materially assist the child whose interests are being safeguarded.

It should be noted that counsel will only be approved in exceptional circumstances and instructed only to advise on a specific point of law or appear in a specific hearing on a specified point. Authorisation will only be given for junior counsel. Each application will be considered on its own merits but the factors outlined above will form part of the assessment, so the application should include this information.

## Appendix C - What fees and expenses should be detailed in an estimate when requesting authorisation to engage a solicitor and/or counsel?

Requests for authorisation to engage a solicitor and/or counsel should include detailed estimates of fees and expenses for example:

- the estimated fee to obtain an Opinion from counsel.
- the estimated fee for a Consultation with counsel.
- the estimated fee for a solicitor/counsel preparing for and appearing at a pre-proof hearing.
- the estimated fee for a solicitor/counsel preparing for and appearing at incidental hearings.
- the estimated fee for a solicitor/counsel preparing for an appearing at an appeal hearing.

### **Approval in principle for a solicitor to conduct a proof (section 101, or review of grounds determination- Section 110 and appeals)**

Where a request in principle is granted for a solicitor to conduct a proof then subject to approval of the estimate of fees and expenses this will include the following:

- Consultations with the Safeguarder's solicitor and /or counsel
- Necessary notes\* at the discretion of counsel

The fees estimate should only detail work that is reasonable and undertaken with due regard to economy.

\* A "necessary note" is where counsel provides a legal opinion or substantive note on the line of evidence which is clearly integral to the Safeguarder's case. Necessary notes do not include usual correspondence between counsel and the instructing solicitor.

Where approval has been granted for the conduct of the proof, the fees payable will be at civil legal aid rates, as prescribed in [The Civil Legal Aid \(Scotland\) \(Fees\) Regulations 1989](#), and generally include all associated preparation work.

[The current Legal Aid rates are available here: Legal aid fees - Scottish Legal Aid Board \(slab.org.uk\)](#)

### **Approval in principle to engage a solicitor and/or counsel in appeal proceedings**

Where a request in principle is granted for a solicitor and/or counsel to conduct an appeal before the Sheriff Appeal Court or for a solicitor and counsel for an appeal before the Court of Session then the fee estimate should include:

- Drafting Adjustments to Stated Case.
- Conduct of any hearing on Adjustments.
- Drafting additional questions for the Stated Case.
- Drafting any Note of Argument if called for by the Court.
- Drafting List of Authorities if called for by the Court.

- Consultation with the appellant/respondent prior to the appeal taking place.
- Conduct of the appeal hearing itself.

### **Work of an unusual nature or likely to involve unusually large expenditure**

Where the work involves getting an order of the court, approval must be obtained from Children First Safeguarders Panel Team before the court is asked to consider the matter.

The application should:

- Address, in detail, why the Safeguarder believes the work is essential.
- Show that all reasonable alternatives have been considered.
- Give full costings both for the course of action proposed and for possible alternative courses of action.

When applying for funding for work of an unusual nature or likely to involve unusually large expenditure, the Safeguarder should:

- Give a full breakdown of the likely fees and expenses.
- State what fees are proposed, including fees for reports, attendance at court and travel time (e.g. for expert witnesses), with a statement of the basis of charge, for example, an hourly or daily rate.
- Specify individually any likely outlay (e.g. travel/accommodation etc).
- Fully explain the need for the unusual work or work that is going to involve unusually large expenditure.

## Appendix D - Expert witnesses

### Approval to engage an expert witness

The basis for any request for approval for payment for an expert witness must be reasonable and appropriate in all the circumstances of the case.

Consideration must be given to whether the expert witness should be called for by another party, or if not, whether costs of an expert witness can be shared with another party or parties.

The following criteria should be addressed:

- Is the work of the witness required at this time and can the work be reasonably fulfilled by another role?
- Is approval being sought only for a report or/and for the expert to attend court/be consulted as a witness?
- Will the work of the witness be based on an examination of papers and records or will it involve an examination of the child or another party? If an examination of a child or other party to the proceedings is sought the Safeguarder must properly address the issue of consent.
- If the Safeguarder is prepared to share the instruction, findings and costs of the expert with another party or parties and if not, why the Safeguarder does not consider this appropriate. What pro-rata share is being sought?
- If the Safeguarder is seeking approval to instruct their own expert rather than a joint single expert why this is both reasonable and necessary.
- If the Safeguarder wants authority to consult with the expert or for the expert to attend court to give evidence.
- Any other relevant information.

Where approval has been given to engage an expert to produce a report and subsequently approval is sought to cite that expert to give evidence in the court proceedings, a further quote for fees and outlays must be provided to allow a decision to be made.

### When applying for approval for an expert, the Safeguarder should

- Provide a full breakdown of the likely costs.
- Clearly state what fees are proposed, including fees for reports, attendance at court and travel time, with a statement of the basis of charge, for example, an hourly or daily rate.
- Specify individual outlays likely to be incurred .e.g. travel and accommodation
- Provide a comparative quotation if the cost of the proposed expert report is over £2,000 or provide an explanation why no alternative quotation is available.

Confirmation should be obtained that the expert would be prepared to attend court if necessary. (Whether in person or remotely using electronic means)

Any approval granted may include a condition that costs may not exceed a specified amount or that specified work may not be carried out. The amount which will be paid will not exceed the amount that is



approved by Scottish Government and the Safeguarder may be personally liable to the expert for any extra costs. If, it appears that the amount approved will be insufficient to meet fees and expenses, a further application should be submitted without delay.

If approval is granted subject to a ceiling of expenditure, this does not allow the expert witness to automatically claim a fee at that ceiling. Payment for fees and/or outlays not undertaken or accounted for, cannot be paid.

### **Consultations with Expert Witnesses**

Separate requests must be made for engaging a solicitor and/or counsel to consult with an expert witness whether this is for:

- An expert witness for whom a request has already been granted
- A proposed expert witness whose involvement has not yet been requested or agreed
- An expert witness for the Reporter or other party to the proceedings.
- Such a request should include:
- Detailed reasons why a consultation is considered appropriate and to show why the Safeguarder cannot get the information in a statement or precognition.
- A detailed breakdown of the proposed expert's fees and outlays.
- An explanation that the method and place of consultation is the most economical.
- Experts generally have access to conferencing and video-conferencing facilities and consultations at a distance will generally take place by these means.

### **Precognition of Witnesses**

When requests to engage solicitors and/or counsel are granted to conduct the court hearing it is still the Safeguarder's responsibility to obtain \*precognitions/statements from witnesses. Therefore, it is not generally appropriate for solicitors and/or counsel to be involved in this task.

*\*"Precognition" – a preliminary statement or record of the evidence a person may be expected to give in court which is taken down in writing by a third party. It is not signed and cannot usually be produced or relied upon in court.*

*"Statement" – a written record of a person's account of events given to a police officer or other statutory agency which is signed by the maker and can usually be relied upon in court.*