



# I have been asked to be a witness – what do I do?

## Being a witness in the High Court and County Court

### Why have I been asked to be a witness?

You have been asked to be a witness because you have something to tell (called 'evidence') which may help a person (a 'party') who is making or disputing a claim made through a civil court.

Depending on the type of claim, the person who started it can be called the 'claimant', 'petitioner' or 'applicant', and the person disputing it the 'defendant' or 'respondent'.

A civil court deals with non-criminal matters, for example:

- family proceedings, including divorce and adoption;
- claims for debt; and
- claims for damages to compensate for personal injury or damage to property.

A civil case can be heard in either a County Court, the Family Court or the High Court.

You might be asked to be a witness by a party, or by a party's legal representative, because, for example,

- you have seen an accident take place, and are able to say how it happened. In this case you are called a 'witness of fact'; or
- you have a special qualification, knowledge or skill (such as doctor, dentist, plumber, builder, mechanic) and can give a professional opinion (a 'report'), about injuries, the state of repair of a motor vehicle or the quality of building work done by others. In this case you are called an 'expert witness'.

## Can I refuse to be a witness?

Yes, if you are asked to be an expert witness. You must decide whether you can spare the time from your work or business to prepare a report and, perhaps, go to a court hearing.

If you are asked to be a witness of fact, you can also refuse. But the party who asks you can take steps to make you come to court to act as their witness.

Tell the party (or the party's legal representative) as soon as possible if you have something arranged, such as a holiday or hospital appointment, that may affect the dates that you can come to court.

## How can I be made to act as a witness of fact?

A party (or a party's solicitor) can ask the court to issue a Form N20 (witness summons).

Form N20 tells you that you must go to court to act as a witness and when and where to attend. If you do not go when you are told, you will be in 'contempt of court' and could be fined up to £1,000 in the County Court. In the High Court the penalty may be imprisonment or having your assets seized.

If you receive a witness summons but you really cannot get to the hearing, you can apply to have the summons withdrawn.

Before you do this, contact the party (or the party's legal representative). They may be able to help with any difficulty you have.

If they cannot help, you must go to the court where the summons was issued as quickly as possible and ask to make an application. You may have to pay a fee.

You will be given an appointment to see a judge. The judge will listen to your reasons and any objections and decide if you should be excused from acting as a witness.

Think carefully before you make the application. If your application is unsuccessful you may have to pay the costs of the party who issued the witness summons.

You may still receive a witness summons even if you have not refused to be a witness. You can also ask to be sent one. You may find it helpful to have one, for example, to show to your employer when you ask for time off work to go to the hearing.

## How will I give my evidence if I am a witness of fact?

The court will decide whether your evidence is to be given in writing, spoken or both. Your written evidence should be contained in a 'witness statement'.

The witness statement should be in your own words and should contain:

- your full name, address and occupation;
- whether the details in it are made from your own knowledge; and
- a signed statement of truth worded, "I believe that the facts stated in this witness statement are true" — followed by your signature.

If you knowingly give false information in your statement and you have verified it with a statement of truth, there may be serious consequences for you.

## How will I give my evidence if I am an expert witness?

The general rule is that your attendance at court will not be required and your evidence will be limited to your written report. If you do have to give evidence, the person asking you for your report will tell you when and where to attend or serve you with Form N20 (a witness summons).

## What should be in my report?

The report should be addressed to the court and not to the party who 'instructed' (asked) you to prepare your report.

You have a duty to the court to help the court with all matters within your expertise. Your duty to the court overrides any obligation you have to the party instructing you or paying for your report.

Your report must give details of :

- your qualifications;
- any documents or other material on which you relied in making the report;
- any person who carried out any test or experiment mentioned in the report, including their qualifications, and whether it was carried out under your supervision.

It must contain:

- a summary of any range of opinion given in the report and reasons for your own opinion;
- a statement that you understand your duty to the court and that you have complied with that duty (see above);

- a summary of any written and oral instructions given to you by the party (or parties) asking for the report; and
- a signed statement of truth verifying the contents of the report - ie. "I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matter to which they refer" — followed by your signature.

If you knowingly give false information in your report and you have verified it with a statement of truth, there may be serious consequences for you.

What a witness statement says must be the truth. If the statement is used as evidence and it is found that you have deliberately lied, criminal proceedings may be brought against you which could lead to you being fined or imprisoned.

Sometimes the opposing party in a case will agree that a particular witness statement (or report) should be used as evidence. If this happens, you may not have to go to the court hearing. **You will be told if you do not have to go to court (by the parties — not the court).**

If the parties:

- do not agree your written evidence, or
- feel that you should be at court in case the judge, or the other party, wants to ask you questions about your evidence, you will be told the time, date and place of the hearing.

