



Home Office

# Giving evidence in court

Version 5.0

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# About this guidance

This guidance tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the good practice you must use if you give evidence in court, how to prepare, what to expect when you give evidence, and the rules of evidence.

It also covers how to deal with cross examination, which is when the defence representative asks you questions and gives some general witnesses care advice.

This guidance helps immigration enforcement staff prepare for the experience of giving evidence and to make sure you give a good account of yourself in the witness box.

It provides the following information:

- why there is good practice
- your role in giving evidence
- the rules of evidence
- preparing to go to court
- in the witness box
- dealing with cross examination
- how preparation and presentation of the evidence can have an impact on the result

For more details about rules of evidence, see: Evidence in criminal investigations

The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: Vulnerable people and children.

Criminal Investigators in Immigration Enforcement must be aware of their obligations under the General Data Protection Regulation (GDPR) and the complementary Law Enforcement Directive (LED) domestic legislation via the Data Protection Act 2018 see: Data protection changes (GDPR and Data Protection Act 2018).

## Contacts

If you have any questions about the guidance and your line manager cannot help you or you think that the guidance has factual errors then email the CFI Operational Guidance Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **5.0**
- published for Home Office staff on **16 April 2020**

## Changes from last version of this guidance

Minor housekeeping

### Related content

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# Giving evidence in court: good practice

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about good practice when giving evidence in court.

Going to court to give evidence can be a nerve-racking experience. The evidence you give and the way you give it are important factors in the decision-making process for both:

- major cases
- cases involving relatively minor offences

Your evidence can be crucial to the outcome of a trial, and the public do not take it for granted that your evidence is completely truthful or credible.

All staff are under the same pressure as any other witness to demonstrate their:

- honesty
- credibility
- competence

It is important to maintain and improve public confidence in the criminal justice system and immigration enforcement.

If you are called to give evidence in court you must expect to go through rigorous questioning from the defence and, in some instances, your integrity may be questioned.

Complex or hostile questioning from the defence or allegations of impropriety (improper behaviour) can make you feel that either you or the organisation is on trial rather than the defendant. If you do not prepare your case correctly or detail the facts properly you can do a disservice to yourself, the organisation and to the cause of justice.

If you need more information about giving evidence in court, see: CPS: Going to court

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# Your role when giving evidence

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about your role when you give evidence in court.

You must remember what the principal roles are when attending a court hearing. Officers must be aware that:

- as a witness or investigator, you are there to help the court to reach a decision based on the evidence placed before it
- the prosecutor's job is to try to secure a conviction
- the jury or the judge decides the defendant's guilt or innocence

To help the jury or magistrate reach a decision, you must explain, as clearly and concisely as possible, what you have:

- seen
- heard
- recorded

You must do this:

- honestly
- impartially
- without embellishment

As a general principle, all you are required to do is to give evidence as honestly and to communicate your evidence as clearly as possible.

You are not a professional or expert witness and not therefore expected to demonstrate any special skills whilst giving evidence. However, the courts are entitled to expect you to be truthful, factual, competent and to communicate your evidence effectively.

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# How to prepare before going to court

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about how to prepare before you go to court.

The key to a good presentation of evidence is preparation. You must consider the whole process not just the time spent in the witness box. You must also remember that everything you do, say or record as having seen or heard, from the first report or observation of an offence throughout the course of the investigation and those things you fail to do or record may be subject to the critical scrutiny of the court.

## The responsibilities of an officer in charge (OIC) giving evidence at court

To help you present your evidence and to respond to questions about your evidence, you must take care to make sure your notes and other records are accurate and clear.

It gives a poor impression to the court if your exhibits are mishandled or mislaid, so you must organise the exhibits beforehand, especially if there is a large number.

Any doubts, apparent inefficiency or lack of knowledge of the case can detract from the prosecution case. Equally, if you do not have the required information it can damage you personally and the organisation or could have serious implications for the defendant.

## Pre-trial visit

Courts can be confusing and sometimes intimidating places so try and arrange a pre- court visit so the first time you give evidence is not your first time in court.

Spending time in both a magistrates' and a Crown court, (or Sheriff Court and High court of Justiciary in Scotland) to familiarise yourself with the surroundings and court procedures will help you to understand:

- how a hearing is conducted
- the roles of those present
- the ways in which people should behave

Court observation makes the court a more familiar and less intimidating place when you have to give your evidence. Seeing the formality of the surroundings and seriousness of the issues the courts deal with helps you to understand the significance of your role in presenting evidence.

For more information about evidence in criminal investigation, see: [Evidence in criminal investigations](#)

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# The rules of evidence and preparation for court

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the rules of evidence and what evidence is admissible (allowed) during a court hearing.

Your preparation must include reminding yourself of the rules of evidence.

