



# Advice Note

## Preparing to Give Evidence

July 2014

### Introduction

Giving evidence in court can be a daunting prospect in particular because for many witnesses, appearing in court to give evidence as a witness will be a totally unfamiliar experience.

However steps can be taken by a witness and a party's lawyer to help prepare a witness for trial provided that such preparation is carried out within certain parameters so to avoid any allegations that a witness is being "coached".

This note addresses what can and cannot be done to assist you in preparing to give evidence at trial.

It also summarises briefly the process of giving evidence.

### Preparation

Being fully prepared is very important to giving evidence at trial successfully. Being underprepared could affect your credibility and performance in the witness box, which potentially could damage the case of the party which has asked you to give evidence.

To ensure that you are fully prepared as possible, you should:

- Read your statement before going to court; it may be necessary to do this several times to ensure that you are familiar with the issues raised in your evidence.
- Read through and familiarise yourself with any supporting documents that are referred to in your witness statement (although you should note that these documents will be available at court for you to refer to).
- If requested to do so, read through the "pleadings" i.e. the court documents that set out each party's case, and the witness statements of other witnesses in the case.
- Raise any queries or concerns with us, so that we may address them insofar as we are permitted and able to do so.

### Witness familiarisation

Part of the preparation may include familiarising the witness with his evidence and the issues in the case. It cannot include coaching a witness or training the witness on how to answer specific type of questions. Nor can it include using an example case study based on similar facts to the actual case that you are giving evidence in as this would amount to witness coaching rather than witness familiarisation.

In essence, a witness should be giving his own evidence, in his own words as opposed to being influenced by anyone else; to do otherwise can taint his evidence. The overriding approach is to avoid helping you give evidence that "appears" better but is actually in fact false or misleading.

However, there are still many things that can be done to help fully prepare witness for giving evidence that is not coaching. The process of familiarisation is encouraged by the courts and should help give the witness greater confidence in giving evidence. It can extend to:

- Familiarising with the trial process, location and the people involved. This can include giving descriptions of the different participants' roles and descriptions of what happens at trial and visiting the court.
- The provision of tips on giving evidence, and running through examples of what to do and what not to do. The tips and examples should help show the different tactics that barristers use to cross-examine witnesses, and may include tips on how to present yourself to the court and the best approach to responding to cross-examination questions.
- Remind you about the key issues in the case and highlight areas that may be difficult for you, but this cannot include giving you an "answer" to potential cross-examination questions. You must give your own words in evidence.
- Providing a mock cross-examination, with the purpose of showing you how it feels to be cross-examined and your reaction to the type of questioning. This can help give some witnesses greater confidence for the actual trial.

Witness familiarisation is something that Pinsent Masons can offer to clients. There are also third party providers that offer witness familiarisation courses, and we can arrange this.

### Giving evidence

Assuming that you are giving evidence for the claimant:

Each party who is relying upon a witness to support their case will call their witness(es) to the witness stand. The claimant's witnesses will be called to give evidence first. The witness will be "sworn"<sup>1</sup> in and asked by the claimant's counsel to give his name and address

<sup>1</sup> This will vary according to the witnesses' religious beliefs.



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and to confirm whether the witness statement that he has given is true to the best of his knowledge and belief. This is all that the claimant's counsel will do unless there are any corrections to be made to the witness statement, in which case, the claimant's counsel will invite the witness to mention these at this stage.

The witness will then be questioned about his evidence by the defendant's counsel; this is called cross-examination. Also, the judge has a complete discretion to allow supplementary evidence expanding on matters already in the witness statement. Cross-examination is not limited to matters given in evidence in the witness statement although it will be primarily directed at this evidence. If inappropriate or unfair questions are asked, then the claimant's counsel may be able to intervene.

The purpose of cross-examination is to elicit favourable evidence in support of the other party. Counsel for each party may seek to expose any contradictions or weaknesses in the evidence or to challenge the credibility of the witness being cross-examined. Counsel will be allowed to ask leading questions (i.e., questions which suggest the required answer) and may also ask questions

about documents relevant to the evidence so that it will be important for a witness to ensure that he is generally familiar with these documents. A witness will normally be given an opportunity to look at a copy of the document being referred to enable him/her first to refresh his memory. If a witness is not invited to see a document, he can ask to be shown it to verify its contents.

Depending upon the complexity of the dispute between the parties and your role in the dispute, cross-examination can be relatively short but in some instances it can take several days.

Once cross-examination has been completed, the claimant's counsel may seek to "re-examine" the witness. The main purpose of re-examination is to give a witness an opportunity to clarify points made in cross-examination which may seem adverse but in fact are not. Re-examination must be confined to matters arising out of the cross-examination.

Once all the claimant's witnesses have been called, the defendant will call its witnesses and the same procedure as outlined above will be followed.

### For further information, please contact:



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