



University of Strathclyde
LAW CLINIC

6C. Witness Evidence

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Outline

- ▶ What happens at the hearing?
- ▶ Who gives evidence first?
- ▶ Examination in chief
- ▶ Cross examination
- ▶ Re-examination
- ▶ How do I make an objection?
- ▶ What can I object to?

What happens at the hearing?

The following things will happen at the Merits Hearing:

- ▶ Preliminary points
- ▶ Examination in Chief
- ▶ Cross Examination and Re-examination
- ▶ Examination in Chief
- ▶ Cross Examination and Re-examination
- ▶ Submissions
- ▶ Judgment (can take up to six weeks to be issued)

Who gives evidence first?

- Who goes first in evidence depends on the type of claim. Usually the Respondent goes first but in unfair dismissal cases where dismissal is admitted.
- In other types of cases including discrimination claims the Claimant will more usually go first.
- The first witness might be you as the Claimant. Or if the Respondent goes first it will be someone representing the Respondent and relevant to the case. For example the dismissing officer.
- If you go first then you need to set out all the relevant facts in your case. Or the Respondent might be explaining why and how a dismissal took place and why the employer thought this was reasonable decision.
- This helps set out most of the facts at the start (although the other side may later question those facts as they disagree).

Witness evidence

The procedure for witness evidence is made up of three parts:

- ▶ Examination in Chief
- ▶ Cross Examination
- ▶ Re-Examination

Examination in Chief (1)

Examination in chief is the witness giving their own evidence in response to questions from their representative if represented.

In examination in chief, the golden rule when questioning a witness is to ask open questions starting with words like: “**what**” “**where**” “**when**” “**who**” “**why**” and “**how**”. You are not permitted to ask closed questions where the answer is pre-empted or evidence is given in the question. These questions are usually spotted as they ask a question that can be answered yes or no.

Leading question: were you on Buchanan Street on the first of June?

Open question: Where were you on the first of June?

Examination in Chief (2)

- If you are questioning a witness ask questions in chronological order. So in an unfair dismissal case start with issues at the beginning of the process through to dismissal, for example, the investigation, disciplinary hearings, appeal hearings etc. (assuming this is relevant to the claim). If you are giving evidence on your own- plan to do the same, and ensure that you refer to relevant documents in the bundle as you go along- either taking a witness to the documents, or referring to them yourself if you are giving evidence without representation. You must draw the Tribunal's attention to any relevant document. They will not look at them otherwise.
- For other claims such as discrimination you might want to discuss the background and then go on to outline the situation or circumstances when you started feeling like you were being treated differently from others. Who did/said what? when? What happened?
- Whatever the case, look back at the ET1 assuming you have set out your case clearly. The Respondent evidence should follow what is in the ET3. If your questions are not relevant to the case or stray away from the relevant facts then they may not help the case, annoy the Tribunal and the other side may object because the questions are irrelevant to the claim.

Examination in Chief (3)

- Keep an eye on the Judge. If they are writing quickly, give them a chance to catch up before asking your next question. Direct your evidence towards the Judge or panel so they can hear it clearly. Ensure your evidence is as precise as possible, clear and measured.
- Remember that in most cases you will also need to lead evidence about loss in the course of your examination in chief. What money you think is due if it is wages or holiday pay.
- If it is a claim for unfair dismissal or discrimination and you have left your job you will need to discuss what steps you have taken to mitigate your loss- such as applying for benefits/ looking for work and finding a new job. You will need to include documents about all of this in the bundle.
- If it is a discrimination claim you will need to describe the impact of the treatment you are alleging has had on you - this is called injury to feelings. See slideshows 7F and 11A for more information.
- You may have prepared a Schedule of Loss (see slideshow 7B) which you would include in the bundle (see Slideshow 6A).

Cross Examination (1)

- After examination in chief comes cross examination. This part of the procedure is for testing evidence just given. Leading questions are permitted at this point and the questions are normally intended to trip up a witness to make them seem less credible or to get facts out that will support the other side's case.
- It is important that, when being cross examined, witnesses remain calm and give short direct answers. If a witness elaborates, they are doing the cross-examiner's job for them by bringing out further information.
- Witnesses can direct their answers toward the Judge to avoid tension building up and to avoid looking at the person questioning them or watching the representative of the Respondent. Neither you or your witnesses want to show signs of becoming angry or frustrated.
- When you are cross-examining the Respondent witnesses you need to ensure that any points in your case are put to the other side so that they have the opportunity to explain what their position is even if you will not agree with this.

Cross Examination (2)

In terms of putting your position, here is an example:

- If the witness said in examination in chief that you were not arriving at work on time and that they saw you standing outside smoking at 9.30am when you were meant to start at 9am a question could be:
- You said that you saw me outside smoking. Did you check if I was at my desk? Can you be sure that I was not really at my desk? Did you see the face of the person you saw? Might you have mistaken someone else for me? It is my position that I did arrive on time for work.
- You should try very hard not to ask a witness questions that you do not know the answer to in cross examination - don't fish or give the witness an opportunity to give lots of evidence that is not helpful for you.
- That is why you ask short direct questions that often require a 'yes' or 'no' answer.

Re-examination

- After cross-examination, there is an opportunity for re-examination. This is where the side whose witness just gave evidence may ask additional questions that are limited to matters that have arisen during cross examination.
- You are not allowed to ask any further questions at this point that don't relate to the evidence in cross examination even if you feel there is an additional point you would like to squeeze in. If you feel all the points you wanted to cover have been covered, then there is no need to ask any further questions.
- This part is used to clarify issues that have arisen during cross examination. It is a useful tool when a witness looks less credible after cross examination to clarify details that may be misinterpreted if left unclarified.
- The Tribunal is also allowed to ask questions and they may do so, usually after cross and before re-examination, or if after they might ask if there is anything else you want to clarify by way of further re-examination.

How do I make an objection?

- During oral evidence, you may have cause to object to the other side's questioning. Objections should be used appropriately and you should be courteous when objecting. Shouting "objection" and leaping from your seat will win you no favours from the Judge.
- You should politely, firmly and clearly direct your objection to the Judge by stating "Judge, I must object to the question being asked", giving your reason for the objection.

What can I object to?

Reasons for objections could include:

- ▶ Leading questions during examination in chief;
- ▶ The questioner giving evidence themselves rather than asking a question;
- ▶ Irrelevant line of questioning;
- ▶ Overly aggressive questioning.