

Conference Skills

(Inns of Court School of Law 1997) (Blackstone Press Ltd. London)

The Inns of Court School of Law in London is descended from the oldest law schools in the English-speaking world: the medieval Inns of Court. The English legal profession is divided into two branches: barristers who specialize exclusively in trial and appellate practice, and solicitors who do primarily transactional work. The Inns of Court School of Law trains barristers.

The following readings are taken from a textbook on communication skills for barristers. Although the focus of these readings is on the lawyer–client interview, they provide useful guidance for all types of interviews, including the interviews you will be conducting of solo and small firm practitioners.

Planning Questions

How you choose to present the questioning stage in your plan will depend upon personal preference and style. What follows is for your consideration when making some of these choices.

THE WRITTEN PLAN

Most barristers will follow a written plan to some extent, as few, if any, conferences can afford to rely upon the barrister's memory alone. This is particularly true of the questions as they form the hub of any conference. A complete list of fully drafted questions is rarely necessary and can impede the progress of the conference as it can be cumbersome and restricting. On the other hand if the areas for questioning are too vague, important topics may not be investigated and vital questions may be left unasked. A compromise position is often the answer. A combination of bullet points and selected questions is one solution that has found favour with practitioners and students alike. The bullet points for questioning will need to be logically and coherently ordered so that you can conduct the conference in a way that enables the client to appreciate what you are doing at each stage and follow your line of enquiry. Drafting what you want to ask in full will help you with the construction of complex questions or those which require particular care in their formulation and to avoid leading the client. Your performance can therefore be aided by some careful forethought and the plan can act as a useful reminder.

Time is always of the essence during the conference so you will need to prioritise the questions. Some questions are inevitably more central to the objectives of the conference than others. Nonetheless there will always be a need to ask a number of questions to establish the foundation for the client's knowledge before you gather the relevant information. Once you can move on to the questions that are designed to elicit the details. Remember each issue must be introduced within a reasonable amount of time and adequate time must be allocated to enable you to investigate all the relevant points in turn. All the questions must be asked whilst both you and the client have sufficient energy to move on to the advice stage.

The physical layout of a plan is also important. It is worth remembering that some space for answers and notes can be an advantage. This will save you time during the conference and aid the comprehension of the notes after it. It has already been recommended that all plans have sufficient flexibility to incorporate fresh topics raised in the conference. The unexpected always happens and no one is perfect, so time for some additional questions should be accounted for in the plan (see **Chapter 5**).

6.2 Classes of Questions

The following definitions and explanations introduce the major categories of questions. Most will, of course, be familiar to you, but what is important for the barrister is what effect each type of question will have upon the client. With this knowledge you should quickly gather the relevant information whilst controlling the client. In short, the barrister must be familiar with all the available tools of the trade.

6.2.1 YES/NO QUESTIONS

These are the simplest and perhaps the most limiting form of questions. The only answer expected, indeed at times permitted, is a straightforward affirmation or denial.

Example

Q1	Your name is John Smith, isn't it?
A1	Yes, it is.
Q2	Are you married?
A2	No.

Obviously the questioner does not expect much additional information from the client. On occasions though, the person replying will volunteer more information. For example, the reply to Q2 could have been: 'No, I'm divorced'. Further, the questioner has phrased the question to allow for a confirmation or a denial but that does not mean that he is personally ignorant of the truth. For example, questions like Q1 are often designed to confirm information already known to the questioner. However, the question might be a speculative one. The questioner might have a strong suspicion that the person in front of him is called John Smith but requires confirmation of this suspicion.

One important drawback with this form of question is that it enables the respondent to give very limited replies, 'yes' or 'no', without ignoring the question. The full picture may not be revealed because of a desire to be evasive, or a fear of going beyond the limits set by the question or because of sheer inertia. On the other hand it is, of course, an excellent way of controlling the amount of information that comes from the client and the style in which it is presented. The barrister can control the client further by adding that the answer is limited to a simple 'yes' or 'no'.

