

# TAKING THE STAND



## TOP TIPS FOR LAY WITNESSES

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Put yourself in a witnesses' shoes. They could be a CEO of a multi-million-pound business accustomed to speaking in front of large groups of people. A race car driver, willingly putting themselves in perilous situations. Or an A&E doctor, dealing with life-or-death situations on a daily basis. Regardless of the intellect, tenacity, and confidence they may display in their day-to-day environment, the vast majority of lay witnesses will never have been inside a courtroom or tribunal before. So, the formalities, procedures and setting will be unfamiliar to them. Not to mention giving evidence and being cross-examined by barristers, which can often be an uncomfortable, unsettling, and daunting experience.

Bond Solon is a leading professional training company, which specialises in providing support and guidance to all types of witnesses, including witnesses of fact, professional witnesses and expert witnesses. Our team of experienced lawyer trainers are experts in understanding the specific requirements of a case and the needs of a witness. Having worked

with over 250,000 witnesses in our 30-year history, we know the traps that witnesses can fall into and the fundamental behaviours that contribute to a witness presenting their evidence confidently and persuasively.

Whilst not a substitute for comprehensive witness familiarisation training, below we've shared our top tips by way of a 'cut out and keep' guide for factual witnesses when giving evidence in any legal hearing.



### 1. Preparation is key.

Your witness statement will form the basis of the questions that you will be asked when giving evidence. Opposing counsel will be looking for any discrepancies between the evidence you give at court and what you stated in your witness statement. So, make sure that your evidence is fresh in your mind. Read and re-read your statement and any related documents, before going into the witness box. You

should also ensure that you are aware of any potential "challenges" to your evidence that you are likely to face in cross examination and how you might address such challenges.



### 2. Direct your answers to the decision maker.

When opposing counsel is asking you a question, turn to face them. Consider the question and your answer to it, before directing your answer to the decision maker. This will immediately make your responses more effective as you will be able to observe their reaction and gauge whether the answer is clearly understood. In addition, addressing the decision maker instead of opposing counsel will mean that you are less likely to be impacted by any non-verbal techniques they may have to unsettle you.

When you have finished your answer turn back to the lawyer, at your own pace. This is a signal of readiness.



### 3. Don't be afraid to seek clarification or assistance from the decision maker.

If you do not understand the question that you are being asked, always obtain clarification from the lawyer before answering. If you do not feel comfortable addressing your request to the lawyer, you will be permitted to ask the decision maker. The decision maker who can then refer any questions to the lawyer. This way you are minimising contact with the lawyer and reducing the risk of becoming unsettled or overwhelmed by contact with them.



### 4. Communicate effectively.

A legal hearing is not a natural environment. There is tendency for witnesses to mumble or speak too quickly when nervous or overwhelmed. It is important to be conscious of this and adjust your voice accordingly. Remember to take your time and speak clearly and slowly. Avoid using jargon and technical terms. But if you do, explain what the jargon or technical term means. When answering the decision maker, you may see them making notes. This is a useful reminder to you to slow down to give them time to write good notes of what you are saying. There is often no microphone in the hearing to amplify your voice, so you need to pitch their voice appropriately.



### 5. Assume nothing.

A bundle of documents will have been prepared by the legal team to assist the judge or panel with understanding the case in advance. However, you should not assume when you are giving evidence that the decision maker has had time to read everything beforehand and/or has understood your evidence. Take every opportunity to elaborate and expand on your answer, whilst remaining within the remit of your recollection.



### 6. Be aware of common cross-examination techniques.

Opposing counsel will use a variety of cross-examination techniques (for example, repeating questions, using an intimidating or aggressive tone, or displaying an overbearing stance)

to try to achieve one of the following objectives:

- Attack or undermine your evidence (for example to make you seem inconsistent, mistaken etc.)
- Attack or undermine your character (for example to make you appear incompetent, difficult to deal with etc.)
- Put forward their client's alternative explanation (the "challenge") of what happened ('I put it to you...')

Keep your knowledge of these techniques in mind throughout your court appearance. Remind yourself that it is not personal – your opposing counsel is playing a role. This will help you keep your calm and not get flustered by their actions.



### 7. Stay calm.

This point cannot be reiterated enough.

***The role of a cross-examiner is to undermine your evidence and/or your character. Do not take the bait.***

Try to ignore their tone of voice or body language. Stay calm when answering the question put to you and refrain from mimicking their actions.



### 8. Answer honestly and completely.

You are under a legal obligation to tell the truth, the whole truth and nothing but the truth. This means, quite simply,

when giving evidence that you give an honest answer, whether it helps your "side" or not.

The role of a witness is to help the decision maker come to a decision by answering questions. To be helpful the witness needs to give complete answers, not incomplete answers which could be misleading. Nor should a witness avoid answering questions – particularly difficult ones. To do so risks the witness appearing evasive.



### 9. Stick within the remit of your recollection.

When giving evidence, if you are asked about facts that you do not know, then you should say that you do not know. This is a perfectly proper answer if it is an honest one. Your answers should be limited to those matters of which you have personal knowledge, and you should not speculate or give opinion (if you are a witness of fact).



### 10. Be professional.

Whilst you are in court purely to give your evidence, appearing professional will only add weight to your credibility as a witness. Dress presentably. Ensure that you address the decision maker and opposing counsel in the correct manner.