## Can I claim my expenses?

Yes. The party (or the party's solicitor) who asks you to be a witness should pay:

- your costs of travelling to and from the court;
- the cost of overnight accommodation (if this is necessary);
- a reasonable amount to compensate you for any wages or income you may lose when you go to court; and
- for the time you have spent preparing a report.

There is no fixed amount for preparing an expert report. It is for you to decide how much your time is worth. You should agree an amount with the party (or the party's solicitor) and when it will be paid **before** you agree to write the report.

If you need money for travel or overnight accommodation before the hearing, you should ask the party or the solicitor. **The court cannot help.**

## What should I do to prepare for the hearing?

Make sure you have all the papers about the case that you need. Have them in the right order so that you can refer to them quickly and easily.

Be quite clear about the time, date and place of the hearing, and where the court is. Every court has its own leaflet which will tell you where the court is, and what facilities it has. The court will send you one if you ask.

If you have a disability that makes going to court or communicating difficult and/or you require any information in an alternative format, for example large print, please contact the court concerned who will be able to help you. You can find contact details for all of our courts online at [hmctscourtfinder.justice.gov.uk](http://hmctscourtfinder.justice.gov.uk)

Decide what you are going to wear. You will probably have to spend some time waiting, so choose something comfortable but smart.

To help pass the time while you wait, take a book, or ask a friend to go with you to keep you company (although the friend will not be able to claim any expenses).

If you can, it is a good idea to visit the court before hand and see where the hearing will take place. A member of the court's staff will show you where you will wait and where you will give your evidence. If you want to do this, it will help court staff if you write first and arrange a suitable time. **You will not be able to claim any expenses for making this visit.**

Some legal representatives may want you to visit their office before the hearing to go through your evidence. This is useful and will give you an idea of the sort of questions you might be asked at the hearing.

## Where will the hearing take place?

The hearing may take place in either a court room or in the judge's room. Some of these rooms have equipment to record the evidence being given.

Hearings can either be 'in public' or 'in private':

- Members of the public are allowed to be present at a hearing in public, if there is sufficient room.
- Only the people involved in the case (called the parties), their witnesses and legal representatives can be present at a hearing in private.

The judge decides whether the hearing is to be in public or in private but possession cases or cases involving a person's finances or the interests of a child are usually heard in private.

## What do I call the judge?

- A High Court judge is called 'My Lord' or 'My Lady'.
- A Circuit Judge is called 'Your Honour'.
- A District Judge is called 'Sir' or 'Madam'.

If you are unsure what type of judge will be hearing your case, ask a member of the court's staff, or the party's legal representatives.

## What should I do on the day of the hearing?

Arrive in good time. Find the party you are giving evidence for (or the legal representatives). There may be some last minute instructions for you. For example, you may be told approximately when you will be giving your evidence or that the case has been sorted out at the last moment and the hearing does not need to take place.

When you arrive at the hearing centre, report to the receptionist or the court usher (who will usually be wearing a black gown). A note will be made that you have arrived and you will be told where to wait.

If you have to leave the waiting area for any reason, tell the usher or another person involved in the case, where you can be found.

You will normally find a list of cases to be heard that day close to the waiting area. The list will tell you whether your case is taking place in public or in private. It should also tell you the name of the judge and whether he or she is a High Court, Circuit or District Judge.

## What do I do in a court or judge's room?

The court usher will normally call out your name when it is time to give your evidence. You will be shown to the witness box. You should stand up. If you find standing difficult, you can ask to sit down.

Either of the parties can ask the judge that a witness stay outside the court (or judge's) room until they are needed to give their evidence. If this happens, and the judge agrees, you will be told. You will be shown where to wait until the usher calls you into the hearing.

In a judge's room, there is no witness box. You will normally sit around a large table with others involved in the case. Otherwise what you have to do is the same as you would do in court.

You may be asked to swear (take an oath) that what you say is the truth. An oath is taken on the bible or a holy book. If you prefer, you can give a promise to tell the truth, called 'affirming'. It will help if you tell the usher you want to affirm or on which particular holy book you wish to be sworn, **before** you go into the hearing.

You will first be asked questions about your statement (or report) if you have made one, by the legal representatives for the party who asked you to be a witness. Then the opposing party (or the legal representatives) will ask you questions. This is called 'cross examination'. The judge might also want to ask you some questions.

Sometimes a barrister rather than a legal representatives will ask you questions. In court a barrister will wear a wig and gown.

Remember to speak clearly, giving your answers to the judge and not to the person who asks the questions. If you do not understand the question, or cannot hear what is said, say so. **If you need to refer to your papers, you must ask the judge if you may do so.**

When you have given your evidence you may be told that you are 'released'. This means that you are free to leave the hearing.

**Only leave the court building if you are released or the hearing of the case is finished.** Sometimes you may be released but asked to come back later that day or another day.