6.2.2 CLOSED AND SEMI-CLOSED QUESTIONS

This is a large category of which the latter group forms a sub-set. They are called closed because to a greater or lesser extent they control the answer that the client will give to the barrister. Answers of a short length are sought; a phrase or a single word will often suffice.

Example

Q1	What is your name, please?
A1	Alan Jones.
Q2	When did you leave your wife?
A2	On 16 January 1995.

The first question severely limits the expected response although it does not suggest the answer. Q2 is another example: this time the word 'when' indicates that only the date is required.

- Q3 You then moved in with your mother and following that you lived with which brother, David or Geraint?
A3 Geraint first and then David.

The third question is a leading one as although expressed as a choice the answer appears in the question itself. It is also a classic example of a closed question. The client, however, went beyond what was asked and offered some additional information. This is not surprising as the client wished to clarify the position.

Clearly then, closed questions offer guidance as to the sorts of answers expected and indicate to the client the amount of information expected. This will assist the barrister to control the client. However, there are drawbacks. An obvious danger is that the client will limit his or her answers, and it is unlikely that he or she will give you the full picture. What if, for example, the full story was that the client stayed with a female friend (and a possible co-respondent) immediately upon leaving the marital home and before staying with either brother? Closed questions should be used with caution and avoided unless you already have the client's version of events.

6.2.3 OPEN QUESTIONS

The open question allows the client freedom to speak at some length and on a wide choice of topics. In effect the question invites the client to launch into a narrative or an explanation using his or her own words. Typically the answers are long and there can be diversions from the original topic. There are, therefore, some inherent dangers, but this form of question can be a swift route to a large amount of information. Consider the likely responses to the following questions.

- Example*
- Q1 What was your relationship with your wife like?
Q2 Why do you blame yourself for the breakdown in communication?
Q3 How do you account for the financial problems that you were both facing following the birth of your second child?

Whilst one can imagine a variety of answers, the amount of detail and the honesty with which they are answered depend upon the client's willingness to be open with the barrister. Additionally the client's knowledge of events will limit his or her answers. On most occasions if the barrister asks questions of this type the client will respond with large chunks of information that will require further explanation and expansion.

Open questions do not readily allow the questioner to exert control and interruptions must be handled with care. Too many interruptions will jeopardise the rapport between client and counsel. If a question is asked, it is only right that the person answering should be allowed to say what they have to say uninterrupted.

6.2.4 SEMI-OPEN QUESTIONS

This class of question can be one of the most useful to the barrister during the conference. It combines the control of the closed and semi-closed questions with the fruitfulness of the open question. The questioner selects and imposes limits upon the answer expected and communicates these to the client through the medium of the question itself.

- Example*
- Q1 Please tell me what you were doing on 10 January between leaving work and returning home at 2 am.
Q2 What did you tell your wife in that telephone conversation?
Q3 What did she say to you when you returned home?

Each question gives the client a clear picture of what type of information is sought, but leaves the respondent sufficient freedom to give detailed replies.

6.2.5 SIMPLE QUESTIONS

This is not strictly speaking a class of question but refers to the form that questions can take. They are also known as single issue questions. Let us consider two important observations in turn. First, lay clients are rarely used to being interrogated; secondly, like all of us, they are used to holding a conversation. The former point is worth bearing mind throughout the conference. You cannot expect the client to answer all of the questions either immediately or satisfactorily. Nor can you treat the client in the same way as you might choose to cross-examine a witness who is damaging to your case and inimical to you personally. This is just common sense, but easily forgotten when a conference is not going as smoothly as planned.

The second point warrants greater attention. Most conversations follow an unplanned and freely structured format. Questions maintain the flow of communication, and the degrees of appropriateness of the answers reflect the formality of the conversation. In this fluid environment a questioner will often use verbal shorthand to indicate to the other what topic or topics he or she is interested in hearing about next.

