

Tipping the scales in your favour



Judges want an easy life and lawyers who remember this are more likely to hear a decision in their favour. Barrister Richard Wheeler explains how a few simple improvements to case preparation can maximise a client's chances of success in the courtroom.

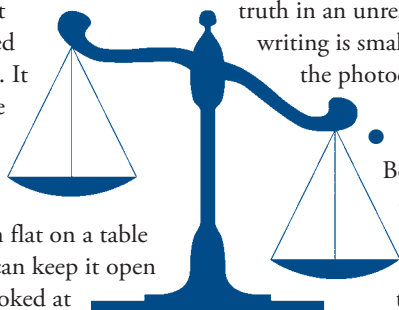
Judges want an easy life. They do not want to work out what the case they are trying is about: they want to be told what the options are and then to make a decision. The easier the lawyers make this for the judge, the more inclined he or she will be to find in their client's favour.

Few cases that end up in court are so strong the other side stands no prospects of success. Most cases have their weak points and there is always 'litigation risk': witnesses can be terrible or the judge could turn against your client from the start. However, if you can present the case beautifully on paper, the judge should be on your side from the outset.

Part of the problem with presenting the case papers in the best possible way stems from the fact that the legal profession is divided between those who prepare the case and those who present the case in court. The person who prepares the written case for a trial may rarely get to see how judges approach the case in court. They can often only guess at what a judge may like or dislike about the way it has been prepared.

What follows are a few ideas picked up from appearing in front of judges in the county courts. These will be well known to experienced solicitors, but they should prove useful to those more junior and for paralegals that might have to prepare the case papers (a bundle) for a trial.

- A bundle has to be a useable tool. The practice direction to part 39 of the civil procedure rules sets out principles to follow when preparing a bundle. The bundle must include all the relevant documents and be numbered consecutively with an index. It is usually best to arrange the documents chronologically. The bundle ought to be in a ring binder or lever arch file which enables it to open flat on a table so the judge and witnesses can keep it open at whatever page is being looked at



during the case. Documents should not be stapled within the bundle.

- Do not include duplication. Judges get very annoyed if there is duplication of documents in trial bundles. This is because it is very difficult for a judge to see at a glance whether a document is a duplication or a different draft which is material to the case. The easiest way to keep the judge on your side is to include only one copy of each relevant document in the bundle. If a document is not relevant, do not include it.

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- It is vital that each document is legible. A prime example is with terms and conditions in contract cases. These are not called the small print for nothing. You need the judge to be able to read the terms which support the case. Even if they do not support your case, the judge still needs to read them and will not thank you for trying to hide the truth in an unreadable document. If the writing is small, enlarge the document on the photocopier.
- Check the photocopying. Be careful to check each page of the bundle in full - what if the crucial piece of evidence is missing because the page became folded as it

went through the sheet feeder? Often faxes and other documents can become faint with repeated scanning or photocopying. Thumb through the bundle and make sure all the documents are clear enough to be read.

- Get a full witness statement. The practice direction to part 32 of the civil procedure rules sets out principles to follow when preparing a witness statement. In civil cases the witness statement stands as the client's evidence-in-chief. It should contain everything they want to say about their case. Usually their barrister will be allowed to ask extra questions to elicit more information but this can annoy the judge because it means more work for him or her. When extra questions are asked the judge then has to write down what the witness says. This is extra work and means the case will take longer. To keep the judge on your side, make the witness statement as full of relevant detail as possible. For example, imagine a simple personal injury tripping case where the client fell over on the pavement, liability is in dispute and the statement says:

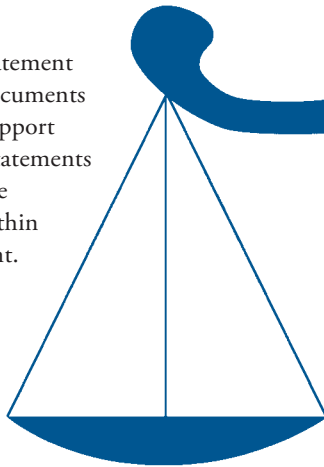
I was walking and I fell over a paving slab. I landed on my left hand and broke my wrist.

The judge will need to know more to decide if this was the client's fault or the paving slab owner's fault, or a bit of both. It might help to ask the witness the journalist's questions 'what, when, where, why and how'. There is not enough 'why' and 'how' in the above description. Was this a trip, a slip or a fall? What actually caused the accident? What else might have caused the accident? Was the client looking where he was going? Was he carrying anything? Was he in a hurry?

- Pictures and plans are a quick and easy route to understanding something new. If location is important to your case get some colour

pictures and a plan to illustrate it. Clearly location will be more important in some cases than in others. But even if location is not strictly relevant to the issues like, for example, a contract case, a picture of the subject matter of the contract can help just to give the judge something upon which to start building a mental image of your case. If there are photographs of the location then the witness statement should refer to them, perhaps with an arrow marked on the photograph to show the relevant detail.

- Your client's witness statement may have to refer to documents in the bundle which support your case. Ideally the statements should contain the page numbers referred to within the text of the statement. It can be very difficult to do this in practice because the statements are often prepared before the bundle is put together and numbered. However, bear in mind that if you use your own reference system rather than the bundle numbers it may antagonise the judge. Similarly, a judge may become quickly exasperated if each statement has its own individually numbered bundle appended to it, as that can quickly lead to confusion in court about which document is being referred to during the case.



print it out and send a copy to counsel with the brief as it is sometimes hard to find a case the night before trial.

- If your case is in court and you are not attending, make sure you are available in the office to deal with any issues that arise. Usually the barrister will be speaking to the client in conference before the case and may

have only a few minutes to telephone you to ask a vital question. The court breaks for lunch at exactly the same time as solicitors' firms. Lunchtime may be the only time for counsel to speak to you. It may be better to take lunch a little earlier that day or to leave your mobile number. If you are not available give counsel a contact at the firm who knows where the file is and can help.

- Everyone has good ideas. If you have cross-examination points or submissions you think are good ones, tell counsel. You may think the points are obvious, but it can be helpful for counsel preparing the case for trial to see what you think.

Hopefully, making these improvements will help you to win your next case. Of course, impressively presenting a dreadful case will not mean the judge decides in your favour. However, he or she will be more sympathetic and, perhaps, openly grateful to you for putting matters simply and clearly. Your client may lose their case, but if they do so having heard the judge praise their case preparation and presentation, you can almost count it a win. ■

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- Be careful what you include in the bundle. Clearly without prejudice correspondence should not be in the bundle. However, sometimes vast amounts of inter parties open correspondence is included. Some of this may be relevant - for example the letter of claim. However, the more you ask the judge to read, the less he or she will be able to focus on your best points. Keep irrelevant documents out.
- If you know of relevant case law which support your client's case then it is vital to give the full citation to the barrister and to the court. Different firms, chambers and courts have access to different online databases: if the case is a supportive one,

Key points

- Make bundles user-friendly. Arrange chronologically and include an index.
- Avoid duplication and if a document is not relevant do not include it.
- Ensure each document is legible. Consider enlarging small print.
- Get a comprehensive witness statement, which can be evidence-in-chief.
- Consider including a picture or plan to make things clearer.
- Check your photocopying, being careful that nothing is missing.
- If you know of relevant case law it is vital to provide full citation.
- If you have ideas or points you think are good ones, tell counsel.