

## **PRACTICE DIRECTION 5B – STATEMENTS OF TRUTH**

*This practice direction supplements Part 5 of the Court of Protection Rules 2017*

### **General**

1. Rule 5.2 makes provision for certain documents to be verified by a statement of truth. These documents are specified in rule 5.2(1).

### **Form of the statement of truth**

2. The form of the statement of truth verifying an application form is as follows—

'[I believe] [The applicant believes] that the facts stated in this application form and its annex(es) are true.'<sup>1</sup>

3. The form of the statement of truth verifying a document for court proceedings is as follows—

'[I believe] [The (applicant or as may be) believes] that the facts stated in this [name of document being verified] [and attachments] are true.'

4. The form of the statement of truth verifying a witness statement is as follows—

'I believe that the facts stated in this witness statement are true.'

5. The form of the statement of truth verifying an expert's report or a report prepared pursuant to section 49 of the Act is as follows—

'I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true and that the opinions expressed represent my true and complete professional opinion.'

6. Where the statement of truth is contained in a separate document, the document being verified should be identified in the statement of truth by including in the statement of truth—

(a) the name of the person to whom the proceedings relate (P) (unless an order to the contrary pursuant to rule 5.11 has been made);

(b) the case number as entered on the application form, if available;

(c) the date the application form was issued, if available; and

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<sup>1</sup> Rule 5.2(3) provides that where a party is conducting proceedings with a litigation friend, a statement of truth in an application form, application notice or respondent's notice is a statement that the litigation friend believes the facts stated in the document being verified are true.

(d) the title of the document being verified.

### **Who may sign the statement of truth**

7. A statement of truth verifying a witness statement must be signed by the witness.
8. A statement of truth verifying an expert's report must be signed by the expert.
9. A statement of truth verifying a report prepared pursuant to section 49 of the Act must be signed by the person who prepared the report.
10. The individual who signs a statement of truth must print his or her name clearly beneath the signature.
11. Where a document is to be verified on behalf of a company or other corporation the statement of truth must be signed by a person holding a senior position in the company or corporation. That person must state the office or position he or she holds.
12. For the purposes of paragraph 11, each of the following persons is a person holding a senior position—
  - (a) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation; and
  - (b) in respect of a corporation which is not registered, in addition to those persons set out in (a), the mayor, chairman, president, town clerk or similar officer of the corporation.
13. Where the document is to be verified on behalf of a partnership, those who may sign the statement of truth are—
  - (a) any of the partners; and
  - (b) a person having the control or management of the partnership business.
14. Where a party is legally represented, the legal representative may sign the statement of truth on behalf of the client. The statement signed by the legal representative will refer to the client's belief, not the belief of the legal representative. In signing the legal representative must state the capacity in which he or she signs and the name of the firm where appropriate.
15. A legal representative who signs a statement of truth must sign in his or her own name and not that of his or her firm or employer.

16. Where a legal representative has signed a statement of truth, his or her signature will be taken by the court as his or her statement—

(a) that the client on whose behalf the legal representative has signed had authorised him or her to do so;

(b) that before signing the legal representative had explained to the client that in signing the statement of truth the legal representative would be confirming the client's belief that the facts stated in the document were true; and

(c) that before signing the legal representative had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts.

(Rule 5.6 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

### **Persons unable to read or sign documents to be verified by a statement of truth**

17. Where a document containing a statement of truth is to be signed by a person who is unable to read or sign the document, it must contain a certificate made by an authorised person.

18. An authorised person is a person able to administer oaths and take affidavits but need not be independent of the parties or their representatives.

19. The authorised person must certify—

(a) that the document has been read to the person signing it;

(b) that the person appeared to understand it and approved its content as accurate;

(c) that the declaration of truth has been read to that person;

(d) that the person appeared to understand the declaration and the consequences of making a false declaration (see rule 5.6); and

(e) that the person signed or made his or her mark in the presence of the authorised person.

### **Form of certificate of authorised person**

20. 'I certify that I [name and address of authorised person] have read over the contents of this document and the declaration of truth to the person signing the document [if there are exhibits, add 'and explained the nature and effect of the exhibits referred to in it'] who appeared to understand (a) the document and approved its content as accurate and (b) the declaration of truth and the consequences of making a false declaration, and made [his] [her] mark in my presence.'