



Expert Witness Roles and Realities

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SCENARIOS

- Planning Appeals (written reps, hearings and Public Inquiries)
- Development Consent Order Hearings (major infrastructure projects)
- Select Committee Hearings
- Abatement Notice Appeals and Prosecutions (statutory nuisance)
- Licence Appeals (premises licences – regulated entertainment)
- Health and Safety Notice Appeals and Prosecutions (noise exposure)
- Civil claims (private nuisance, hearing loss, disputes)

PUBLIC INQUIRIES

- Statement of Case, Outline statements
- Pre-Inquiry meeting
- Proof of evidence, rebuttals, exhibits, SoCG and summary proofs
- Heard by a Planning Inspector in a formal setting
- Advocates formally present cases
- At least two sides – sometimes more – interested parties may contribute
- Decision based on balancing planning policies and material considerations
- Conditions session

ABATEMENT NOTICE APPEALS

- Heard by a bench of Magistrates or a District Judge
- Usually formal advocates but self representation not uncommon
- Burden of evidence – on the ‘balance of probabilities’
- Statutory grounds for appeal
- Blanket appeals common
- Witness Statement, Rebuttal Statements and exhibits
- Statement of Common Ground

ABATEMENT NOTICE PROSECUTIONS

- Heard by a bench of Magistrates or a District Judge
- Usually formal advocates but self representation not uncommon
- Burden of evidence – on the ‘beyond reasonable doubt’
- The nature of the offence may be very wide or very narrow
- Witness Statement, Rebuttal Statements and exhibits
- Statement of Common Ground

INITIAL CONSIDERATIONS

- Consider your position prior to accepting the appointment – if the client's course is already set will your opinion support their position?
- Critically review the technical evidence - if you did not gather the technical evidence yourself ensure that you understand how it was done - consider the need for the assessor to give evidence
- Consider the nature of the decision before the adjudicator. How does your evidence assist with that decision?
- Consider the adequacy of the evidence - are there gaps - can you still gather more evidence or is it too late?
- Do you have access to any technical evidence from the other side yet? Does that necessitate additional assessments from you?

PREPARING YOUR WRITTEN EVIDENCE

- Your statement/proof will need to exhibit and explain your technical evidence in terms accessible to the adjudicator(s)
- It will also, crucially, need to provide your expert opinion on what that technical evidence means in terms of the crucial policy/legal questions
- Various approaches to rebuttal. Numerous minor criticisms may detract from your key points but, conversely, unchallenged evidence may be accepted as fact. Agree/develop your approach with your advocate.
- If possible seek areas of agreement with the other side's expert as early as possible and work these into a SoCG. These *should* then be accepted as fact and allow greater focus on the outstanding issues

PREPARING YOUR WRITTEN EVIDENCE 2

- Your advocate – often a barrister or QC –will want your evidence to complement and dovetail with the other statements and exhibits and with the direction of his/her argument
- He/she may also help to identify weaknesses in your evidence that could be exploited in cross examination
- Evidential reviews and case conferences will help them to develop a cohesive case and will assist you in producing robust evidence
- You are responsible for your expert evidence – do not be pressured into making changes which are not entirely true or misrepresent your expert opinion!

ASSESSING VERBAL EVIDENCE

- Listen carefully to other's evidence – particularly your opposite number. Their verbal evidence should not introduce new issues – but it might...
- You may strongly disagree with their verbal evidence. If you are yet to give evidence you may address those points when you do so, otherwise advise your advocate to address them in cross or in closing
- If you have already given evidence, they might challenge your testimony. Keep notes to assist your advocate in cross

PRESENTING EVIDENCE IN CHIEF

- Your evidence in chief will be led by your advocate but you should direct your answers to the bench
- You may be asked to read from your summary evidence to reinforce key points
- You may be asked for your opinion on evidence from other witnesses
- Do not be rushed – consider your responses carefully
- Refer to the evidence bundles if necessary
- Do not allow your advocate to lead you into giving evidence which you are not entirely comfortable with – be fair

CROSS EXAMINATION

- Questions from the opposition advocate but answers to the bench
- May attempt to undermine your evidence – seek sequential concessions
- May direct you to aspects of standards/policy documents which might appear to conflict with your approach or conclusions when read in isolation
- Do not be afraid to challenge when an advocate is seeking to misrepresent evidence through taking points out of context - make your points directly to the adjudicator
- Do not be led, bullied or rushed – these are common ploys
- Your advocate can re-examine afterwards and this may be followed by additional questions from the adjudicator (and interested parties in PIs)

TOP TIPS FOR THE NOVICE

- Nerves prior to giving evidence are normal – there are techniques for control and nerves disappear once you've started giving evidence
- Advocates can be theatrical and can try to convey impressions with body language, mannerisms and tone of voice – adjudicators are used to this
- As an expert your verbal evidence should be (and should appear to be) dispassionate, considered, balanced and sincere. Don't waffle
- Show respect to all parties, but particularly non-professionals whom are involved on a personal level. Its not just a job to them!
- Don't forget to draft/agree conditions during Public Inquiries – if they are contentious ask the Inspector to leave enough time to consider them

THANK YOU FOR LISTENING

ANY QUESTIONS?

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