For more detailed information on the rules of evidence and the types of evidence, see: Forms of evidence in court

It is important that you recognise the different types of evidence and what constitutes:

- opinions
- hearsay evidence

Failure to recognise the different forms of evidence available could mean that part of your evidence is ruled inadmissible (not allowed) and you may come across as incompetent or insincere.

When you are called to give evidence in court, you must take the following steps in advance:

- make sure you are familiar with the case, this is especially important if the offence took place a long time ago or the case is complex
- as officer in charge (OIC) you should check all the necessary administrative steps have been taken:
  - the case papers are complete
  - any exhibits are available, correctly ordered and labelled

Exhibits that are poorly organised or mislaid can cast doubt on the efficacy (value) of the case. If material relevant to your evidence is the responsibility of others, check with them that everything is available and organised, so you are able to give a complete and competent account.

## Preparation for giving evidence in court

Reviewing your witness statement and contemporaneous (written at the time) notes before giving evidence is an essential element of your preparation for giving evidence in court. Do not rely on your memory but re-read your notes and witness statement to ensure you are fully informed of your observations and account before giving evidence.

You must not discuss your evidence or compare your witness statement with other officers involved in the case. If you are found to have done so this will undermine your evidence and could therefore undermine the case itself.

## Disclosure and evidence

Under the [Criminal Procedure and Investigations Act 1996](#) (CPIA) or [Criminal Justice and Licensing \(Scotland\) Act 2010](#) in Scotland you must retain (keep) all material, whether it is information or objects, which is obtained or produced during a criminal investigation, which may be relevant to the investigation.

If it is important to the offence under investigation, it will be produced as evidence and later served upon the court and the defendant as evidence (subject to the restrictions regarding sensitive material).

For more detailed information on the acceptable types of material and the disclosure process, see:

- [CPS: Disclosure](#)
- [Criminal procedure and investigation act 1996 \(CPIA\)](#)
- [Criminal Justice and Licensing \(Scotland\) Act 2010](#)

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# Arriving at court

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about arriving at court and how to give evidence in the witness box.

Make sure you arrive at court in advance of the time your case is listed so that you have an opportunity to talk to the prosecution lawyer and/or the prosecution barrister or advocate depute before the hearing to:

- make sure they know who you are
- discuss any concerns or outstanding points
- answer any questions you may have before you enter the witness box

Occasionally, the prosecution lawyers may not arrive until the hearing commences. However, by talking through issues with prosecution lawyers before you go into the witness box, this will enable you to clarify any problems before you give your evidence.

A witness is a person who gives evidence in court, and are either:

- prosecution witnesses who give evidence on behalf of the prosecution case who have instigated (started) the court proceedings
- defence witnesses who give evidence on behalf of the defendant who has had the court proceedings brought against them

Before you are required to give your evidence, you will have made a witness statement in relation to your evidence. A witness statement is the main way of informing lawyers about the evidence you can give. The witness statement is recorded on a form MG11 or national standard witness form in Scotland.

For more information about making and taking a witness statement and MG forms, see: [Witness statements](#)

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# In the witness box

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the good practice to follow when you are in the witness box.

The credibility of all your evidence, and therefore the outcome of a court hearing, can be affected by the way in which you conduct yourself in the witness box. The following are important:

- your appearance
- your demeanour (behaviour)
- the way you address the court

A smart appearance shows respect to the court and the participants and knowing you look smart can help you feel comfortable and relaxed.

Of course, you may find you have no choice but to attend court directly from a situation that demanded casual dress. If this happens, the court will appreciate you explaining the situation at the first opportunity. It is normal in those circumstances for you to apologise to the court for your attire while explaining the reason.

When you enter the witness box you are required to take an oath in accordance with your religion to tell the truth, the whole truth and nothing but the truth. If you have no religious belief or do not want to take the oath you must make a solemn affirmation (declaration) to the same effect. After you have taken the oath or made the affirmation, you are then asked to give evidence.

If you do not tell the truth it may result in you being prosecuted, and you could be:

- held in contempt of court
- accused of perverting the course of justice

You can be asked questions about anything the court thinks might be relevant to a case. It is therefore important you are seen to be competent and a reliable witness. Good advice is:

- when you address the judge or magistrate(s):
  - stand straight
  - speak clearly and confidently
- do not be afraid of direct eye contact
- give your replies in a pleasant, courteous and helpful manner

Remember to address the various court officials correctly:

- High court judge – My Lord
- Crown court judge – Your Honour
- Recorder – Sir or Your Honour

- Magistrate – Your Worship
- Sheriff – My Lord
- High court of Justiciary judge – My Lord

Try to:

- speak clearly and positively
- present your evidence succinctly (briefly), in a straightforward way and give the information required as simply as possible
- avoid using jargon and acronyms
- listen to the questions you are asked and answer them precisely
- avoid:
  - rambling or giving irrelevant information
  - personal opinions
- speak in plain English do not use long, uncommon words when short, familiar ones will do

The court hearing is the conclusion of your investigation and an opportunity to get a conviction but, securing a conviction is not your role in the proceedings.

