

25 TIPS FOR ADVOCATES

1. Never lose sight of the basic job, which requires you to do your professional best to win the case, subject to your professional duties. Concentrate on how best to *persuade* the tribunal that your client is right and that the other side is wrong.
2. The CPR obliges parties and their advocates to co-operate. You will be popular with the tribunal if you appear co-operative; and it can genuinely help to sort out in advance as much as possible with your opponent – such as chronologies, lists of issues and the like (so long as they have your structure or spin to them).
3. Stand back to assess how the case or application is likely to appear to the tribunal hearing it, and fashion your submissions accordingly. *Amour propre* or arrogance as to the correctness of your ideas or approach will just get in your way.
4. If you want to persuade the tribunal that your client is right, then you must gain the confidence of the judge or arbitrator. This means, never appear to be unreliable. If the judge does not trust you, any submission you make will be greeted with doubt, you and therefore your client, may well forfeit the sympathy of the court: the judge will want you to lose.
5. Never misrepresent the facts, whether they are the facts of the case, or what was said in court or between the parties. You can of course submit in support of your client's evidence, even if it seems unconvincing: you are not saying you believe it, merely that it is part of the case you are putting forward for your client as an advocate. So never say or even think, in terms of "I believe"; only ever "I submit".
6. Do not make points which you consider plainly bad. It is fatal – the court will stop listening to you on other points as well. There is a huge

difference between a point which is plainly bad and one which is weak. But if it becomes apparent, as argument develops, that a point is clearly hopeless (but only if it is clearly hopeless), say so and move on.

6. You may have to run weak points but do so with care and preferably only as back up points and alternatives in case your main points do not get you home or run into difficulties. Different arguments can strike different people differently (construction points are notorious for this) and may change when exposed to oral argument

7. In advance of the hearing try and see the case from your opponent's viewpoint. Try some of the arguments on your colleagues. It will help you to appreciate, prepare for, and deal with the weaknesses in your case and you will then be less likely to be taken by surprise, or to overstate your case, or to make bad points during oral argument.

8. Always be well (but not over-) prepared. Every word you say must count. If you do not know your way round the relevant papers or the relevant facts, you will irritate everyone by wasting time, and your submissions may not be reliable. Make sure that you are physically familiar with and have marked up the hearing bundle you will be using.

9. Focus on the essential facts and issues. Work out what needs to be decided and what facts and law are relevant, and try to keep off the rest. Summarise what are the key issues and why you are right at the beginning – and maybe also at the end. Do not burden the tribunal with irrelevant information. If your opponent raises irrelevant issues, explain why they are irrelevant, and deal with them very shortly.

10. Lord Neuberger has described skeleton arguments as the *hors d'oeuvre* to the main course of the oral submissions: they come first in time and they are normally less substantial than what follows, but they should be perfectly good if taken on their own, and anticipate and complement what follows.

11. So skeletons should include all the relevant facts, and even direct quotations of the crucial bits of a document or judgment. But they should not go on and on, or go over the top, or you will put off the judge from reading them. They should, like every aspect of good advocacy, be user-friendly – readable, self-contained, structured, and punchy.

12. Say at the start what the issues are and how your skeleton is ordered, so as to make the tribunal receptive from the beginning. User-friendliness also means that you should identify, by reference to the bundles and pages, the source for any fact or quotation included.

13. Be ready for the (usual) judge who has read the skeleton and very little else ahead of a hearing, but also for the (rarer) judge who has read everything and the (occasional) judge who has read nothing..

14. Do not force a tribunal to listen to you simply reading out your skeleton. It is much better to reformulate the argument in some way. This will be less boring and give you another way of putting your case, which may appeal more.

15. A good way of reformulating your argument, is to go through your opponent's skeleton, identifying where you say he has gone wrong and why. But always remember that many judges like to be told as you go along where a particular point you are making orally is to be found in the skeleton.

16. Adapt the manner, focus and speed of your submissions to what you know, or assess, of the judge's character - quick and impatient, or slow and thorough, prepared or unprepared. And consider whether it is possible to modify your approach if it does not appear to be going down well.

17. It is important that you not only appear confident but also feel justified in your confidence. Have a basic plan - a summary note which briefly sets out each item on the menu - the points you must make; the facts, documents and

cases relevant to those points, with references to your skeleton; and the order and manner in which you want to take things.

18. Balance fixity of purpose with flexibility. When the judge raises questions, and your opponent makes new points at the hearing, it is an opportunity, in order to engage and persuade the tribunal, to divert from your plan. But do not be disorientated by diverting (or refusing to divert) and make sure you do not lose your thread or your confidence.

19. If you are interrupted by a question from the court, deal with it either by answering it straight away, or by saying that you will deal with it at a later point – and then do not forget to do so: write down the question because it is surprisingly easy to forget it. If the judge talks too much, the time might come - choose the moment -gently to suggest that it might be better for you to develop the case in your own way.

20. Deal courteously but firmly with over-interrupting opponents. A little witticism will not go awry. If the judge does not shut that opponent up, it is probably annoying anyway. Never interrupt your opponent unless it is crucial - you will have your chance unless it is your opponent's reply and it will usually be more effective to correct the point in the right place in your speech.

21. Always express yourself clearly. Speaking well requires you to enunciate clearly, to engage in eye contact and not to speak too fast. Speak in short sentences as otherwise it is easy to get lost in mid-sentence. A verbatim note is not a good idea. Spontaneity is attractive in oral argument, and is lost if you are reading word-for-word.

22. Try to be both authoritative and engaging. This usually means avoiding mantra-like repetitions and rhetoric. "Authoritative" does not normally mean domineering. It is important to keep the court sympathetic if you can do so. You should set an agenda but be ready to move from it if you are losing the judge. If you are not sure how the judge wants to proceed, there is often no harm in asking, although the answers may not always be reliable

23. If you want to refer to extracts from documents or law reports, it is sensible to ask if the judge wants you to read them out loud; if the answer is no, it is often worth nonetheless risking judicial impatience by identifying (even reading out) the sentences you particularly rely on.

24. Show the tribunal that you are good-natured even in adversity, and calm and reasonable, because it reflects on your client and may affect discretionary questions (whether to grant an indulgence, or how to award costs, on interlocutory applications).

25. Finally, remember always to check on any directions relating to the hearing, especially those concerned with the very hearing (such as lodging of authorities or the length of submissions). If there has been some non-compliance, be ready and if something is your side's fault, apologise and, if you can, explain. It is irritating if an advocate or party in the wrong prevaricates about it; by contrast, a frank and unforced apology is often disarming