

## Witness Preparation – the Dos and Don'ts

### Prepare

It is vitally important that you familiarise yourself fully with the case. The more you have prepared the more confident you will be and it is less likely that anything will come up in court that you are not ready for. You should:

- **Read** your internal case papers (ensuring your file is up to date with the current position) and file notes
- **Review** the court papers, including productions which have been lodged. You will be provided with these from the solicitor dealing with the case
- **Discuss** with any colleagues who have been dealing with the case or assisting you with it to ensure you are fully armed with the facts, background and current position.
- **Liase** with the solicitor who is dealing with the proof hearing before the hearing. The solicitor will be in touch with you, but do not hesitate to get in touch if you have any questions.

### On the day

It is important to remember that courts are formal environments therefore you are expected to dress and act in a certain way.

- **Smart clothing** should be worn e.g. dress trousers/skirt, shirt and tie/blouse and jacket in dark colours. You should avoid wearing very heavy make-up or an excess of jewellery. The sheriff is unlikely to comment negatively on a witness's appearance; however a smart appearance does help to convey your professionalism and credibility.
- Only documents formally lodged at court can be referred to at the proof hearing. Any other documentation cannot be referred to during the proof.
- In the morning the solicitor dealing with your proof will arrange to meet you at the court, usually around 9:30am to discuss the procedure that the day will follow and identify which court the proof will take place in.
  - Court usually starts at 10:00 therefore it is very important you arrive on time. It is helpful if you wait in the foyer area to meet with the solicitor.
  - When the proof starts you will wait in a waiting area or a witness room until you are called.
  - You are not permitted to sit in the court to listen to the case before you are called as a witness as this is deemed to affect the impartiality of your evidence. **It is important that you do not leave the area where you have been asked to stay.** Witness areas often have toilets and, at some courts, refreshment areas but if you are absolutely required to leave the witness area/waiting area, please inform a court officer. This is extremely important.
- You may be required to wait on the case calling for a long period of time and the length of time you will be expected to be at court is very hard to estimate. You should ensure you do not have any competing commitments at any point during the business hours of the proof date.

### When you are called

When the court is ready to hear your evidence, the court officer will come to collect you. They will accompany you into court and usher you into the witness box. Once you are in court:

- You are not permitted to take any drinks with you into court. If you wish for a glass of water, please ask the court officer who will provide you with one.

- Please ensure that your phone is **switched off**. It can be very embarrassing for your phone to go off in the court and is very disrespectful to the bench – the sheriff is likely to take an ill view if this occurs.
- You should stand whilst giving evidence. If you are unable to stand due to health reasons, please inform your solicitor or the court officer.
- Before giving any evidence you will be asked to take the **oath** or **affirmation** by the sheriff and to do this you just repeat the words after the sheriff speaks them to you.

## Appearance and terminology

Terminology and demeanour to be used in court is worth noting:

- You should refer to the sheriff as "My Lord" or "My Lady". The party pursuing the claim is the "pursuer" and the person defending the claim is the "defender", however you can refer to the defender by their name also.
- Try your best to maintain eye contact with both the solicitor who is asking you questions and also the sheriff.
- The sheriff will be noting down what you say therefore speak at a reasonable pace. It is common to talk very quickly when you are nervous so be aware of this and slow your pace down.
- Remember that the court is a formal environment and adjust your language accordingly – avoid slang and do not use bad language.
- Your tone is also important, therefore you should appear and sound engaged.
- Avoid distracting habit such as clicking a pen, fiddling with a rubber band, fidgeting or adjusting your hair. This is liable to distract the court from the main purpose, which is the case that the court is considering.

## Questioning

The solicitor acting who is dealing with the proof will ask you questions first. The other side will then have the opportunity and then there will be one more opportunity for your solicitor to ask questions. The sheriff may also ask you some questions or ask you to clarify an answer. When answering a question by any party you should:

- **Only** answer the questions that are put to you – do not try to pre-empt the next question.
- **Listen** carefully to the question that is put to you so your full attention must be given at all times.
- **Speak** clearly and audibly – courtrooms can often be large, therefore it is important to project your voice so everyone (most importantly the sheriff) can properly hear you.
- **Remain calm**, especially when being cross examined by the solicitor for the opposing party. These questions will sound different from the questions that the solicitor dealing with your case will put to you. The purpose of cross examination is to cast doubt on your evidence. It is vitally important that you do not react in a hostile or defensive manner to questioning of this sort, as this will affect your credibility to the sheriff.
- **Tell the truth** and **do not attempt to speculate** what happened or what you think happened. If you do not know the answer to a question or you do not remember, you must say so. Similarly, if you do not understand a question that is asked of you, you should ask for further clarification to allow you to understand.

It is not unusual to be daunted and intimidated by the experience of being called as a witness – the more experience you will gain as acting as a witness, the more the nerves will dissipate and the more confident you will become.

For ease of reference, see the quick bullet table below regarding key dos and don'ts of being a witness:

**Do**

- Prepare fully
- Discuss the case with the solicitor dealing with the proof
- Arrive at court on time
- Dress smartly
- Speak slowly, clearly and audibly
- Answer only the questions you are asked
- Maintain eye contact
- Remain calm and collected, maintaining professionalism at all times
- Tell only what you know

**Don't**

- Do not assume that no preparation work is required from you
- Do not become difficult to contact in the run up to the proof – ensure you are contactable and make your contact details available to the solicitor
- Don't be late
- Don't wear garish clothing
- Don't leave the witness/waiting area before you are called
- Don't behave in a casual manner when in court
- Don't become rattled, aggressive, hostile or uncooperative when in the witness box
- Don't try to answer all the questions or relay the full story in one go
- Don't speculate as to what happened or say to the court what you think happened