



### **LETTER REQUESTING ATTENDANCE AT COURT**

Where a witness is simply invited to attend Court, the witness is not at that stage under any legal compulsion to attend.

### **WITNESS SUMMONS**

If the Court believes that a witness is likely to be able to give significant evidence, but a summons will be necessary to compel that witness's attendance, then a witness summons can be issued.

A witness summons can be set aside only if the evidence would be immaterial, inadmissible, or there is a Third party right to confidentiality that outweighs the reason for calling the witness.

A witness who fails to attend court without just excuse despite service of a witness summons upon that person, is guilty of a contempt of court, and can be punished with imprisonment of up to 3 months. Culpable forgetfulness is not a reasonable excuse.

### **WARRANT**

If a Court believes that a person who has been served with a witness summons is unlikely to comply, the court may issue a warrant to bring that witness before the court.

This is normally reserved for situations where the evidence is critical.

This will entail police arresting the witness and bringing that person to court.

The court will then decide whether the witness will be kept in custody until the hearing, or whether the witness will be allowed bail (with or without conditions).

### **SPECIAL MEASURES**

Special Measures can be made available to the court, for witnesses whose quality of evidence is likely to be diminished by reason of fear or distress when giving evidence, or where the witness is a child or other vulnerable person.

This allows evidence to be given in an alternative method, most commonly by

- a) giving evidence behind a screen
- b) giving evidence by video link
- c) video recorded evidence in chief

### **UNAVAILABLE WITNESSES & HEARSAY**

Evidence can be given at a hearing by way of a written statement rather than live evidence, if one of the following conditions is met:

- a) the relevant person is dead

- b) the relevant person unfit to be a witness due to a bodily or mental condition (stress alone will not suffice)
- c) the relevant person is outside the UK and it is not reasonably practicable to secure that witness's attendance
- d) the relevant person cannot be found despite reasonable efforts (particularly if that evidence can be independently corroborated)
- e) the relevant person cannot give oral evidence due to fear or intimidation and there is proof of that fear (and the fear cannot adequately be avoided by Special Measures above)

### **HEARSAY IN THE INTERESTS OF JUSTICE**

The court can admit a written statement in evidence in place of oral evidence, if the court is satisfied that it is in the interests of justice for it to be admissible.

In deciding this, the court takes into account:

- a) how important the written evidence appears to be
- b) whether the same evidence can be provided in a different way
- c) the circumstances in which the written statement was made
- d) how reliable the maker of the statement and the evidence appears to be
- e) whether the reason why oral evidence cannot be given is a good reason
- f) what difficulty would be caused for the defendant challenging the statement
- g) what prejudice would be caused to the defendant by admitting it

The court is aware that written evidence must be treated with more caution than oral evidence. It cannot be challenged or tested.

Hearsay evidence can be admitted with the consent of both sides.

*Dunn & Baker – Here to help you*

*Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.*