



JUDICIARY OF  
ENGLAND AND WALES

PRESIDENT OF THE FAMILY DIVISION

## President's Memorandum: Witness Statements

1. Too many witness statements are prepared in breach of proper professional standards.
2. It is clear that this problem is not confined to proceedings in the Family Court. It has become so acute in the Business and Property Courts that it has been necessary to pass a highly prescriptive Practice Direction – CPR PD 57AC – to seek to deal with the problem.
3. I do not consider that the Family Court needs an equivalent Practice Direction, at least not at the present time. However, the Family Procedure Rule Committee will have to consider introducing such a measure if the principles in this memorandum are not observed.

### *The fundamental requirements*

4. Witness statements tell the parties and the court what evidence a party intends to rely on at a final hearing. Their use has the key added benefit of promoting the overriding objective by helping the court to deal with cases justly and proportionately, including by helping to put parties on an equal footing, saving time at the final hearing and promoting settlement in advance of the final hearing.
5. Witness statements must only contain evidence from the maker of the statement.
6. The statement must be expressed in the first person using the witness's own words (PD 22A para 4.1).
7. A witness statement must not:
  - a. quote at any length from any document;
  - b. seek to argue the case;
  - c. take the court through the documents in the case;
  - d. set out a narrative derived from the documents;
  - e. express the opinions of the witness; or
  - f. use rhetoric.

### *Facts, information and belief*

8. A witness statement may only set out matters of fact and matters of information and belief (para 4.3).
9. Matters of fact include past facts (i.e. events which have happened) and future facts (i.e. events which are expected to happen). A statement may state only those matters of fact of which the witness has personal knowledge and which are relevant to the case (para 4.3(a)).

10. The statement must indicate the source of any matters of information and belief (para 4.3(b)). Evidence about proposed child arrangements or, in a financial remedy case, about needs, will be matters of information and belief. Therefore, where such evidence of such information and belief is given, the source or basis for that belief must be stated.
11. *Documents*
  - a. The statement must identify in a list appended to it what documents, if any, the witness has referred to, or been referred to, for the purpose of providing the evidence set out in the statement.
  - b. The statement should identify or describe the documents in such a way that they may be located easily at the final hearing.
  - c. Documents disclosed in the proceedings should be listed by disclosure reference (e.g. “reply to questionnaire bundle at page 75”). Such documents must not be annexed to the statement.
  - d. The requirement to identify documents the witness has referred to, or been referred to, does not affect any privilege that may exist in relation to any of those documents. Privileged documents may be identified by category or general description.
  - e. Documents in the list which are not privileged and have not been previously disclosed must be disclosed at the same time that the witness statement is filed and served.

### *Memory*

12. A person involved in preparing the statement of a witness must not, subject to the next paragraph, in any way seek to alter or influence the recollection of the witness. This is a rule of fundamental importance, breach of which will be serious professional misconduct.
13. However, the memory of witnesses may be refreshed by showing them a document which they created, or which they saw while the facts stated in the document were still fresh in their mind. Any such document must be listed under para 11.
14. Parties should understand that the court’s approach to witness evidence based on human memory will be in accordance with CPR PD 57AC, Appendix para 1.3. This states that human memory:
  - a. is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but
  - b. is a fluid and malleable state of perception concerning an individual’s past experiences, and therefore
  - c. is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration.

A person involved in preparing a witness statement should keep this very clearly in mind and, therefore, be wary of categorical statements about past events unless those events are corroborated by contemporaneous documents.

### *Length of the statement*

15. A witness statement must be as concise as possible without omitting anything of significance.

16. As a general standard, a witness statement should not exceed 15 pages in length (excluding exhibits). This page limit is a statement of best practice and does not derogate from the limit of 25 pages in PD 27A para 5.2A.1, which should be regarded as a maximum.

*Sanctions*

17. The court has a power under FPR 22.1(2) to exclude evidence that would otherwise be admissible. The court will consider excluding under this rule a witness statement which materially fails to comply with the standards in this memorandum. The court also has power under CPR 44.11(1)(b) to disallow the costs incurred in preparation of a non-compliant witness statement.

*Template for LIPs in non-complex private law welfare cases*

18. A useful template for use by Litigants in Person in non-complex private law welfare cases is attached to this memorandum. Its use in such cases is optional, but is strongly encouraged.
19. It should be noted that a guide for LIPs litigating in the Family Court will be prepared in due course.

