



Public Sector
Fraud Authority

Government
Counter Fraud
Profession



CENTRE OF LEARNING

Attending Court as a Counter Fraud Professional

Practice Note

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Purpose and Scope

This guide has been developed by the Government Counter Fraud Profession (GCFP) Centre of Learning, operating out of the Public Sector Fraud Authority. The guidance aligns to agreed GCFP standards for professionals produced by GCFP and is aimed at practitioners who may attend court as a witness in England or Wales.

For a counter fraud professional, court is often the final stage in what may have been a long investigative process. It is the point at which your evidence, work and conduct will be scrutinised and when a suspect or defendant must ultimately answer to the case presented against them, culminating in a judgement being handed down that in the most serious cases could deprive them of their livelihood, property or liberty.

Depending on your role in counter fraud, you may attend court regularly, occasionally or not at all. You may be involved in criminal or civil cases or indeed both. You may have played a supporting role as part of a wider team or been the lead or only investigator in a given case.

This Practice Note therefore gives an overview of the courts in England and Wales and guidance on what to prepare for and expect if you are called to attend court as a witness in the course of your duties as a counter fraud professional.

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Courts of England and Wales

There are a number of different court and tribunal systems in England and Wales¹, with different jurisdictions and responsibilities².

Criminal courts hear criminal cases, seeking to pass judgement on whether an offence has been committed and punishing offenders in accordance with prescribed sentencing guidelines. The criminal standard of proof in such cases is usually described as “beyond reasonable doubt” - in other words, the court must be sure that a defendant is guilty of the offence. Virtually all criminal cases start at a Magistrates’ court (overseen by 2/3 Magistrates or a district judge) who can deal with summary offences and some “either way” offences. More serious offences are passed on to the Crown Court (overseen by a judge and jury) and magistrates can also pass on sentencing of cases to the Crown Court if they believe the sentence should exceed 6 months.

Civil courts on the other hand hear disputes between individuals, companies or other organisations, seeking to remedy or to right a wrong. The civil standard of proof is “on the balance of probabilities” - in other words, a court must be satisfied that it was more likely than not that the fact or event had occurred. The civil standard of proof is therefore lower than the criminal standard. Following judgement, the outcome in civil proceedings is generally an order issued by the court compelling a party to do or not do something specific to remedy the matter in question depending on the area of law. Importantly the civil court cannot impose the criminal sanction of imprisonment.

Tribunals hear cases in specialised areas, for example employment or immigration and asylum and are usually less formal than the criminal and civil courts. Tribunals have distinct rules and regulations but share the civil standard of proof.



The Court of Appeal is the highest court within the senior courts of England and Wales and deals only with appeals from other courts and tribunals

The other jurisdictions are the Family and the Military courts as well as the Coroners, however, for the purpose of this guidance it is assumed that counter fraud professionals will primarily attend civil or criminal courts, and to a lesser extent tribunals.

The Court of Appeal is the highest court within the senior courts of England and Wales and deals only with appeals from other courts and tribunals. The Court of Appeal has both a civil and criminal division³.

Fraud can often traverse both criminal and civil law and it will depend on the case and organisational setting as to which jurisdiction(s) you may work in.

For a comprehensive view of the structure of the judiciary, see:

<https://www.judiciary.uk/structure-of-courts-and-tribunals-system/>

1 Scotland and Northern Ireland have their own distinct structures and judiciaries

2 <https://www.judiciary.uk/about-the-judiciary/our-justice-system/>

3 N.B. The Supreme Court is the final court of appeal in the United Kingdom for civil cases, and for criminal cases from England, Wales and Northern Ireland. It hears cases of the greatest public or constitutional importance affecting the whole population - see www.supremecourt.uk

The table below gives examples of some typical counter fraud cases the different courts might hear (the list is not exhaustive):

Court	Typical Counter Fraud Cases
Criminal	Criminal offences - Fraud Act 2006, Bribery Act 2010, Theft Act 1968, Prevention of Social Housing Fraud Act 2013, Proceeds of Crime Act 2010 offences, benefit fraud, tax fraud, associated conspiracy offences.
Civil	Breaches of contract or remedy - insolvency, social housing possession hearings (e.g. unlawful subletting), company director disqualification, debt recovery and various civil penalty regimes.
Tribunals	Employment, Immigration and Asylum, Social Security and Tax.

