

Conducting cross examination

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What is involved

Cross examination takes place after the examination in chief. So in a civil trial involving one defendant witnesses for the claimant would give evidence in chief before being cross examined by the advocate for the defendant.

Cross examination has two key aims.

- First, to advance your case by putting it to witnesses from the other side and getting them to say things which support your case. If you fail to put your case on a particular issue it may be assumed that you accept the other side's account of that issue and you will not be able to put your account of it in your closing speech.
- Second, to undermine the case of the other side by exposing weaknesses in the reliability and credibility of its evidence. This usually means attempting to show that a witness' account is mistaken, inconsistent or deceitful.

Cross examination is often considered to be the most difficult form of advocacy. As an advocate you need to:

- use advanced skills of argument and persuasion
- think on your feet
- handle witnesses for the other side who are presumed to be hostile to your case.

Your obligations

Conducting an effective cross examination can help you meet some requirements of our Competence Statement

[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/>] including, but not limited to:

- B5 Undertake effective written and spoken advocacy.
[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/#b5>]
- C1 Communicate clearly and effectively, orally and in writing.
[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/#c1>]



- C3 Establish and maintain effective and professional relations with other people. [<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/#c3>]

Conducting an effective cross examination is also a requirement of our Statement of standards for solicitor higher court advocates.

[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/?version=4ab095>]

Open all [#]

How to plan a cross examination

Focus on the issues in dispute

Your cross examination should be structured around the issues in dispute that you need to cover and in what order. Based on your analysis of these issues, which should be clear from your case theory, your plan should map out:

- What you want witness(es) for the other side to say on each issue in dispute to support your case and/or harm the case of the other side.
- What questions you need to ask to get them to say those things.

Prepare questions

In general, the questions you prepare will be leading questions designed to elicit a specific response that supports your case and/or harms the case of your opponent.

You should be able to anticipate the response to each leading question, also called closed questions. This is because, in most cases, the only possible response to a leading question is 'yes', 'no' or 'I don't know'.

This is a key difference between cross examination and examination in chief, which relies on open questions. Open questions permit the witness to say what they want in response, which is likely to support the case of the other side. The Conducting examination in chief

[<https://www.sra.org.uk/solicitors/resources/advocacy/conducting-examination-chief/>] section of these advocacy resources includes examples of leading questions and open questions on the same issue.

However, it is too simplistic to say that open questions should always be avoided in cross examination. You should consider in advance whether a leading or open question is more likely to generate valuable evidence on a particular factual matter.

Other tips

Your questions should be:

- Relevant and founded on evidence. Putting unfounded questions or allegations to the other side can harm your credibility.
- Short, clear and well ordered. Generally, each question should be limited to one issue. This controls the witness and helps to lead them, step by step, to bigger points or admissions.
- Topped and tailed. Your first and final points are likely to be the most important so make them as strong as possible.
- Linked to your case theory. Make sure all your questions help to establish your case theory.
- Carefully thought through but not scripted as this could make it hard for you to think on your feet and respond to the answers given by a witness.

Preparing during a trial

Some of your planning will happen during a trial: you need to pay close attention to the evidence given by the other side during examination in chief and adapt your cross examination accordingly.

Key things to consider when observing the examination in chief:

- Did the witness give any evidence about an issue in dispute which you weren't already aware of and which you need to focus on in your cross examination? You may deal with this by asking them to confirm the evidence and then question them about it, highlighting any inconsistencies with previous statements.
- Did the witness reveal any previously unknown weaknesses in their evidence such as an inconsistency with the account they gave in a previous statement? If you notice any inconsistencies you should ask the witness to repeat what they said in evidence in chief, then point out the inconsistency with what they said in a previous statement.
- Did the witness say anything that is favourable to your case which you want them to repeat or develop in cross examination?
- Did the witness say anything that is harmful to your case which you need to try to undermine in cross examination?

Handling witnesses for the other side

Behaving appropriately with witnesses

Competence B5f. of our Competence Statement

[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence->

statement/] requires you to deal with witnesses appropriately. To meet this requirement:

- You must never bully, harass or intimidate any witness during cross examination even though witnesses for the other side are presumed to be hostile to your case and even if they are rude.
- Your cross examination should remain fair, calm and composed so that the witness cooperates with you and to maintain your credibility as an advocate.

Firm and robust questioning

Firm and robust questioning is an important part of cross examination and different from inappropriate questions which bully, harass or intimidate a witness.

