

# Witness Statements in Family Proceedings

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# What is a witness statement & why is it important

- ▶ A witness statement is "a written statement signed by a person which contains the evidence which that person would be allowed to give orally" (FPR 22.4(1))
- ▶ A witness statement is required where a fact needs to be proved by the evidence of a witness (evidence in writing at hearing other than a final hearing, in oral evidence at the final hearing) (FPR 22.2).
- ▶ A party/witness is required to serve a witness statement in order to give oral evidence (unless otherwise permitted to do so by the court) (FPR 22.10).

# The court's use of witness statements

- ▶ A witness statement will stand as evidence in chief at the final hearing unless the court directs otherwise (FPR 22.6(2)).
  - ▶ Permission of the court is required to amplify the witness statement or to give evidence in relation to new matters which have arisen since the statement was served on the parties (FPR 22.6(3)).
- ▶ A witness called to give evidence at the final hearing may be cross-examined on the witness statement, whether or not the statement, or part of it, was referred to during the witness's evidence (FPR 22.11).
- ▶ Permission of the court is required where a party is seeking to adduce evidence from a third party. The permission is required both to adduce a statement from the third party and permission for the witness to give oral evidence.
- ▶ A party wishing to rely at the final hearing on the evidence of a witness who has made a statement, the party must call the witness to give oral evidence (FPR r. 22.6);
  - ▶ unless the court directs otherwise; or
- ▶ A party puts the statement in as hearsay evidence (see Part 23 – provisions about hearsay).

# General considerations about witness statements

- ▶ A witness statement should set out a truthful record of the witness's knowledge of relevant facts. It should not include a witness's opinions or thoughts on matters.
- ▶ It should set out the evidence that the witness would be permitted to give orally – avoid analysis of documents/exhibits, expressing an opinion, making submissions or advancing arguments (FPR 22.4).
- ▶ Each witness statement should be written in the witness's own words.
- ▶ A witness statement should not contain inflammatory language or seek to smear the other party.

# Format of a witness statement

<i>[Party on whose behalf the statement is made]</i>		<i>[Initials and surname of the maker]</i>
		<i>[Number of the witness statement]</i>
		<i>[Initials/number of each exhibit referred to]</i>
		<i>[The date made]</i>
<b>IN THE FAMILY COURT AT</b> <i>[insert]</i>		<b>Case No.</b> <i>[insert]</i>
<b>IN THE MATTER OF</b> <i>[insert]</i>		
<b>B E T W E E N:</b>		
	<i>[APPLICANT NAME]</i>	<u>Applicant</u>
	-and-	
	<i>[RESPONDENT NAME]</i>	<u>Respondent</u>
<hr/>		
<b>WITNESS STATEMENT OF</b> <i>[insert]</i>		
<hr/>		
I, <i>[INSERT FULL NAME]</i> of <i>[insert address (residential address unless the witness is giving evidence in a professional, business or other occupational capacity, where their occupation, position held, and name of firm and address should be given)]</i> , will say:		

- ▶ A statement should:
  - ▶ be fully legible and typed on one side of paper;
  - ▶ be bound in a manner that does not hamper filing;
  - ▶ be paginated;
  - ▶ be divided into numbered paragraphs;
  - ▶ have all numbers, including dates, expressed in figures; and
  - ▶ give reference to any documents in bold text or in the margin.
- ▶ See also FPR PD22A r. 9.1 to 13.4 regarding exhibits to a witness statement.

# What must a witness statement include?

- ▶ A witness statement must be verified by a statement of truth (FPR 17.2(1)(b))
  - ▶ 'I believe that the facts stated in this witness statement are true' (PD 17 r. 2.2)
    - ▶ The court may direct that an unverified witness statement shall not be admissible as evidence (FPR 17.4)
    - ▶ Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified by a statement of truth without honest belief in its truth (FPR 17.6)
- ▶ Where a witness statement is made by a person who is unable to read or sign the statement, must contain a certificate by an authorised person (FPR 7.3) certifying:
  - ▶ that the witness statement has been read to the witness;
  - ▶ that the witness appeared to understand it and approved its contents as accurate;
  - ▶ that the statement of truth has been read to the witness;
  - ▶ That the witness appeared to understand the statement of truth and the consequences of making a false statement; and
  - ▶ That the witness signed or made their mark in the presence of the authorised person.