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Being a Witness

Before Proceedings

There are many steps before a case ultimately reaches court, the breadth of which is beyond the scope of this guidance.

However, it is a useful guiding principle to remember that anything you say, do or record in the course of your duties may ultimately be presented in legal proceedings. Working on this premise not only serves as a constant reminder of the legal or regulatory framework in which you operate, but can also promote more effective case management practices and outcomes.

Consider:



Case and evidence management

- Make sure your case or evidence is the best it can be. Get the basics right and ensure you have acted in accordance with the relevant legislation, rules or guidelines, for example, CPIA (including disclosure), PACE, Civil Procedure Rules and ask yourself: is there more that you need to do?
- An effective authorisation structure combined with a diligent legal team should also ensure any concerns are picked up and addressed prior to proceedings being issued.

Witness statement

- Before a matter reaches court, you will have provided some form of witness statement.⁴ The importance of being able to draft accurate witness statements cannot be overstated as your statement forms the basis of your evidence in court.
- It is vital that your witness statement is factual, accurate and true and describes matters you know directly.
- Criminal and civil witness statements differ slightly in format but both require the witness to sign a declaration that the contents are true. **Providing a false statement is a criminal offence and you may be found to be in contempt of court if you do so.**
- Further guidance on witness statements can be found in the GCFP standard for Counter Fraud Investigators.⁵



⁴ Or in some cases an affidavit.

⁵ <https://www.gov.uk/government/publications/professional-standards-and-guidance-investigation>



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Whatever your role, countering fraud is ultimately a factual endeavour

What Kind of Witness are You?

Whatever your role, countering fraud is ultimately a factual endeavour and the majority of counter fraud professionals will therefore act as witnesses of fact. When drafting a statement or giving evidence in court, you are providing your account as to events you have personally witnessed or to facts of which you have direct knowledge, to enable a court to make a judgement as to those facts. Your opinion - if you have one - holds no evidential weight and **must not** be given unless expressly directed by the court. For example, in fraud cases, whether or not a witness thinks something was dishonest is irrelevant as ultimately it is the court who decides whether an act was “dishonest”.

You may be an “expert” in your field but **you are not** by default an “expert witness” which has a specific meaning in law⁶. Expert witnesses are called to give their independent opinion on specific and usually technical matters and there are particular rules as to their expected conduct. The court decides whether a witness is admitted as an “expert”⁷.

Being summoned

There is likely to be the expectation that a counter fraud professional may be required to attend court as part of their duties, typically as part of a prosecution case for the organisation they work for and therefore as a cooperative witness. However, it is important to note that courts can also summon individuals to attend as witnesses. If a witness fails to attend after being issued with a summons, they may be held in contempt of court and even arrested.

6 Criminal - <https://www.gov.uk/guidance/rules-and-practice-directions-2020#evidence>, Civil - <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35>

7 For example, a medical professional with no involvement in a specific case may be asked to give their opinion on medical procedures used in that specific case.

8 I.e. Under the Equality Act 2010.

Before the Hearing

You should:

- **Refresh** your mind on your statement - it may have been weeks, months or even years since you gave the statement. If you do not have direct access to it - ask the lead officer.
- Note if the hearing is to be **held remotely** and if so - ensure the technology works and your environment is suitable.
- If you require any **reasonable adjustments**⁸ or interpreter support - communicate this to the court as soon as you know you are required to attend.

At Court

- **When?** Arrive early, not on time.
- **Where?** Ensure you know where the court is and find where to go when you arrive. There will be a hearing list - if you are unsure where to go ask an usher.
- **Dress appropriately** - there is no “dress code” for witnesses, but it is a formal setting and it is advisable to dress professionally.