10 November 2021

**In the Family Court  
Sitting at [place]**

Date of next hearing; [complete]

**STATEMENT OF THE APPLICANT / RESPONDENT**

I (insert name) of (insert address or state “undisclosed confidential address”) make this statement believing the contents to be true to the best of my knowledge and ability and that this statement will stand as my evidence in these court proceedings.

Signed

Date

| <b>The children</b>  |   |
|--|---|
| 1) Please state the full name date of birth and age of each child                              | <ol style="list-style-type: none"> <li>1. (name) born on ... who is ... years old and is my son/daughter (or specify if other relationship)</li> <li>2. (repeat these details for each child involved in the case)</li> </ol>       |
| 2) Please set out where and with whom each child is living                                     | <ol style="list-style-type: none"> <li>1. (Name or alternatively “the children”) live with (insert the name, relationship to the child and address if different to the address above).</li> <li>2. (repeat as necessary)</li> </ol> |
| 3) Please set out the current arrangements for each child to spend time with the other parent. |   |
| <b>The summary of dispute</b>  |   |
| 4) Please identify the areas of dispute between you and the other parent.                      |   |

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| <p>5) Please re-read the “safeguarding Letter” from Cafcass and confirm if the contents of the letter are correct to the best of your knowledge.</p> | <p>YES/NO (delete as appropriate)</p>  |
| <p>6) If your answer to the last question is NO, please set out a summary of what you disagree with or is incorrect.</p>                             |  |
| <p>7) Has Cafcass or a social worker prepared a further (Section 7) report?</p>  | <p>YES/NO (delete as appropriate)<br/>Insert the date of the report ....</p> |
| <p>8) If so, do you accept the recommendations at the end of the report?</p>   | <p>YES/NO/PARTLY (delete as appropriate)</p>                                 |
| <p>9) Are there any relevant facts stated in the report that you disagree with?</p>  | <p>YES/NO (delete as appropriate)</p>  |
| <p>10) If so please identify what those facts are</p>  |  |
| <p><b>Courses and mediation</b></p>  |  |
| <p>11) Have you attended the Separated Parents Information Programme (SPIP)?</p>   | <p>YES/NO (delete as appropriate)</p>  |
| <p>12) If so, state how this has helped your approach to issues involving the children</p>   |  |

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| 13) Have you attended mediation?  | YES/NO (delete as appropriate) |
| 14) If not, would you like to?  | YES/NO (delete as appropriate) |
| <b>Your proposed arrangements</b>   |                                |
| 15) Please set out with whom the children should live   |                                |
| 16) Please set out why your proposed living arrangements will best meet the needs of the child(ren).  |                                |
| 17) Please set out your proposed arrangements for the Child(ren) spending contact time with the other parent or relevant adults. You should include proposed arrangements for holidays and special events.                |                                |
| 18) If you are proposing a build up over time in the amount of time that the child(ren) will spend with the parent with whom they are not living please set out you plan and the time periods from which it will increase |                                |
| 19) Please set out why the above proposed contact arrangements will best  |                                |

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| meet the needs of the child(ren).  |  |
| 20) If your proposed arrangements do not include overnight stays, please explain why and how you believe this is in the best interest of the child(ren)  |  |
| 21) Please set out your proposed arrangements for the collection and the return of the child(ren)  |  |
| <b>Further information</b>   |  |
| 22) The court must make its decision about the child(ren)'s welfare by reference to the welfare checklist under the Children Act (1989). This is set out in the next column. Please provide any additional evidence that you wish to rely on under each heading. | <p><i>(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);</i></p> <p><i>(b) the child's physical, emotional and educational needs;</i></p> <p><i>(c) the likely effect on the child of any change in his circumstances;</i></p> <p><i>(d) the child's age, sex, background and any characteristics of which the court considers relevant;</i></p> <p><i>(e) any harm which the child has suffered or is at risk of suffering;</i></p> |

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|--|---|
|  | <p><i>(f) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs;</i></p> <p><i>(g) the range of powers available to the court under this Act in the proceedings in question.</i></p> |
| <p>23) Please list here what documents, if any, you have referred to or been referred to for the purpose of providing the evidence set out in this statement. If the documents have not been previously disclosed you should disclose them when you file and serve this statement.</p> |   |

**Note: Please make sure that a copy of this statement is sent to the court and to all parties, and if a report has been prepared, to the Cafcass officer or Social Worker who wrote it. Please make sure that you keep a copy for yourself and bring it to all Court hearings with you**