# Witness statements in Children Act proceedings

- ▶ Witness statements are generally filed within proceedings in respect of a child:-
  - ▶ In support of a without notice application (PSO or SIO, EPO, (disclosure order under FLA 1986));
    - ▶ Factual basis relevant to the application must be set out, ideally in chronological order;
    - ▶ Need to include information setting out why the application is being made without notice; and
    - ▶ Duty to the court of full and frank disclosure of all material facts relevant to the application.
  - ▶ In relation to allegations of domestic violence to be determined at a fact-finding hearing (and also in respect of applications for Non-Molestation & Occupation Orders where relevant to the CA proceedings);
    - ▶ Factual basis relevant to the allegations which the court will consider should be set out in chronological order; or
    - ▶ In response to allegations made against a party – full response should be provided wherever possible;
    - ▶ Normally accompanied by a Scott Schedule;
    - ▶ Note any limits as to the number of allegations which will be considered by the court.

# Witness statements in Children Act proceedings - Continued

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- ▶ To provide information which will be used to inform a Section 7 or Section 37 Report; or
  - ▶ Give factual background *relevant* to the application before the court and the basis of the application;
  - ▶ Set out the party's position on issues that are not agreed (refer back to the order);
  - ▶ Outline the party's proposals for the arrangements for the child(ren);
  - ▶ See template (Form C120) for LIPs at: <https://www.gov.uk/government/publications/form-c120-witness-statement-template-child-arrangements-parental-dispute>
- ▶ In response to recommendations made by Cafcass, a local authority or expert, normally in response to a Section 7 or Section 37 report (very rare circumstances – normally position statement).
  - ▶ Respond to the recommendations, setting out clearly which recommendations are agreed with and which are not. Where a recommendation is not agreed with you should set out why it is not agreed.
  - ▶ Outline the proposals for the future, ideally to final order, including residence, contact and progression.

# Narrative statements in financial remedy proceedings

- ▶ A narrative statement, also known as a s.25 statement, is a statement which sets out the information the court requires in order to determine the appropriate order to make in financial remedy proceedings.
- ▶ The parties will ordinarily be directed to prepare narrative statements following a FDR if the proceedings are not concluded at the FDR.
- ▶ The statement should seek to address the matters outlined in MCA s.25(2) – (4) as relevant to the proceedings.
  - ▶ It should use headings where possible when addressing each factor;
  - ▶ Consider which factors are likely to carry more weight in the proceedings when preparing the narrative statement.

# Section 25(2) MCA – Party to the marriage

(2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A, 24B or 24E above in **relation to a party to the marriage**, the court **shall** in particular have regard to the following matters –

- (a) the **income, earning capacity, property and other financial resources** which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity and increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the **financial needs, obligations and responsibilities** which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the **standard of living** enjoyed by the family before the breakdown of the marriage;
- (d) the **age of each party** to the marriage and the **duration of the marriage**;
- (e) any **physical or mental disability** of either of the parties to the marriage;
- (f) the **contributions which each of the parties has made or is likely in the foreseeable future to make** to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the **conduct of each of the parties**, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h) In the case of proceedings for divorce or nullity of marriage, **the value to each of the parties to the marriage of any benefit** which, by reason of the dissolution or annulment of the marriage, **that party will lose the chance of acquiring**.

# Section 25(3) MCA – Child of the family

(3) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above **in relation to a child of the family**, the court **shall** in particular have regard to the following matters –

- (a) The **financial needs** of the child;
- (b) The **income, earning capacity (if any), property and other financial resources** of the child;
- (c) Any **physical or mental disability** of the child;
- (d) the manner in which he was being and in which the parties to the marriage expect him to be **educated or trained**;
- (e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of subsection (2) above.

## Section 25(4) MCA – Child who is not the child of that party

(4) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above **against a party to a marriage in favour of a child of the family who is not the child of that party**, the court **shall** also have regard –

- (a) to **whether that party assumed any responsibility for the child's maintenance**, and, if so, to the **extent** to which, and the **basis** upon which, that party assumed such responsibility and to the **length of time** for which that party discharged that responsibility;
- (b) to whether in assuming and discharging such responsibility that party **did so knowing** that the child was not his or her own;
- (c) to **the liability of any other person** to maintain the child.

# Service of witness statements

- ▶ Look at the court order(s) to confirm:
  - ▶ Who is to serve the statement (including where the statement is to be served by the court);
  - ▶ The order in which statements should be served and the deadlines for service;
  - ▶ Upon whom the statement should be served (including Cafcass and any experts); and
  - ▶ Whether or not the statement should be filed.
- ▶ A party who fails to serve the witness statement of an intended witness within the time specified by the court may not call that witness to give evidence unless the court gives permission (FPR 22.10).

# Contact Details

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