

PRACTICE DIRECTION 11: Representatives and Witnesses

- 11.1 REPRESENTATIVES:** A person does not need to be represented to appear before the Appeal Tribunal. If a party engages a professional person to act on their behalf, that professional should ensure they comply with the requirements set out in this Practice Direction.
- 11.2 NON PROFESSIONAL REPRESENTATIVES:** If a party seeks to be represented by a friend, colleague or family member who is not acting in the professional capacity of an advocate, the person seeking to be represented must complete an Authorisation to Act form. That document must be filed with the Tribunal as early as possible in the proceedings and before the representative undertakes activities in representing the party. The Authority to Act form is on the Tribunal's website.
- 11.3 NOTICE OF APPEARANCE:** Any professional person (solicitor or other professional) who is engaged to appear as an advocate for a party must complete and file with the Tribunal a [Notice of Appearance](#) as soon as they receive instructions to act.
- 11.4 ACTING AS BOTH WITNESS AND ADVOCATE:** Please read *Practice Direction 12 – Expert Witnesses* in relation to Expert Witnesses and their obligations. Given the inherent conflict between the role of an advocate and the impartial expectations of an expert witness, any person who takes on both roles of advocate and expert witness is on notice that greater critical scrutiny will be applied to the evidence of that person than would have been applied had they acted purely as an expert witness.
- 11.5 DUTIES AND ROLES OF REPRESENTATIVE/ADVOCATE:** A representative acts for another person. That person must be fully aware that the decisions that a representative makes will be binding upon them and therefore must ensure that they have given that representative full and clear instructions as to the conduct of the proceedings. A representative and/or advocate must attend all listings of the Tribunal's hearings. A representative/advocate is responsible for co-ordinating and conducting the case of a party. As with any witness, the representative has a responsibility and duty to the Court and Tribunal and must not knowingly mislead the Tribunal in the conduct of any proceedings.
- 11.6 WITNESSES:** In relation to expert witnesses, please see the separate *Practice Direction 12 – Expert Witnesses* for expert witnesses. In giving evidence at the Tribunal as a non-expert witness it is necessary to complete a Statement of Evidence. Please see *Practice Direction 8 – Material & Evidence*. All witnesses must be present at a hearing of the Tribunal to be questioned about the contents of their statement of evidence and may only be excused from attending proceedings with the consent of all parties and the Tribunal. An application for a witness not to attend a hearing must be made at least two weeks before the hearing date. Witnesses may also give evidence by telephone or video link up – but only on application at least two weeks before the hearing. Such application may be declined if the witness needs to be shown hard copy documents in the course of questioning.

- 11.7 EXPERT WITNESSES AND NON-EXPERT WITNESSES:** Ordinarily a witness who wishes to express an opinion must be an expert in a relevant field to be qualified to give evidence of that nature. The Tribunal, since January 2006, in accordance with Section 16 (1) (c) has allowed evidence to be given by non-expert witnesses who are parties to the proceedings and wish to express their own personal opinions. Evidence will not be excluded on the basis that the party expressing the opinion has no expertise in the field in which the opinion is expressed. This does not allow parties to call non-expert witnesses other than themselves to give evidence. The weight given by the Tribunal to expressions of opinion by non-expert witnesses is a matter for the Tribunal, having regard to all relevant matters.
- 11.8 DUTIES AND ROLES OF WITNESSES:** A witness must prepare a Statement of Evidence in accordance with the Tribunal's Practice Directions - *Practice Direction 12 – Expert Witnesses*, and *Practice Direction 8 – Material & Evidence*. They must attend proceedings at the times directed by the Tribunal. They must follow directions given by the Tribunal in the course of proceedings. They must not knowingly give evidence that is false or misleading. Some of these matters are not merely duties, but are also requirements of the *Appeal Tribunal Act* and a failure to comply with them may constitute an offence (see Sections 30, 31, 32 & 33 of the *Appeal Tribunal Act*).
- 11.9 SUMMONSED WITNESSES AND COSTS:** The Tribunal, under Section 20 (2) of the Act may issue a summons for the production of material or witnesses. Please see *Practice Direction 13 - Summonses* for greater details. The Tribunal will not issue a summons for an expert to prepare opinion evidence in relation to an appeal. However, the Tribunal may consider the issuance of a summons to an expert to attend to give evidence in relation to a pre-existing opinion relevant to the proceedings. When summoning a person to attend to give evidence, the person who successfully applied for the summons is expected to pay the allowances and expenses of that witness. (see Section 36 of the Act). If a witness is being called to give evidence in relation to certain factual matters within their knowledge and as such no written statement of evidence exists regarding that knowledge, a deposition hearing may be required (see *Practice Direction 13 - Summonses*)
- 11.10 CONDUCTING THE CASE AND INTERPOSING WITNESSES:** The Tribunal follows a set order in its proceedings (see *Practice Direction 7 – Hearing Process*). However, on occasions, the parties may have witnesses who have a limited timeframe within which they may attend a hearing to give evidence. In those circumstances, a party may seek to “interpose” a witness outside the ordinary order of proceedings – that is, you may wish to call the witness earlier than you would ordinarily be entitled to do. Application to interpose a witness should be made as soon as you become aware that the witness has limited availability, and that should be known upon first engaging the witness to prepare evidence. The application must be made in writing and filed with the Tribunal and served upon each other party to the proceedings (see *Practice Direction 3.4*).
- 11.11 GIVING EVIDENCE (technology options):** As indicated under *Practice Direction 11.6* witnesses are able to give evidence by telephone and video link. In relation to video link you will be required to notify the Tribunal and make the arrangements to be linked to the Tribunal's video conferencing facilities. You should contact the Tribunal Registry well before the hearing to make those arrangements. If the giving of evidence entails the use of information or technology or display equipment, you should contact the Tribunal Registry as to whether it has the facilities to display the material you wish to use. If it does not, you

will be expected to provide the necessary technology and equipment for the presentation of your case.