

Advocacy in the Employment Tribunal

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Preliminary Points (1)

- What are the disputed legal issues in the case?
- What factual issues do they give rise to?
- What is your case in relation to those issues?
- What is your opponent's case?

Preliminary Points (2)

- Chronologies and their use
- The skeleton: when needed and its contents
- Compare its role to that of closing submissions
- Glossary, cast list, organogram, lists of disputed/agreed facts

Review of your own case

- How will you persuade the Tribunal that your case in relation to those disputed issues is more likely to be true?
- What evidence will you put forward?
- Prepare (or consider) statements of your own witnesses
- When to prepare a draft of your closing submissions

Preparing for XX of opposing witnesses

- What kind of witness is it? helpful, hostile, neutral?
- If damaging, what is the reason? mistaken, prejudiced, lying?
- What elements of the witness' evidence are implausible?
- And what about inconsistency?

Dealing with your own witnesses

- Impact of tribunal reading the statements in advance
- Preparing the witness for xx
- Supplementaries: why the Tribunal will not like them
- Applying to ask supplementaries

Leading

- What is a leading question?
- When you can and cannot lead - XIC and RX when in dispute
- How to avoid leading questions - what when why how where?
- Explain, describe, tell us etc

What to do during XX of your witness

- Taking a note of XX
- Whether to object
- When and how to object

The Process of Cross-examining (1)

- Do you need to XX?
- Keep it as short as you can
- Know how long you are going to be
- Don't be unnecessarily nasty
- Should you call the witness a liar?

The Process of Cross-examining (2)

- Work from headings, rather than a script
- Use closed questions only
- Do a lot of leading
- Dealing with an evasive witness
- Dealing with an argumentative witness
- Putting your case
- Noting the answers

Tribunal Questions

- Irrelevant? You may think so but....
- What to do if you think a question is improper
- How you should treat proper questions

Re-examination (RX)

- Do you need to RX?
- Judge the state the witness is in
- Remember no leading, no new matters
- Is there a relevant helpful document?
- Did the witness appear to be cut off when answering?
Is context needed?

Closing Submissions (1)

- Using the issues as a structure
- Use of written submissions
- Foundation must be laid for any comment
- Keep it short
- What is the pivotal point?
- Make any necessary concessions

Closing Submissions (2)

- Deal with the ways in which the evidence assists your case
- Make submissions on credibility
- Make sure you deal with the weak points in your own case
- Never throw down the gauntlet to the Tribunal!

Closing Submissions (3)

- Use of authorities
- Deal with questions and points raised during the hearing by the Tribunal
- Dealing with judicial interruptions
- Show the Tribunal “the way home”

Remote and Hybrid Hearings (1)

- There is a useful webinar at www.cloisters.com/news/remote-hearings-webinar-available-now/
- Consider whether witnesses need to attend professional premises
- Help with technology and negotiating electronic documents is acceptable
- Multi-screens present a challenge
- Practice with technology needed to acquire confidence
- Ensure your witness has an unmarked bundle if hard copy used

Remote and Hybrid Hearings (2)

- Encourage witnesses to communicate with the tribunal if there is a problem
- Have a channel available to take instructions from client etc e g WhatsApp, email, text
- Visual clues will be limited
- Speak more slowly
- Evidence takes longer, so ensure timetable allows
- Intense process, so breaks needed
- Set up Zoom meetings for end of day, lunchtime etc