

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 18th FEBRUARY 2014**

Question

Will H.M. Attorney General state:

1. Whether the Rules of Court for the Royal Court, Magistrates Court, Petty Debts Court, Industrial and other Tribunals allow witnesses or people likely to be called as witnesses to:
 - (a) be present in court/hearing and hear the oral evidence of other witnesses to the case in question before giving their own evidence;
 - (b) have sight of, or knowledge of, the witness statements made by other witnesses before giving evidence;
 - (c) hear the legal arguments between the parties/ prosecution and defence and judge/chairman before giving evidence;
 - (d) discuss with other witnesses their evidence before giving it in the court/hearing/tribunal, or have knowledge of the evidence given by other witnesses.
2. Whether any of 1 (a), (b) (c), (d) would be prejudicial to a fair hearing of the case in question; and
3. Whether any of 1 (a), (b) (c), or (d) would be compatible with Article 6 of the European Convention on Human Rights ie. the Right to a Fair Hearing?

Answer

As far as the Attorney General is aware there are no specific Rules of Court that deal with the matters set out in the question.

It is the obligation of any of Courts and Tribunals determining a criminal case or a civil right or obligation to ensure a fair hearing and to ensure, where applicable, the specific provisions set out in Article 6 of the European Convention of Human Rights ("ECHR") are adhered to. A court will apply the appropriate rules of evidence in doing so.

The proper handling of witnesses will depend on the nature of the case, the allegations, and the evidence that the witness might give.

Different considerations may apply to different types of witnesses. For example, it is quite normal for someone who is to give expert evidence to remain in a court and hear all of the other witnesses, particularly if that may help the expert give more assistance to the court in the light of what those witnesses might say.

Accused persons in criminal proceedings or parties in civil proceedings will, as a general rule, be entitled to see all of the evidence in advance and hear all evidence against them and any legal arguments before giving evidence themselves.

Witnesses giving purely formal or uncontentious evidence may by agreement be allowed to remain during other evidence.

As a general rule, however, lay witnesses and witnesses of disputed fact are excluded from a hearing until they have given their own evidence. Generally witnesses should not discuss the evidence that they might give with another witness and if they have done so the credibility of their evidence may be undermined.

It is open to a defendant in a criminal case to cross-examine a witness as to credibility and in a criminal matter, for example, a judge may warn a jury to be cautious of evidence given by a witness who has discussed it with another witness and in some cases may direct a jury to disregard it.

There is nothing wrong in principle with a witness, prior to giving evidence, refreshing his or her memory from his or her own witness statement.

Once a witness starts to give evidence and the matter is adjourned before that evidence is concluded they are directed by a judge that they should not discuss their evidence with any person during the adjournment.

Accordingly, in response to the numbered paragraphs in the question:

- (1) There are no Rules of Court as such that touch expressly on the matters set out in sub-paragraphs (a) to (d);
- (2) It is impossible to answer this question. Any of the matters set out in 1(a) to 1(d) might be prejudicial to a fair hearing (and that possibility is greater if not corrected during the hearing itself) but it is equally possible that there may be no prejudice. It will depend on the circumstances of the case and the nature of the evidence; and,
- (3) None of the express provisions of Article 6 ECHR touch on the matters raised in part 1(a) to (d) of the question. Accordingly this part of the question falls to be answered in the same way as the preceding part.