Conducting examination in chief

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What is involved

Advocates use examination in chief to question their witnesses after they have been sworn into court and before they are cross examined by the other side.

In civil trials, subject to any directions previously given or any ruling by the judge, the evidence in a witness' written statement, once confirmed, will be taken as their evidence in chief.

In family law matters judges will often only allow a brief examination in chief if the witness has already filed a statement of evidence, to update on events after the statement was filed.

The purpose of examination in chief is to get your witness to tell their story and give their evidence to the court. You need to be skilled at communicating and dealing with witnesses and thinking on your feet.

Your obligations

Conducting an effective examination in chief can help you meet some requirements of our Competence Statement including but not limited to:

- B5 Undertake effective written and spoken advocacy. [https://guidance.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#b5]
- C1 communicate clearly and effectively, orally and in writing. [https://guidance.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#c1]
- C2 Establish and maintain effective and professional relations with clients. [https://guidance.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#c2]
- C3 Establish and maintain effective and professional relations with other people. [https://guidance.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#c3]

Conducting an effective examination in chief is also a requirement of our Statement of standards for solicitor higher court advocates. [https://guidance.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/]

Open all [#]

How to conduct an examination in chief

When conducting an examination in chief, you can only use open questions rather than leading questions. Open questions are designed to let a witness tell their version of events in their own words. Leading questions are designed to elicit a specific response (usually 'yes' or 'no'), and often sound like statements rather than questions. Here are some examples:

Leading question

- 'It was about 14:00, wasn't it?'
- 'The defendant spat at the victim, didn't he?'
- 'You saw a red Volvo, didn't you?'

Open question

- 'What time of day was it?'
- 'What happened when you saw the defendant?'
- 'What colour and make was the car?'

The exception to this rule is when you have agreed with the other side that certain facts are undisputed. You can ask leading questions about undisputed facts, which can make your examination in chief run more efficiently. For example, if it is agreed that a witness was in a specific location at a specific time, you could ask 'You were in location x on date y, weren't you?'

When preparing your examination in chief, you should map out the key points you want your witness to make and in what order. From this, you can work backwards to identify the questions you need to ask to get to those points.

Case study

Assume you want your witness to describe what happened when they saw the defendant or respondent in a case (Mr X). To get to that point, you could ask the following questions:

- 'Where were you on the date in question?'
- 'What were you doing?'
- 'What could you see from where you were standing?'
- 'How did you know that it was Mr X?' (assuming the witness says they saw Mr X)
- 'How clear was your line of vision when you saw Mr X?'

From this point, you can use open questions to ask the witness to describe Mr X and what he was doing at the relevant time.

Handling your witness during an examination in chief

Our Competence Statement [https://guidance.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/] states that to undertake effective written and spoken advocacy you need to deal with witnesses appropriately. It is impossible to completely predict the behaviour of witnesses in court so you need to be ready to adapt your examination in chief and think quickly on your feet.

Preparing

Some witnesses will give concise and precise answers to your questions. Others may be vague or give too much detail. You should anticipate this when preparing your examination in chief and be ready to adapt it. To help, you can:

- Write down the core questions and/or issues you want to cover with a witness along with a set of additional, back up questions and/or issues if you need your witness to be more specific.
- Tailor the questions and/or issues you want to cover with a witness if you know they are likely to be vague or give too much detail. For example, instead of planning to ask, 'What did the person look like?', you could plan to ask multiple questions about specific parts of their appearance such as 'What colour was the person’s hair?'.

Remember that asking questions from a formal script obstructs you from adapting your advocacy in an instant. As a general rule use bullet points to remind you of each question or topic that you need to cover.

Nervous witnesses

Witnesses may also be nervous which can affect things like the pace and volume of their speech.

You should monitor these issues and politely ask your witness to speak up, slow down, repeat an answer or give more detail if needed. Failing to do this could mean that the court struggles to understand your witness which could harm your case.

If your witness is nervous you should take appropriate steps to reassure and support them so that they can give their best evidence. This could include:

- asking the court for a break so that your witness can compose themselves
- asking your witness if they would like you to repeat a question or speak more slowly.

Witnesses who can't remember their evidence

Witnesses who can't remember their evidence are sometimes referred to as unfavourable or unhelpful witnesses.

A range of factors, including nervousness, can impact a witness's memory of their evidence. If this happens to your witness you can ask the judge to allow your witness to refresh their memory by reading their written evidence.

The judge will base their decision on whether the witness's memory was significantly better at the time of giving their written evidence.

Hostile witnesses

If your witness intentionally refuses to give the evidence they were called to give, which includes deliberately giving contrary evidence, then you should carefully consider making an application to the judge to treat them as a hostile witness.

If the judge grants your application you will be allowed to cross examine your own witness when they give their evidence. In criminal proceedings their original statement can also then become evidence of any admissible fact stated in it.

It should be remembered that a hostile witness may be left with little or no credibility so the court may attach little or no weight to their testimony.

Vulnerable witnesses

Vulnerable witnesses may find it difficult to understand or respond to questions and be more affected by the stress of appearing in court.

You can use the 'Meeting the needs of people who are vulnerable [https://guidance.sra.org.uk/solicitors/resources/specific-areas-of-practice/meeting-needs-vulnerable-people/] ' section of this Advocacy Hub to help you adapt your examination in chief to someone who is vulnerable.

Our Statement of standards for higher court advocates [https://guidance.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/] includes specific requirements in relation to vulnerable witnesses.

Expert witnesses

If your witness is an expert witness you need to make sure you understand their evidence and professional background. Usually, examination in chief of an expert witness confirms:

- their name, professional background and area of expertise

- that the report submitted to the court was written by them and is truthful.