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{ MERGEFIELD LINKNAME_TITLE_1 } { MERGEFIELD LINKNAME_INITIALS_1 } {
MERGEFIELD LINKNAME_SURNAME_1 }
{ MERGEFIELD CALCULATION_ADDRESS }

Dear { MERGEFIELD LINKNAME_TITLE_1 } { MERGEFIELD LINKNAME_SURNAME_1 }

Re: Preparation of your witness statement

I write further to my letter of [DATE].

As you know, we need to prepare a witness statement to deal with all the matters that the tribunal must consider in your tribunal claim.

I thought it would be useful if, at this stage, I set out the steps that will be taken to prepare your witness statement. I have also included some general advice on how to prepare to give your evidence and how to deal with cross-examination by the other side's representative.

YOUR WITNESS STATEMENT

Early preparation of your statement will ensure that:

- (a) Your recollection is set down on paper while matters are as fresh in your mind and before they are subject to challenge;
- (b) You have a proper opportunity to think about the matters and/or events you are dealing with and your evidence is presented in a clear and logical fashion;
- (c) You have the chance to thoroughly consider any documents referred to in your statement;
- (d) The words used in the statement are your own, you are comfortable with what you have said, and you are not committed to say anything that you do not really mean; and
- (e) We can identify any areas of difficulty or concern at an early stage so that you can be properly prepared to deal with them at the hearing.

We are likely to prepare several draft witness statements as part of producing a final version. The tribunal is likely to order the parties to exchange witness statements in advance of the hearing and you should therefore have the opportunity to read what is being said by the witnesses.

PREPARING FOR THE HEARING

Once your statement has been finalised, in preparation for giving evidence at the hearing you should practise reading your statement slowly out loud a number of times. Doing this should avoid two situations that commonly make witnesses look foolish and damage their credibility:

(a) A witness who reads out their statement in a faltering fashion suggests that the words they are reading are unfamiliar. The tribunal may conclude that the words they are hearing are not their own; or

(b) A witness contradicts their statement when they answer a question in cross-examination.

A witness who remains calm and sticks to their evidence is difficult for even a skilled cross-examiner to undermine.

GIVING EVIDENCE AT THE HEARING

When you are called to give evidence you will be asked to take the oath. This will involve either swearing on a holy book or, if you are not religious, affirming. Most tribunals will then ask you to read out your witness statement. You will be asked to pause from time to time while the tribunal looks at documents that have been referred to in your statement. Some tribunals, however, prefer to read the statements to themselves.

Once you have finished reading out your statement, or the tribunal has read it (as the case may be), our representative will ask you "supplementary questions". These deal with matters that have been addressed in the other party's witness statements that may not have been addressed in your own. These questions will also enable you to get comfortable with the process of answering questions before the tribunal.

Once supplemental questions have been completed, the other party's representative will have the opportunity to cross-examine you. Since this is the part of giving evidence that most often worries witnesses, I have set out some advice below about how to give evidence effectively when being cross-examined.

After you have been cross-examined, the [tribunal **OR** employment judge] may have questions for you. Those questions may be put by the legally-qualified employment judge or one of the two "wing members". One wing member will have an employee representative background and the other will have a background in advising employers.

Finally, our representative will be permitted to ask you questions about matters that have come up during your cross-examination.

HOW TO GIVE EVIDENCE EFFECTIVELY

This is very simple: do what the oath requires of you. Tell the truth, the whole truth and nothing but the truth.

Dealing with possibilities

You should only tell the tribunal things you know for a fact. The cross-examiner may ask you to speculate about whether it is possible that a particular event occurred. Contrary to what is commonly assumed, you cannot refuse to answer a question merely because it is hypothetical. The issues commonly dealt with by tribunals often involve the consideration of hypothetical matters.

If you are asked whether something was possible, unless you tell the tribunal how likely you think it was they will be left guessing. Therefore, if you think that there was a slight possibility of that something happening or having happened, rather than saying that it was possible you should let the tribunal know how likely it was. For example, you could say that it was possible but would have been very unlikely.

When you can't remember something

If you have no recollection of something you are asked about, don't be tempted to tell the tribunal what you assume must have happened as if you know it for a matter of fact. You should say that you do not recall the particular matter in issue but think it likely that a particular scenario would have happened and explain why you think that to be the case. For example, "I do not recall if I typed this document immediately after the meeting, but I think it likely that I would have done as that is my usual practice". Do not say: "I would have typed it up immediately", and hope that no-one notices that you can't remember what actually happened. The phrase "would have" is heard so often in the tribunal that it amounts to an admission that a witness can't remember. Be honest or the cross-examiner will force you to admit you can't remember and you will look foolish for not having been honest in the first place.

When you would rather not remember something

There may be something that you are tempted to forget and suggest that you have no recollection of. However, you should still be honest. In relation to serious matters, the tribunal will simply not believe you if you tell them you can't remember. They will expect serious allegations (for example, that a conversation had included an allegation of dishonesty or a threat of violence) to stick in your memory and therefore be matters that you will deal with in your evidence.

You don't have to be perfect

Do not worry about admitting that you or your organisation were less than perfect in anything you did. Generally, tribunal proceedings are about persuading the panel that you are a reasonable person who has acted in a reasonable manner. Defending the indefensible will give your cross-examiner the chance to make you look unreasonable.

Cross-examiners frequently ask witnesses whether a hypothetical course of conduct would have been reasonable. The hypothetical course of conduct put to you will be eminently reasonable and you will agree that it is. You then find yourself being treated as if you have accepted that what you actually did was unreasonable. For example, a cross-examiner may suggest that postponing a disciplinary meeting as a result of an employee's sickness absence would have been a reasonable step. Where, however, you have already postponed the hearing on a number of previous occasions, you may consider that pressing ahead was equally reasonable.

Being asked for a yes or no answer

The most popular line of attack for a cross-examiner is the closed question. You will become familiar with the phrase "it's a yes or no answer". You probably won't agree.

The temptation when faced with an unreasonably restrictive question is to not answer it and instead to answer the question you think you should have been asked. However, this will make you appear evasive and unhelpful and will not endear you to the tribunal. It is better to either answer yes or no, but to state that is not a complete answer and there are other things the tribunal should know in order to be able to understand it. Then, the tribunal will either let you expand your answer immediately or you will at least have brought your representative's attention to this issue as being one that you should be taken back to in re-examination.

Being referred to documents

You may find the cross-examiner posing an impossible memory test by referring to a document in the hearing bundle (for example, they may suggest "this isn't mentioned anywhere in the minutes, is it?").

The temptation is to avoid appearing as if you do not know what the document says by agreeing with the statement. Instead you should stay calm, ask to be taken to the relevant document in the bundle and to be given an opportunity to read it. If you think that the relevant matter is dealt with in another document, but can't remember which one, tell the tribunal that you think a relevant document exists and look through the bundle for it.

Answer the question and avoid repetition

You should keep your answers to the questions that you are asked. You can undermine your credibility and the strength of your evidence if you take each question as an opportunity to repeat the same thing.

DEALING WITH THE CROSS-EXAMINER

Do not be tempted to argue with the cross-examiner. You will come across as being deliberately difficult and evasive, which tribunals hate. It is far better to stay calm and focus on dealing with the questions put to you.

If there are any matters of particular concern to you about either the evidence you are to give or that may be put to you in cross-examination you should let me know now.

So that we can start on the preparation of your statement [DETAILS OF MEETING OR TELEPHONING PARTY OR WITNESS TO START THE PROCESS].

Yours sincerely

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