

BAR STANDARDS BOARD

REGULATING BARRISTERS

Guidance notes for witnesses called to give evidence at Disciplinary Tribunals

1. Background

- 1.1. Giving evidence at a court or a tribunal as a witness can be very worrying, particularly if it is your first time and you don't know what to expect. This guidance is intended to give you an idea of what to expect when attending to give evidence at a Disciplinary Tribunal.

2. Before the Hearing

- 2.1. Before the hearing takes place, the Bar Standards Board will have appointed a Case Officer and he or she will have been in touch with you about giving evidence. The Case Officer will know about the case and will be available to provide practical information about the proceedings. However, briefly, before a barrister, authorised body or any person regulated by the BSB, can be found guilty of professional misconduct a Tribunal will need to hear and consider all the evidence, including hearing from anyone who has knowledge about what happened. If you are asked to be a witness at a Disciplinary Tribunal, you will play an important part in ensuring that the Tribunal has the information it needs about the conduct/behaviour of the barrister, person or body so that it can reach an appropriate decision.
- 2.2. If it is necessary for you to be a witness at a Disciplinary Tribunal hearing, we will inform you as soon as possible. We will also advise you as soon as we can of the date, start time and address at which the hearing will take place. It is not necessary for witnesses to attend the hearing to give evidence in person and where possible we will arrange for people to give evidence by video-link. This is often far more convenient for witnesses as it avoids time taken up in travelling to the venue.

- 2.3. **Reasonable adjustments:** The Bar Standards Board is happy to make any reasonable adjustments that may be needed in relation to any aspect of your role as a witness. Please ask the Bar Standards Board's Case Officer if you need any other information including directions and transport routes either to the venue or to the place from where you will be giving evidence if you are doing so by video-link. You should tell the Case Officer if you have a disability or other special needs that mean you will need help in getting to the hearing or the video-conference suite or moving about the building in which the hearing takes place or from where you will give evidence.
- 2.4. If you are unable to attend the hearing on the day because you are too ill or some other emergency has arisen, please contact the Case Officer as quickly as possible to let them know. It may be possible for you to give evidence on another day if the Tribunal is due to run for more than one day. Alternatively the Tribunal may be prepared to accept an earlier written statement although this cannot be guaranteed.
- 2.5. When you are attending a Disciplinary Tribunal to give evidence, you may find it useful to bring a friend or a relative. You don't have to attend the hearing alone.
- 2.6. At the hearing you will be asked to either swear on your holy book or to affirm that you will tell the whole truth. By making a solemn promise to tell the truth and by giving your evidence to the Tribunal in person you will help to make it possible for them to understand what really happened. Tribunal hearings are usually held in public and therefore members of the public are allowed to come and watch what happens. This can include friends and relatives of the people involved in the case and other people such as journalists although this is comparatively rare. Other witnesses who have not already been heard will be excluded from the hearing until their evidence is given. Once they are released as a witness, then and only then, they may sit in on the hearing.
- 2.7. Tribunal hearings are, on the whole, less formal than court proceedings. The proceedings do not take place in a courtroom. The Tribunal will comprise a Judge, two lay representatives, and two barristers. No wigs and gowns are worn and everybody, including the witnesses, remains seated during the whole of the proceedings.

3. On the day

- 3.1. On the day that you are due to give evidence to the Tribunal, we will try to ensure that you have to wait as little time as possible before you are called to give evidence. You may however wish to consider bringing with you something to read or do whilst you are waiting to be called.
- 3.2. If you are giving evidence in person and would like to be shown around the room where the hearing is to take place to familiarise yourself, please let the BSB Case Officer know. He or she will be pleased to show you round.
- 3.3. Very rarely, some cases are delayed or even put off until another date. Sometimes a settlement is reached; for example the person admits the charges against them on the day, so that you cannot be told until the last minute that your evidence is not needed.
- 3.4. When you arrive you will normally be asked to wait outside the room in which the hearing is taking place until it is your turn to give evidence. You will not usually be able to hear the evidence of other witnesses before you give your own evidence.
- 3.5. If you are giving evidence in person, you will be shown where to sit when called into the Tribunal Room. If you are giving evidence in person, the video-link will be activated when the Tribunal is ready to hear your evidence. In either case, you will then be asked to take the oath. This means that you have to swear to tell the truth on the Bible or the holy book of your religion. If you prefer, you can “affirm”, that is to promise to tell the truth. If you want to do this, you can tell the BSB representative in advance. Alternatively, you can tell the Tribunal Clerk when he or she asks you whether you will take the oath or whether you will affirm.
- 3.6. The Clerk to the Tribunal will normally introduce himself or herself to you. It is their function to make sure that all the people who should be in the room are there, and

that what is supposed to happen happens on time and in the right order. They are also usually responsible for going outside the Tribunal room and calling witnesses in.