Example Q1 Did you enjoy your holidays, was the weather good?

The questioner obviously wants to know about the trip, but has also singled out the weather for comment. During everyday settings little, if any, confusion is caused by this style of question. During the introductory chat with the client there is nothing wrong with continuing to use these everyday forms. However, consider the next example.

Example Q2 What treatment did the hospital administer to your wounds, were you satisfied by it at the time?

The two topics are both relevant, but this is really two questions rolled into one. First, the barrister seeks information about what actually took place in the hospital. Second, he or she seeks an estimation of the client's satisfaction with that treatment. By addressing these two relevant points at once there is a danger that the client will either answer one and ignore the other or give inadequate answers to both. Sometimes, however, it is not clear that two issues are being dealt with in the same question.

Example Q3 Who delivered the cash to the banks?

On the face of it this question appears to be a single issue question, but in certain circumstances it could contain at least two issues. First, who delivered the money, and second, to which banks did the various parties make their deliveries? Unless both questions are addressed separately, important information may be missed and the conference's objective to take full instructions may not be obtained. This in turn could lead the barrister into giving faulty or incomplete advice to the client. The key then is to ask single issue questions in a logical order. This will assist you to conduct a thorough examination and allow the client to pass on detailed and focused information.

6.2.6 LEADING QUESTIONS

Leading questions appear in several forms, but there are broadly two categories. First, those which encourage the client either to agree or disagree with a statement made by the questioner with the express design of putting the words into the mouth of the person being questioned — in other words, feeding.

Example Q1 You were not the person whom the store detective saw in the chemist's that morning, were you?
A1 No, it wasn't me.
Q2 Because you would have been in school as it was a Wednesday?
A2 That's right.

6.2.7 CONCLUSION

Clearly each of these types of questions will be familiar to you through daily use. During the conference, however, one is faced by many concerns and stresses and the selection of the appropriate form of question can become laborious. The danger is that communication between you and the client may become staid or awkward. Two things can assist you:

- (a) Practice is essential. Become familiar with the mental process of selecting and utilising different question forms to elicit information. Experience can only come about through some trial and the occasional error. In each conference you will have to assess the client's level of intelligence and spend a short time selecting the most appropriate questioning strategy.
- (b) Planning will greatly assist you. Not all questions can or should be planned word for word. Some idea of the type of information that you require should enable you to identify areas for questioning and encourage you to prepare a strategy for extracting this information from the client. If a fundamental question or one requiring caution on your part is identified it may be worthwhile drafting it out in full. The key to success here is practice and flexibility. The plan should be sufficiently flexible to allow you to adapt to the needs of each conference and the characteristics of each client (see **Chapter 5**).

With an understanding of the major categories of questions it is now appropriate to develop a knowledge of how to use them during the conference. From the examples used above you will have already noted one useful technique: the degree of control that can be expected from a closed question compared with an open one. In the next section we will consider in greater depth the techniques which can be used as part of an overall questioning strategy.

6.3 Selecting Questioning Techniques

There are many acceptable ways to question a lay client during the conference; indeed several styles may be adopted during different stages in the conference. The decision to utilise various techniques of questioning will form part of your questioning strategy. To begin with it is probably worth selecting and planning these strategies in detail as part of your preparation for the conference — but remember a useful plan will be sufficiently flexible to allow you to adapt your preparation to meet the vicissitudes of the conference. After some practice you will learn to adopt and adapt these techniques with greater ease. In this section we will look in greater detail at the constituent parts that form questioning techniques.

6.3.1 TYPE OF QUESTION

Each time you wish to ask the client for a piece of information you should decide upon the type of question you are going to use. We have already seen that each type of question will elicit a different response from the client. Therefore select the type of question that is appropriate to your needs.

