

✔ Checklist: Preparing questions for cross-examination

Use this checklist to help you remember everything you need to do when preparing to cross-examine the witnesses in your case.

You should prepare at least some of your questions for cross-examination before the hearing. However, you should be ready to change your questions or ask new questions at the hearing in response to the evidence a witness gives.

It is important that you are flexible about what questions you ask a witness in cross-examination.

This checklist is not legal advice. If you are don't know what to do, you should get legal advice.

For more information about how to prepare for and conduct a cross-examination, see [Tip sheet: Cross-examination](#).

Understanding your case

✔ Identify the issues

- To prepare for cross-examination, you must be able to identify the issues in your case.

An issue is a question of law that the Court must decide.

Your case may involve one or more issues that you need to address.

If you are unsure what the issues are in your case, you should get legal advice.

Example - AVOs:

1. Does the protected person fear the defendant?
2. Would a reasonable person in the position of the protect person fear the defendant?

☑ Review the evidence

- ☐ To be successful in cross-examination, you must be familiar with all the evidence in your case. You should review all the evidence in your case at least twice before you start preparing for cross-examination.
It is important that you understand:
 - how the evidence relates to the issues in your case
 - whether there are any inconsistencies in the evidence
 - what evidence that will support your case.

☑ Purpose

- ☐ The purpose of cross-examination is to produce evidence that supports your case and weakens the prosecution's case.
Every witness that you cross-examine, and every question that you ask, should meet that purpose.
If your questions have no purpose, you probably don't need to ask them.
You don't have to cross-examine every witness that is called by the prosecution.
Don't cross-examine a witness, or ask a question, without purpose.

Rules of evidence

☑ Relevance

- ☐ You can only ask questions to introduce evidence that is relevant to the issues in your case.
Evidence is relevant if could rationally affect the assessment of the existence of the issues.

Example:

Where a person is charged with stalking, it is relevant whether their fingerprints were found on the door handle at the complainant's home.

<p>If your questions are not relevant to the issues in your case, the prosecution might object, and the magistrate may not allow your questions.</p>	<p>It is irrelevant whether the complainant likes to drink wine with dinner every night.</p>
<p>☑ Hearsay</p>	
<p><input type="checkbox"/> A lay witness can only give evidence about things they have seen, heard or otherwise experienced.</p> <p>They cannot give evidence about what they heard from someone else. That is hearsay, and it is inadmissible as evidence.</p> <p>You should only ask a witness about things they have firsthand knowledge of.</p> <p>Don't ask a witness to speculate or talk about something that is outside of their actual knowledge.</p> <p>If your questions ask a witness to give hearsay evidence, the prosecution might object, and the Court may not allow your questions.</p>	<p>Example:</p> <p>A witness can say, <i>"I saw him push her onto the ground"</i>.</p> <p>A witness cannot say, <i>"My friend Sam told me that he saw the defendant push her"</i>.</p>
<p>☑ Opinion</p>	
<p><input type="checkbox"/> A lay witness cannot give their opinion as evidence.</p> <p>Only an expert witness can give evidence of their opinion, which must relate to their field of expertise.</p>	<p>Example:</p> <p>A doctor can give their opinion about the cause of an injury.</p> <p>A lay witness cannot give evidence about the cause of an</p>

<p>If your questions ask a witness to give their opinion, the prosecution might object, and the Court may not allow your questions.</p>	<p>injury unless they witnessed it firsthand.</p>
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Form of questions

☑ Clear and concise

- ☐ All your questions must be clear and concise.

Don't ask complicated or compound questions.

A compound question is two or more questions asked as one question.

A witness will only be able to answer your questions if they can understand them.

If a witness cannot understand your questions:

- they won't give the answers you are looking for
- the answers they do give may be useless or even harmful your case
- the Court may not allow your questions.

If your questions are compound questions, or too confusing, the Court may not allow your questions, or may instruct the witness not to answer them.

Examples:

Q: You called the police?

Q: You didn't see the colour of the car?

Q: You didn't see the person's face?

Q: You didn't see the person's clothing?

Instead of:

Q: Did you see what he was wearing and were you paying attention to where he was going?

Q: Did you notice his car at the house on Monday, or was it later that same week?

☑ Plain english

- Always ask questions in plain English where possible.

To do this:

- use short questions
- use everyday language
- use the active voice
- use the present tense
- include only one issue in a question
- use inclusive language.

