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Our Ref: { MERGEFIELD MATTER\_FEE\_EARNER\_ID }/{ MERGEFIELD client\_no }/{ MERGEFIELD matter\_no }

{ QUOTE { DATE \@ "d MMMM yyyy"} }

{ MERGEFIELD FW\_CN\_WITNESS2\_FWWIT2TITLE } { MERGEFIELD FW\_CN\_WITNESS2\_FWWIT2INTS } { MERGEFIELD FW\_CN\_WITNESS2\_FWWIT2SURNAME } { MERGEFIELD FW\_CN\_WITNESS2\_FWWIT2ADDRESS }

Dear { MERGEFIELD FW\_CN\_WITNESS2\_FWWIT2TITLE } { MERGEFIELD FW\_CN\_WITNESS2\_FWWIT2SURNAME }

**Re:** { MERGEFIELD LINKNAME\_FORENAME\_1 } { MERGEFIELD LINKNAME\_SURNAME\_1 } v { IF { MERGEFIELD FW\_CN\_DEF1\_FW\_CN\_D1\_TRUST\_name } <> "" "{ MERGEFIELD FW\_CN\_DEF1\_FW\_CN\_D1\_TRUST\_name }" "{ MERGEFIELD "FW\_CN\_DEF1\_FW\_CN\_D1\_FNAME" } { MERGEFIELD "FW\_CN\_DEF1\_FW\_CN\_D1\_SNAME" }" }  
**Court:** { MERGEFIELD FW\_CN\_COURT\_FW\_CN\_COURT\_name }

I write further to our previous correspondence.

Thank you for agreeing to give evidence in the claim being brought by { MERGEFIELD "LINKNAME\_FORENAME\_1" } { MERGEFIELD "LINKNAME\_SURNAME\_1" }. I understand that you are able to give evidence about [DETAILS OF INFORMATION OR EVENTS TO BE COVERED BY WITNESS STATEMENT].

I thought it would be useful if, at this stage, I set out the steps that will be taken to prepare your witness statement. I have also included some general advice on how to prepare to give your evidence and how to deal with cross-examination by the other side's representative.

### **Your witness statement**

Early preparation of your statement will ensure that:

- a) Your recollection is set down on paper while matters are as fresh in your mind and before they are subject to challenge;
- b) You have a proper opportunity to think about the matters and/or events you are dealing with and your evidence is presented in a clear and logical fashion;
- c) You have the chance to thoroughly consider any documents referred to in your statement;
- d) The words used in the statement are your own, you are comfortable with what you have said, and you are not committed to say anything that you do not really mean; and
- e) We can identify any areas of difficulty or concern at an early stage so that you can be properly prepared to deal with them at the hearing.

### **Preparing for the hearing**

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Once your statement has been finalised, in preparation for giving evidence at the hearing you should practise reading your statement slowly out loud a number of times. Doing this should avoid two situations that commonly make witnesses look foolish and damage their credibility:

- a) A witness who reads out their statement in a faltering fashion suggests that the words they are reading are unfamiliar. The court may conclude that the words they are hearing are not their own; or
- b) A witness contradicts their statement when they answer a question in cross-examination.

A witness who remains calm and sticks to their evidence is difficult for even a skilled cross-examiner to undermine.

### **Giving evidence at the hearing**

When you are called to give evidence, you will be asked to take the oath. This will involve either swearing on a holy book or, if you are not religious, affirming. Our representative will then ask you to take the court through your account of what happened. They will ask questions as required. These questions will also enable you to get comfortable with the process of answering questions before the court.

Once our representative has finished asking you questions, the other party's representative will have the opportunity to cross-examine you. Since this is the part of giving evidence that most often worries witnesses, I have set out some advice below about how to give evidence effectively when being cross-examined.

After you have been cross-examined, our representative will be permitted to ask you further questions about matters that have come up during your cross-examination.

### **How to give evidence effectively**

This is very simple: do what the oath requires of you. Tell the truth, the whole truth and nothing but the truth.

### **Dealing with possibilities**

You should only tell the court things you know for a fact. The cross-examiner may ask you to speculate about whether it is possible that a particular event occurred. Contrary to what is commonly assumed, you cannot refuse to answer a question merely because it is hypothetical. The issues commonly dealt with by courts often involve the consideration of hypothetical matters.

If you are asked whether something was possible, unless you tell the court how likely you think it was they will be left guessing. Therefore, if you think that there was a slight possibility of that something happening or having happened, rather than saying that it was possible you should let the court know how likely it was. For example, you could say that it was possible but would have been very unlikely.

### **When you can't remember something**

If you have no recollection of something you are asked about, don't be tempted to tell the court what you assume must have happened as if you know it for a matter of fact. You should say that you do not recall the particular matter in issue but think it likely that a particular scenario would have happened and explain why you think that to be the case. Be

honest or the cross-examiner will force you to admit you can't remember and you will look foolish for not having been honest in the first place.

### **Being asked for a yes or no answer**

The most popular line of attack for a cross-examiner is the closed question. You will become familiar with the phrase "it's a yes or no answer". You probably won't agree.

The temptation when faced with an unreasonably restrictive question is to not answer it and instead to answer the question you think you should have been asked. However, this will make you appear evasive and unhelpful and will not endear you to the court. It is better to either answer yes or no, but to state that is not a complete answer and there are other things the court should know in order to be able to understand it. Then, the court will either let you expand your answer immediately or you will at least have brought your representative's attention to this issue as being one that you should be taken back to in re-examination.

### **Answer the question and avoid repetition**

You should keep your answers to the questions that you are asked. You can undermine your credibility and the strength of your evidence if you take each question as an opportunity to repeat the same thing.

### **Dealing with the cross-examiner**

Do not be tempted to argue with the cross-examiner. You will come across as being deliberately difficult and evasive, which courts hate. It is far better to stay calm and focus on dealing with the questions put to you.

If there are any matters of particular concern to you about either the evidence you are to give or that may be put to you in cross-examination you should let me know now.

So that we can start on the preparation of your statement I would be grateful if you could contact me to arrange a mutually convenient time for us to discuss.

Yours Sincerely

{ MERGEFIELD CALCULATION\_FEE\_EARNER\_DESCRIPTION }  
{ MERGEFIELD PRACTICEINFO\_PRACTICE\_NAME\\*UPPER }