

Top tips for being an effective witness in civil proceedings

PJ Kirby QC, Jasmine Murphy, Emily Betts

The purpose of this note accompanying our [short film](#) is to set out a short guide for people who are preparing to give evidence in civil proceedings.

Civil proceedings may be in the High Court, County Court, or any of the various specialist Tribunals which hear different civil claims (e.g. employment tribunals). These tips are the kind of points which we, as barristers, would go through with our witnesses in advance of the hearing.

There are innumerable situations in which you may be called upon to be a witness. It may be your own case, a case brought by or against your employer, or simply a matter on which you have some factual evidence which is relevant to the court. You may know a lot, or conversely, very little, about the proceedings before the court. In all of these circumstances there are some general tips which it is helpful to bear in mind.

Before Court

Read your witness statement – It's *your* evidence. Make sure you tell your barrister if there is something in your witness statement that is incorrect. Whilst you do not have to memorise your statement you do need to be very familiar with what it says.

Know the documents – Some cases have numerous files of documents. If you are a key witness then try to familiarise yourself with the files so you may be able to refer to a document that backs up what you are saying. If you are not sure where a document is in a file, identify the document and ask for help in finding it.

Arriving at Court

Be prepared – Arrive at court early and dress suitably - as if for a job interview. Find the court where your case is being heard (by asking an usher or looking at the court list). When it is time for you to give evidence you will move to a seat between the Judge and the barrister and either swear an oath or affirm to tell the truth. You will first have questions from your own barrister (called 'examination in chief'), followed by questions from the other side's barrister ('cross-examination') and then, there is an opportunity for your own barrister to ask some further questions ('re-examination').

Giving Evidence

Answer the question – There is nothing more frustrating to a Judge than a witness who appears to be avoiding the question or anticipating what they are going to be asked. Just answer the question. If you don't know the answer, say so. Don't try and guess.

If you didn't understand the question, ask for it to be repeated – There is no point and considerable danger in answering a question you did not understand. In any event the question may have been badly worded or phrased so the safe thing to do is to ask for it to be repeated.

Speak slowly and clearly – You will be in a large room and the microphone in front of you records but does not amplify, so you may have to speak more loudly than in normal conversation. It is important that you speak slowly. The Judge and others will be writing down what you say, so make sure you speak slowly enough for everyone to get a note of it.

Be careful with rolled up questions – You may be asked a number of questions all rolled in to one. For example, “So you were at the meeting *and* signed the document?” It is important to think about a question before answering it. If it is a rolled up question, answer each part of the question separately, making clear that that is what you are doing e.g. “There are two parts to that question which I will deal with separately. Yes, I was at the meeting. No, I did not sign the document.”

Address your answers to the Judge – Face the advocate when listening to the question but the Judge when answering it. Judges are referred to in different ways in different courts and tribunals. Ask your barrister beforehand how you should address the Judge.

Pay particular attention to any question that the Judge asks – The Judge is going to be making the decision, so if he or she asks a question, you can assume that it is on a point that is of considerable interest to them.

Stay calm – Sometimes the person cross-examining you will be trying to get you to lose your cool or the subject matter itself may be very personal and upsetting. Stay calm. Don't ask questions back to the barrister asking questions of you. Your evidence will be the better for not arguing and trying to keep your emotions in check.

Stick to the point – Sometimes a simple “yes” or “no” in response to a question is enough. If you want to elaborate, then do so briefly. You can refer to a document or your witness statement if you need to.

Don't argue the case – You are there to give evidence on the facts – what you saw, know, did, wrote etc. Your legal representative will argue the case for you. If you try to argue the case from the witness box, you will probably only succeed in annoying the Judge who may take a dim view of your evidence as a result.

Re-examination: Do not switch off just because it is your own barrister – You may be quite tired at this stage but it is still important to concentrate on these questions in the same way that you did in cross-examination.

Tell the truth – This is the most important point. You will be required to swear an oath or make an affirmation as to the truth of your evidence. Lying on oath is perjury. Even small departures from truth (which you may think are not relevant) can lead to the Judge discounting your evidence.

PJ Kirby QC, Jasmine Murphy, Emily Betts
Hardwicke
March 2015

Contact us

If you have any questions, or would like to discuss any aspect of being a witness, please call 020 7242 2523 to speak to a member of our Practice Management Team:

Paul Adams, Senior Practice Manager: paul.adams@hardwicke.co.uk

Paul Horsfield, Senior Practice Manager: paul.horsfield@hardwicke.co.uk