A note on “coaching”

Barristers are encouraged to prepare witnesses for the process of giving evidence. However, “coaching” or influencing a witness to give particular evidence is strictly prohibited.

As a counter fraud professional, your evidence must be your own and must always comply with the law. Depending on your role you may come into contact with other witnesses who in turn must also give their own evidence. Any interference with this process may amount to the serious offence of perverting the course of justice.

In Court and Giving Evidence

In civil courts, witnesses are generally permitted to be in the courtroom for the duration of the hearing. In criminal cases they are not and you will likely be led to a separate room until you are called to give evidence.

- **Oath** - once you are called to give evidence and are in the witness stand, an usher (sometimes the judge) will ask you to choose to either swear or affirm that the evidence you give will be true and they will then guide you through the process of doing so.

It is a serious offence to lie under oath. Section 1(1) Perjury Act 1911:

Perjury is committed when a lawfully sworn witness or interpreter in judicial proceedings wilfully makes a false statement which they know to be false or do not believe to be true, and which is material in the proceedings⁹.

How do I address a judge or magistrate?

How to correctly address a judge or magistrate depends on their seniority and the court. Take notice of how others in the court address them - if in doubt, ask.

HM Courts and Tribunals Service provides a list of all judges and how to address them¹⁰.

- **Address the court.** Never address the defendant and never refer to the jury directly or address an advocate by name.
- **It is good practice to face the person** asking you a question and to face the decision maker in the case when answering (i.e. the magistrate/judge/jury). You may find it helpful to stand or sit with your feet facing the decision maker(s), to prompt you to address them rather than the barrister when answering.

How to correctly address a judge or magistrate depends on their seniority and the court



9 <https://www.legislation.gov.uk/ukpga/Geo5/1-2/6>
 10 <https://www.judiciary.uk/guidance-and-resources/what-do-i-call-a-judge/>

Questioning

Once you are “sworn in” (i.e. have given your oath), you will be asked questions about your evidence:

- ✔ **Answer the question being asked**, fully, truthfully and without unnecessary additions or omissions as this could mislead the court.
- ✔ **If you do not understand what is being asked - say so**, ask to clarify, rephrase etc. You must understand what you are being asked in order for you to be able to give an accurate answer.
- ✔ **If you do not know the answer - say so**, you should only be asked about matters you know directly.
- ✔ **Answer as to facts**, do not give your opinion unless you are an expert witness (see above). If an advocate asks you for your opinion when they should not, this should be picked up by your advocate or the judge - if not - ask the judge whether it is appropriate.
- ✔ **Referring to your witness statement** - In civil proceedings your witness statement will usually be in front of you and one of the first things you will be asked is to confirm that it is your statement. In criminal proceedings witnesses are given the opportunity to read their statements prior to entering the court to provide evidence.
- ✔ **Referring to contemporaneous notes** - If you made contemporaneous notes (for example in a pocket notebook), you are able to take these with you into court. However, when in court if you wish to refer to these you should first ask for permission.
- ✔ **Technical subjects** - If your evidence is of a technical nature, make sure it is as easy as possible to understand. The judge or jury are unlikely to be experts in the subject and so it will assist the court to simplify complex matters (while retaining the meaning), for example using diagrams and avoiding acronyms and abbreviations.



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The prospect of attending court may be daunting, particularly if it is the first time you have been asked to do so. Whether you attend court regularly or it is your first experience, preparation is key



Further Information

Government Counter Fraud Function and Profession

<https://www.gov.uk/government/groups/counter-fraud-standards-and-profession>

Structure of Courts and Tribunals System

<https://www.judiciary.uk/structure-of-courts-and-tribunals-system>

Information and support for victims and witnesses

<https://www.cps.gov.uk/information-and-support-victims-witnesses>

Going to court to give evidence as a victim or witness

<https://www.gov.uk/going-to-court-victim-witness>

Who's who in courts and tribunals

<https://www.gov.uk/government/collections/hmcts-whos-who-in-courts-and-tribunals>