



Giving evidence in a court or tribunal



The prospect of being called as a witness

in a criminal or civil hearing can be nerve-racking for any dental professional but knowing what to expect should help ensure you stay calm during the process as the Dental Defence Union's (DDU's) **Sue N'Jie** explains.

As a member of the dental team, you might be required to be a witness of fact during a personal injury claim, General Dental Council (GDC) hearing, criminal trial or even an inquest. In this unfamiliar environment, it's important to understand the extent and limitations of your role and be prepared. Here are the DDU's five tips to help you be a star witness.

1. Focus on the facts

Your role as a witness to fact (or professional witness) will be to report on your professional involvement with a patient to help establish the facts in the case. This is distinct from being an expert witness whose role is to use their specialist expertise and experience to give an impartial opinion on issues such as the standard of care someone received.

When giving testimony or writing a report as a witness of fact you should focus on your clinical findings, observations and decisions and avoid giving your professional opinion or straying outside your scope of practice. If you're called on to give your interpretation of events in the witness box, be clear that your answer is your professional opinion only.

2. Ensure witness reports are clear, accurate and include relevant information

Initially you may be asked to provide a witness to fact report. It makes sense to do this to the

best of your ability as a well-written report means you're less likely to be called to give evidence in person.

As far as possible you should write reports with reference to your contemporaneous records and be clear if something is based on your 'usual practice' or from memory. Type your report on headed paper, using the first person so it's clear who did what, why, when, to whom and don't assume the reader knows the background of the case, or understands dental abbreviations or jargon.

Include the following information:

- Your full name, professional dental qualifications and contact details
- Who requested the report, naming the individual or organisation concerned
- The nature of your professional relationship with the patient – for example, private or NHS, dentist, dental therapist, dental hygienist etc
- Whether the patient was seen alone or accompanied by someone else during each consultation (give the name and status of the other person)
- Relevant clinical information concerning the patient's history, their reason for presentation, your examination findings including what you looked for but did not find, diagnosis, treatment plan and any treatment provided, including any complications or adverse incidents.

3. Consider patient confidentiality
The GDC says 'You can be ordered by a court,

or you can be under a statutory duty, to release information about a patient without their permission. If this happens, you should only release the minimum amount of information necessary to comply with the court order or statutory duty!¹

opportunity to reread your written report carefully as, depending on whether you are a witness in court or a tribunal, you may not have any non-contemporaneous records or reports available to you when on the witness stand.

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In the absence of a court order, you should ensure you have appropriate consent to disclose someone's personal information. A patient will generally have given written consent for information or their records to be disclosed for a personal injury claim, but you should still be mindful of your duty of patient confidentiality when acting as a witness to fact. For example, ask for directions from the judge or presiding officer if a barrister or solicitor pressure you to disclose information which seems irrelevant or relates to a third party. Contact your dental defence organisation if you have a specific query about consent or if you're in doubt about whether to disclose something in a witness report.

Finally, take suitable precautions against a data breach by sending reports securely by encrypted email/file transfer or special delivery.

4. Be on time

Respond promptly to requests for information and submit reports within the agreed timescale. If there's likely to be a delay (eg you have left a practice and no longer have direct access to the patient's records) you should inform the person requesting the report.

It may seem obvious but when attending court, ensure you know where you are going, where you can park and so on – the last thing you want is to be held up, or arrive feeling stressed. That said, you should be prepared to have to wait for some time before you are called and you won't be able to listen to the evidence of other witnesses. It could be a good

5. Practise giving concise answers

When giving evidence, your responses should be factually accurate but also in plain English and to the point. Barristers and advocates often prefer a black or white response when the truth is often a shade of grey, but it is unwise to volunteer additional information that you have not been asked for, even if you believe it to be relevant. Be aware that often a simple yes or no will suffice. Stay calm, focus on answering the question put to you and address your responses to the judge and jury (if one is present).

The GDC says 'you must cooperate with any relevant formal or informal inquiry and give full and truthful information'² but we strongly advise you to contact your dental defence organisation for advice if you've been served with a court witness summons or you're in any doubt about your ethical and legal obligations.

References

1. General Dental Council. Focus on standards. Principle Four: Maintain and protect patients' information. Available at: <https://standards.gdc-uk.org/pages/principle4/principle4.aspx> (accessed July 2024).
2. General Dental Council. Focus on standards. Principle Nine: Make sure your personal behaviour maintains patients' confidence in you and the dental profession. Available at: <https://standards.gdc-uk.org/pages/principle9/principle9.aspx> (accessed July 2024).

<https://doi.org/10.1038/s41407-024-2716-x>