

## 9. Corroboration

The necessity of having corroborated evidence has lain at the heart of the criminal justice system in Scotland. Its stated purpose, in criminal cases, is to prevent an accused from being wrongly convicted on the basis of a single witness, who may be either fallible or dishonest.

The requirement for corroboration was cited in *McLean (2009)* as one of several elements in the criminal justice system that contributed to the overall fairness of the trial procedure.

Corroboration is a requirement in all forensic medical examinations.

- Examination should be performed by a clinician who has undertaken suitable training in forensic medical examination techniques.
  - [Training for examiners of victims of rape and sexual assault](#)
  - [Police Care Network](#)
- The corroborating witness requires to be able to confirm: the date and place of the examination; the name of the person who has experienced rape or sexual assault, the taking of all swabs and samples; and the presence of any injuries.
- A subgroup of the CMO Taskforce undertaking some scoping of the appropriate skills and training required by corroborating witnesses in the context of sexual offences examinations. This may have a bearing on the role of chaperones (see Appendix A)

For more information see: The Carloway Review: Report and Recommendations (Scottish Government 2011)

### 9.1 Types of Witnesses

There are two types of witness in a case:

**Witness of Fact:** A witness of fact comments on what they saw occur. An example might be a member of the public who was in a shop during a robbery, or a doctor looking at a bruise. A professional witness of fact must offer clear and concise written and oral evidence, based as far as possible on clinical records and notes made at the relevant period of time. Professional witnesses of fact may include **some opinion** about findings but it should be made clear what is factual evidence and what is opinion based on professional judgement and experience.

**Expert Witness:** This witness must comment on what they saw and how to interpret that information. For example, a forensic scientist commenting on fingerprints or a doctor commenting on what could have caused the bruise or the age of a bruise. An expert witness is able to consider **all** the evidence available, including statements and reports from the other parties to the proceedings, before forming and providing an opinion to the court.

For more information see: [GMC Ethical Guidance](#)

When using the standardised national form (within appendix C), it is important to ensure information is presented in a manner that supports both the ongoing investigation and any future prosecution process.

It is imperative that all relevant information is disclosed in the Report and that the report writer does not stray out of their level of competence or expertise.

## 9.2 Disclosure of Records

Reports are generally written with reference to the contemporaneous medical notes taken at the time of forensic medical examination. There may however be occasions where the court requires the original medical record as a production (evidence) in addition to the healthcare professional's report.

It is good practice to document the health assessment separately from the forensic element so non-relevant information may be protected. However this cannot be guaranteed and consent must be clear with the patient being informed from the outset that in addition to a report being prepared all notes may have to be disclosed during the criminal investigation and active acknowledgement of this understanding sought.

Any disclosure of the medical record should be with the patient's consent or on the direction of a court order.

### Resources

[Sharing of Personal Sensitive Information \(Medical/ Clinical Records\) For Court Proceedings](#)