Avoid:

- long, complicated questions
- double negatives
- technical or legal language, unless you are cross-examining an expert witness
- including more than one issue in a question
- unusual words or phrases.

Using plain English will ensure that the witness, and the court, understand your questions.

Examples:

Q: *You saw him get out of the car?*

Q: *He called your phone?*

Q: *You didn't see their face?*

Instead of:

Q: *You saw your former spouse alight from the vehicle?*

Q: *He placed a phone call to your mobile device?*

Q: *You wouldn't agree that you didn't see the face of the person running down the street?*

☑ Leading questions only

- In cross-examination, you should only ask leading questions.

Leading questions suggest the answer you want the witness to give, and usually require a yes/no answer.

Examples:

Q: *You didn't see who was driving the car?*

Q: *You didn't see who was in the front passenger seat?*

<p>This will allow you to control the answers that the witness gives and the pace of cross-examination.</p> <p>Don't ask open ended questions that allow the witness to give a detailed answer or explanation.</p> <p>You can't ask leading questions in examination-in-chief.</p>	<p>Q: <i>You don't know if there was anyone else in the car?</i></p> <p>Q: <i>You didn't see anyone getting in or out of the vehicle?</i></p> <p>Instead of:</p> <p>Q: <i>Well, if you didn't see who was driving the car, how do you know it was the defendant and not someone else?</i></p>
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 One issue only

<p><input type="checkbox"/> Every question that you ask in cross-examination should deal with only one issue.</p> <p>If you ask questions that deal with more than one issue, the witness may not understand the question or become confused.</p> <p>If you ask compound or confusing questions, the Court may not allow you to ask it, or may instruct the witness not to answer it.</p>	<p>Examples:</p> <p>Q: <i>You were placing your children in their car seats?</i></p> <p>Q: <i>You were talking to your children?</i></p> <p>Q: <i>You did not see the car approach?</i></p> <p>Q: <i>You did not see the number plate?</i></p> <p>Instead of:</p> <p>Q: <i>You were placing your children in their car seats when the car drove past, and it was driving in the direction your vehicle was facing while you were facing towards the rear of the vehicle?</i></p>
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 Be specific

<p><input type="checkbox"/> It is important that you clearly refer to specific dates, times,</p>	<p>Examples:</p>
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<p>people and places where necessary.</p> <p>Your questions must contain enough detail for the witness to be able to answer.</p> <p>If your questions are too vague, the witness is likely to give vague answers.</p> <p>If your question is too vague, the Court may not allow you to ask it, or may instruct the witness not to answer it.</p>	<p>Q: <i>You were at home at 10am on Monday 18 July 2022?</i></p> <p><i>Instead of:</i></p> <p>Q: <i>Where had you been before that?</i></p>
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 Logical order

<p><input type="checkbox"/> It is important that you ask your questions in a logical order so that they flow and are easy to follow.</p> <p>There are different ways you can arrange your questions:</p> <ul style="list-style-type: none"> • chronologically • incident-by-incident • by each type of evidence. <p>What order you should choose will depend on the circumstances of your case.</p> <p>If you ask questions out of order:</p> <ul style="list-style-type: none"> • the witness may become confused, and • the impact of the answer may be lost on the court or jury. 	<p>Examples:</p> <p><i>Q: You were standing at your side fence?</i></p> <p><i>Q: You were talking to your neighbour?</i></p> <p><i>Q: You were looking at her phone?</i></p> <p><i>Q: She was showing you photos of her daughter?</i></p> <p><i>Q: You didn't see a car drive past your home?</i></p>
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<p>If you are unsure how to structure your cross-examination, you should get legal advice.</p>	
<p>✔ Avoid improper questions</p>	
<p><input type="checkbox"/> You cannot ask questions that are improper.</p> <p>An improper question:</p> <ul style="list-style-type: none"> • is misleading or confusing • is unduly annoying, harassing, intimidating, offences, oppressive, humiliating, or repetitive • has no basis other than a stereotype, such as a person's sex, race, culture, ethnicity, age, or disability. <p>A question will also be improper if you ask it in a manner or tone that is belittling, insulting or otherwise inappropriate.</p> <p>The Court must not allow you to ask and, must inform a witness that they don't have to answer, improper questions.</p>	<p>Examples of improper questions:</p> <p><i>Q: You are not telling the truth, are you, because you are a liar?</i></p> <p><i>Q: You don't know how to tell the truth, do you?</i></p>