6.3.2 STYLE OF QUESTIONING

The manner in which you ask your questions will depend upon the type of client, your purpose in asking and the sort of answer that you expect to receive. Each client must be assessed at the outset of the conference so that you can adjust your style to suit their personality and characteristics. Factors include the person's age, education and profession, their familiarity with the legal process and with you. There is little point in adopting an excessively businesslike or legalistic style of questioning with an 18-year-old factory worker experiencing his first brush with the criminal law. On the other hand, it is inappropriate to take an unnecessarily friendly or simplistic style of questioning at all stages of the conference. There is probably room for both styles at the right time. You will have to use your judgment and professional experience to help you to decide when one style is more appropriate than the other. Sometimes it will be clear that your questions ought to be phrased in a sympathetic way, for example if asking the client about injuries sustained in an accident. On other occasions you may have to adjust your style subtly, if, for example, you believe the client is exaggerating the symptoms. The key is to remain alert to two things:

- (a) the reason why you are asking the individual question; and
- (b) the client's reactions to you and the questions that you are asking.

Both of these will help you to choose and adapt the appropriate style in which you ask the questions.

6.3.3 STRATEGY

In order to conduct a thorough and effective investigation of the facts, you will need to consider your overall strategy for the questioning section of the conference. This will include not only the right questions to ask, but also the most successful way to present them and the best way to exploit the client's memory. These, and some of the other central questioning techniques, will make up your questioning strategy.

Several factors might affect your choice of strategy: the nature of information that you require, the client's reactions and answers to your questions so far, or the point reached in the conference. An inquisitorial line of questioning, for example, might be selected for a short period to test the client's suitability as a witness. This is a strategic decision that needs careful selection. You will have to take every precaution to avoid upsetting the client and jeopardising the effectiveness of the conference as a whole. If, on the other hand, the client becomes upset or confused you will wish to adopt an explanatory and supportive style and introduce simpler questions, perhaps closed ones. This will help the client to calm down before you resume a more demanding line of questions.

6.3.4 TECHNIQUE SELECTION

Some of the more common techniques are discussed below. Several techniques will almost certainly be necessary during the conference: each technique is selected because it is an appropriate route to the necessary information. Remember that you will have to return to different techniques at different times during the conference. No one technique will realise all of the conference's objectives.

6.3.4.1 Confirming and checking information

This will require an indication that you are looking for short answers, mostly in the form of agreement or disagreement and correction. A mixture of yes/no, closed and

semi-open questions would be most suitable for this technique. These forms of questions will enable you to control the client's answers and allow you to move quickly from topic to topic. For example names, addresses and other details already indicated in your instructions can be swiftly checked in this way.

6.3.4.2 Inviting the client to give you further, more detailed information

The point is to allow the client to pass on sizeable amounts of information to you. Therefore inform the client that you want them to give you details to fill in gaps in your knowledge and make them feel comfortable and free to do so. A series of open and semi-open questions are the most useful forms of question as they give the client freedom to speak at some length. Additionally, the client will probably require some reassurance from you that what is being said is relevant and helpful. So remember to remain interested in what the client has to say.

6.3.4.3 Inviting the client to raise his or her concerns

Some specific open questions will have to be asked to get the client to express any matters that continue to concern him or her. Closed questions or yes/no ones should be avoided. These types of questions will enable the shy client the opportunity to gloss over these points. It may be necessary to combine your open questions with some gentle encouragement. This might take the form of a statement that you are willing to help with additional matters, and that you invite the client to raise them now.

6.3.4.4 Gathering specific details

If you need to gather detailed and complex material, for example a chronology of events, it is useful to combine a businesslike style with semi-open and some closed questions. This technique will concentrate the client upon the task in hand. The businesslike style will help you to get the client to collaborate with you and enable you to exploit the client's knowledge of the facts. The initial question should be a semi-open one. This will control any answer by setting limits so that the client begins by discussing the relevant issues. You can assist the client further by stating what sort of information you are looking for. Leading questions should, of course, be avoided. Semi-closed questions will enable you to select areas to fill in gaps and those which seek to confirm and complete the answers will settle any ambiguities.