- 3.7. If you are a witness for the BSB, the barrister instructed on behalf of the BSB will ask you questions first. Then the defendant or his/her representative will ask questions – this is called cross-examination. When the cross-examination has finished, the BSB's representative may ask you more questions. The members of the Tribunal may also ask you questions. Very occasionally you may be asked to return more than once to give more evidence.

4. Giving evidence

- 4.1. Giving evidence in front of the Tribunal is usually not the same as when you first made a witness statement. Instead, the prosecuting barrister and the representative for the person facing disciplinary charges (or the person himself/herself if they are unrepresented) will ask you questions – they may seem to repeat questions or ask them in different ways. Please remember the following:

- In most cases, the person facing disciplinary charges will not have admitted guilt. Your evidence will help the Tribunal to decide whether he or she is guilty or not.
- If you don't know or are not sure of the answer to any questions you are asked, just say so. You can ask the judge chairing the Tribunal for advice about whether you should answer the question.
- Take your time, speak slowly, clearly and loudly enough for the Tribunal and the parties to hear.
- Ask for questions to be repeated if you don't understand or cannot hear. If you do not understand the question being asked of you, please ask for clarification.

- 4.2. Many people are worried about being cross-examined. It is important to remember the following:

- You are not on trial. The role of the person cross-examining you is not to make people think you are stupid, or call you a liar. It is quite possible that the person

cross-examining you will seek to test your recollection and that he or she may press you to change your version of events or accept theirs. It is sometimes the case that witnesses do feel during cross-examination that their recollection is not as clear as they had thought it was. If that happens to you, you should not be reluctant or frightened to say so. If the questions become too aggressive, the person who called you as a witness has the right to ask the judge chairing the Tribunal to stop it. The Tribunal can also ask the person to stop the questions or to phrase the question(s) in a different way.

- It isn't personal – it's the job of the person cross-examining you to make sure you have not made a mistake.
- The principal is that the person facing charges before the tribunal is innocent until proven guilty. Making sure a witness's evidence really proves something is an essential part of the process. It is important to bear in mind that it is normally only the most serious cases that are referred to a Disciplinary Tribunal. The person facing charges before the Tribunal will potentially be facing serious consequences should he or she, or their "company", be found guilty of professional misconduct – they may possibly risk losing their livelihood. The person facing charges is also likely therefore to be extremely nervous and anxious. If you are clear in your own mind that the evidence you are giving is accurate, you should say so. If you are not clear that it is accurate, you should say that too.

4.3. After you have finished giving evidence you may be told that you are "released". This means that you can leave, but, if you have attended to give evidence in person, you can stay and listen to the rest of the case if you want to. Sometimes you might have to stay after you have given evidence. This will only happen in the unlikely event that something new has come up while you are giving evidence.

4.4. There are occasions where, during the course of you giving evidence, the Tribunal may adjourn the hearing for a number of reasons (the main reasons being lunch or the end of the day). Should this occur, and you have not finished giving your evidence and you have not been released by the Chair of the Tribunal, you will be told that during the adjournment you are not to discuss your evidence or the case

with any other witnesses or people involved in the hearing. These will include the BSB representative, the Case Officer, the defendant or defendant's representative.

- 4.5. If you are giving evidence in person at the Tribunal you may need to stay overnight in London if you have not finished giving your evidence and you live some distance from London, where you cannot reasonably be expected to travel there and back in one day. Should this happen, the BSB will pay for and provide overnight accommodation for you. (Please note that we are only able to pay for your accommodation and not that of anyone else who is not a witness but may have accompanied you to the hearing, unless that person is a carer required to accompany you due to a disability). We will endeavour to forewarn you of this, but this may not always be possible. We will, of course, help to make the necessary arrangements.

5. Expenses

- 5.1. If you are called by the BSB to give evidence we will pay your reasonable travelling expenses to the venue, normally standard class travel, and in certain circumstances (as described above), pay for your overnight accommodation if you are attending in person and live some way from central London. We cannot pay for loss of earnings. One of the BSB's Case Officers will discuss with you, prior to the hearing where possible, what expenses you may be entitled to claim for. If you have particular needs or your circumstances require special arrangements, please raise these as soon as possible with the Case Officer.
- 5.2. Should you be required to stay overnight, the BSB will pay for and provide overnight accommodation in a hotel including breakfast. Should an evening meal be required the BSB will pay up to £20 towards your evening meal. This does not include alcoholic drinks.
- 5.3. In all circumstances relating to expenses, receipts are required. The BSB will not be able to reimburse you, should you fail to provide a receipt for expenses incurred.

6. Further information

- 6.1. Please remember that whilst the BSB's staff cannot tell you what to say when giving your evidence, the Case Officers will be on hand both before and after you have given evidence, to provide you with information on the procedure and will try to assist with any other queries that you might have.
- 6.2. If you require further information after the hearing or have concerns about something that happened at the hearing, please raise these at the earliest possible opportunity. We will try to answer all your enquiries.
- 6.3. The BSB's Case Officers can be contacted at the BSB's Offices at:

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