If the evidence presented to the court, including your own, results in an acquittal, you cannot change the result. But, you must present the facts as you know them in a calm, professional and impartial manner.

Everyone makes mistakes at times. Memories fade or you can become confused when trying to recall events which have taken place some time ago. Therefore, you must speak out if;

- it becomes clear you have made an error or not done something, you must say so
- you are not sure about what took place

You should also speak out if you are convinced that what you are saying is true and make your position clear to the court in a calm and courteous manner.

You should not try to cover up any lack of knowledge or errors you might have made so you should say exactly what you know to be the case and, where appropriate, do not be afraid to admit if you do not know or cannot remember.

This may result in you providing a different recollection or perception of events from those of your colleagues. However, this should not be a major source of concern.

It is rare for two or more people's accounts of the same set of events to be identical in every detail. Witnesses who all give exactly the same story can look as if their evidence was:

- written up jointly
- part of a conspiracy to remove any discrepancies to minimise any cause for doubt

Stick to the facts and do not be tempted to reconstruct what you do not know.

Normally, when you have entered the witness box and taken the oath you are expected to give all your evidence before leaving the witness box. But there may be occasions when giving evidence spans a break in the court hearing. This is called part heard.

This break may be:

- a short recess
- a meal break
- an overnight adjournment
- exceptionally, for the court to hear the evidence of other witnesses whilst another remains part heard

During the period of any break in your evidence you must not discuss the case or your evidence with anyone else.

To avoid any accusation that you have discussed your evidence with others if you are part heard you must wherever possible not associate with colleagues unless it is unavoidable. For example, travelling home in a shared vehicle with other witnesses.

If this situation occurs you must make:

- this status known to colleagues
- sure the case is not discussed in your presence or hearing

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# Using notes when giving evidence

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about using notebooks when you give evidence in court.

If you need to use a notebook, or other aide-memoire, for example, observation log, you must ask the court's permission first. It is standard practice for you to:

- refresh your memories when giving evidence
- refer to notes made at the time of an incident or very shortly afterwards

You may also have to give evidence about the notes, and the time they were made, in relation to the events you are giving evidence about.

It is important that any material, deemed sensitive under the [Criminal procedure and investigation act 1996 \(CPIA\)](#) or the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) is not readily accessible to the defence. This is because whatever you use to refresh your memory in the witness box can be examined there and then by the:

- judge
- defence counsel

For further information about CPIA and disclosure, see: [CPS Guidance to Disclosure](#)

If you are very heavily dependent on your notes and you read verbatim (word for word) from them, magistrates, jurors or judges may gain the impression you do not remember the case at all which may reduce the value of your evidence.

Reading your notes in a 'wooden', monotonous tone:

- makes the content boring and difficult to understand
- may mean those listening fail to notice important points in the prosecution case

A more effective way to use your notes is to:

- refer to them as necessary, to refresh your memory
- look up and tell the story in your own words

Assuming you have familiarised yourself with the material before going into the witness box, you should not consult your notes continually but only on specific issues.

In general, notes are best read out only when a precise point has to be answered, such as:

- verbatim quotes
- times

- vehicle registration marks

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# Dealing with cross examination

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office how to deal with cross examination by defence representatives.

You may find the prospect of cross examination by the defence particularly daunting. However, in practice it should not be a problem, if:

- you are well prepared and confident
- the investigation stands up to scrutiny
- you do not attempt to answer questions beyond your level of knowledge or powers of recall

Cross examination can be very demanding, and it helps to anticipate the kinds of questions the defence might ask, to try to:

- identify weaknesses in your account
- cast doubt on the veracity (accuracy) of your evidence
- question the efficiency, fairness or thoroughness of the investigation

Listen carefully to the questions you are asked and think before you answer. If you do not understand a question, say so and ask, politely, for clarification.

Of course, you must be aware that some defence lawyers will sometimes try to discredit your evidence by:

- pointing out supposed inconsistencies
- challenging you to remember difficult or barely relevant details

Do not take defence attacks on your integrity personally, you can only deal with these assertions effectively by remaining calm. Respond calmly and courteously. Do not become:

- emotional
- impatient
- aggressive

As a general rule, the person who remains reasonable and composed is more likely to be considered credible by the court.

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# Witness care

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about witness care when you give evidence in court.

If you are the OIC in the case and have given evidence previously you will be aware that other officers and witnesses who have been called to give evidence may be apprehensive about giving evidence in court. If this is the first time your officers or witnesses have been to court you should:

- show them round the court
- explain the procedures to them
- reassure them about giving their evidence
- support them throughout the proceedings

If your witness is nervous and uncomfortable, try to support them as much as possible and make sure the prosecution lawyer is fully aware of the needs of your witness so that they can be as supportive as possible.

See: Witness care and services

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