Here is an example of a firm and robust question and an inappropriate question, on the same issue:

- Appropriate question - 'You left your daughter alone in the car for two hours, didn't you?'
- Inappropriate question - 'You're a bad mother, aren't you?'

Accusing a witness of lying

You should only accuse a witness of lying during cross examination if you have evidence to support that accusation. Most witnesses are not trying to deceive the court - they are giving their version of events which may be unreliable because of:

- an honest mistake
- a lack of knowledge
- poor memory
- the circumstances at play when the events took place.

For example, the evidence given by an eyewitness to a crime or road traffic collision may be unreliable because:

- they were standing too far away
- there was poor visibility
- they have poor eyesight
- they only caught a glimpse of the event
- the event was a long time ago.

Commenting on the quality of a witness's answer

If a witness gives an unhelpful answer, you should move on to avoid making it worse.

You should avoid commenting on the quality of a witness's answer in cross examination or arguing with them about an answer you disagree with. This can undermine your credibility and make it harder to get the witness to cooperate.

You can, however, comment on the quality of a witness's cross examination evidence and the weight the court should attach to it during your closing speech.

Vulnerable witnesses

Vulnerable witnesses may find it difficult to understand or respond to questions and be more affected by the stress of appearing in court. You can use the Meeting the needs of vulnerable people

[<https://www.sra.org.uk/solicitors/resources/advocacy/meeting-needs-vulnerable-people/>]

section of these advocacy resources to help you adapt your cross examination to vulnerable witnesses.

Our Statement of standards for higher court advocates

[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/>] includes specific requirements in relation to vulnerable witnesses.

Expert witnesses

The general principles of cross examination apply to expert witnesses but your cross examination may be more technical. You need to be able to test their expert evidence and you may need to challenge their credibility. For example:

- There may be genuine debate on elements of their evidence within their professional community.
- You may have called evidence from your own expert which challenges the evidence given by the expert for the other side.
- The evidence they gave might go beyond their area of expertise or level of experience.
- There may be questions about bias or a lack of independence.
- Their involvement in other cases may have been criticised.

To be able to cross examine an expert witness on points like these you need to have sufficient knowledge of their area of expertise and



professional background and fully understand the evidence they have given for the other side.

10 tips for cross examination

1. Prepare thoroughly but don't write a script.
2. Keep the two aims of cross examination in mind: putting your case and undermining the case of the other side.
3. Carefully consider whether a leading or open question is more likely to generate valuable evidence on a particular factual matter.
4. Keep questions short and clear by limiting them to one issue or query at a time.
5. Make sure your questions are relevant and support your case theory.
6. Make sure that every accusation is founded on evidence.
7. Start and finish with strong points.
8. Remain fair, calm and composed at all times.
9. Be firm and robust but never raise your voice, bully, harass or intimidate a witness.
10. Move on from unhelpful answers which weaken your case.

Cross examination case study

This case study could happen in a civil or criminal trial:

During examination in chief a witness for the other side said that they saw your client's blue car. This is a key issue in dispute.

Your case is that the witness is mistaken. During cross examination you need to show that the witness couldn't recognise your client's car because it was dark, they were too far away, the road was busy and your client's car is generic.

You could ask these questions:

'Ms. X, I'm going to ask you about the car you saw on the night in question.

- It was 10:30pm, wasn't it?
- So it was dark?
- And you weren't close to the car in question, were you?
- In fact, you were standing in a car park over 20 metres away from the road that the car was driving on, weren't you?
- There was also lots of traffic on the road in question, wasn't there?



- In fact, traffic had been diverted onto the road from a nearby motorway, hadn't it?
- So the road was especially busy that night, wasn't it?
- The darkness, the traffic and your distance from the road explain why you couldn't read the licence plate, doesn't it?
- It also explains why you couldn't see who was driving the car in question, doesn't it?
- The darkness, traffic and your distance from the road means you can't be certain that the car was blue, can you?
- It means you can't be certain that the car wasn't another similar colour, like black or dark green, can you?
- Moving on to the make and model of my client's car, it's fair to say that it's a generic car, isn't it?
- There's nothing special or unusual about it, is there?
- So, it would be very easy for someone to mistake it for a similar but different car, wouldn't it?
- Especially if it was dark, there was lots of traffic and the person was standing a long way from the road?
- So, you accept that all these factors were at play on the night in question then?
- As a result, you can't be certain as to the car's exact make and model, can you?