

# Practical Pointers for Preparing Witness Statements



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## Introduction

1. A good witness statement is like a clean window. It frames what you need to see, and only that. You quite forget it is there because you are able clearly to take in the view.
2. Witness statements are a key window into the case for a judge (or magistrate) tasked with making important decisions about a child. That is their primary function. Being able clearly to see the landscape and identify the key landmarks is so much more difficult if that window is dirty, is oriented in the wrong direction, too wide, or even kaleidoscopic. The judge may be left with a far clearer view from the window presented by the other side. In those circumstances, that may be the best picture they have.
3. The problem of poor statements persists. Don't take this from us. Take it from three of the finest legal minds to have graced family justice in recent years:
  - (1) Ward J (as he was) humorously declared that judges are not '*forensic ferrets*' to go trawling through material (***BT v BT*** [1990] 2 FLR 1, at p.17);

- (2) HHJ Bellamy agreed, though with just a little more exasperation, that the pressure under which modern family judges work is such that they cannot search through inadequately prepared or disorganised documents to identify key information (***Re K (A Child: Post Adoption Placement Breakdown)*** [2012] EWCH B9 at §20); and
- (3) The President, Sir Andrew McFarlane, has not (yet) implemented the highly prescriptive terms in the CPR of [PD57AC](#), to give us a chance to prove that we can prepare statements effectively (Sir Andrew McFarlane's ***President's Memorandum: Witness Statements***, 10 November 2023). We are nevertheless all reminded that the court can exclude statements which do not comply, costs consequences may follow, and that statements should not be prepared in breach of professional standards.
4. This article has been drafted to help draw together the practical pointers on how to prepare witness statements, compliant with the rules, which are likely to be well-received by the court. A good statement can go a long way to winning a case before a lawyer ever opens their mouth.

### **Layout of Witness Statement**

5. The starting point when considering the layout of a witness statement is [PD22A.3](#).
6. Paragraphs 3.1 and 3.2 provide that the statement should be headed with the title of the proceedings and where the proceedings are between several parties, it is sufficient to identify the parties as follow:

Number:	
A.B. (and others)	Applicants
C.D. (and others)	Respondents

7. Further, at the top right-hand corner of the first page (and on the back sheet) there should be clearly written -
- (1) the party on whose behalf it is made;
  - (2) the initials and surname of the maker;
  - (3) the number of the affidavit/statement in relation to its maker;
  - (4) the identifying initials and number of each exhibit referred to; and
  - (5) the date made
8. Practically, this makes it much easier for the reader to see at a glance what the document is, where it fits in the context of the bundle, and aids in navigation too.
9. Below is an example of how the front of a witness statement should be presented:

On behalf of the Applicant

AB

Number: 1

Exhibits: AB1-AB3

Date: 20 October 2023

IN THE FAMILY COURT AT BIRMINGHAM

Case No.

IN THE MATTER OF THE CHILDREN ACT 1989

IN THE MATTER OF:

AB

APPLICANT

and

BC

RESPONDENT

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WITNESS STATEMENT OF THE APPLICANT

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10. PD22A 3.3 gives further advice on how the whole witness statement should be laid out. This includes the following:

- (1) Be produced on durable quality A4 paper with a 3.5cm margin;
- (2) Be fully legible and should be typed on one side of the paper only (and whilst electronic bundles are the norm, judges will often require paper bundles, as will witnesses being referred to hard copy documents in the witness box);

- (3) Where possible, should be bound securely in a manner which would not hamper filing or, where secure binding is not possible, each page should be endorsed with the case number and should bear the following initials:
    - (i) in the case of an affidavit, of the maker and of the person before whom it is sworn; or
    - (ii) in the case of a witness statement, of the maker and, where the maker is unable to read or sign the statement, of the authorised person (see paragraphs 7.3 and 7.4 below);
  - (4) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);
  - (5) be divided into numbered paragraphs;
  - (6) have all numbers, including dates, expressed in figures; and
  - (7) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the affidavit/statement.
11. There is no minimum length prescribed for a witness statement but PD27.5.2A.1 makes it clear that a witness statement should not exceed 25 pages, and this is exclusive of exhibits (though do note that the President's Memorandum records that best practice is that a statement should not exceed 15 pages, excluding exhibits).

12. Whilst a witness statement could in theory be 25 pages in length for each case, those drafting the statement should bear in mind Family Procedure Rule 1.1 that cases should be dealt with justly, having regard to any welfare issues involved. When considering whether a case is being dealt with justly, this includes ensuring that the case is dealt with in ways which are proportionate to the nature, importance and complexity of the issues.
13. For private family law cases where there are no safeguarding concerns and the issues remain limited to one party's application for a child arrangements order, a witness statement over 10 pages would be considered excessive and not be in compliance with Family Procedure Rule 1.1. Courts will typically limit the length of statements in these cases, and may do so even to one side of A4.

### **Body of the Witness Statement**

14. PD22A 4 provides guidance for how the body of the witness statement should be drafted.
15. PD 22A 4.1 makes clear that all witness statements should be expressed in the first person, drafted in the witness's own words, if practicable, and commence by giving the witness's full name and residential address. If it is the case that the witness is a party to the proceedings or is employed by a party to the proceedings, the witness statement should state that fact as well at the beginning of the statement.
16. Further, when setting out events in a witness statement, this should follow a chronological sequence of events and indicate which parts are made from the

witness's own knowledge and which are information and belief, and state the source for any matters of information and belief (PD22A.4.3, 4.5).

17. However, if the witness is non-English speaking, then further steps must be taken which include preparing the witness statement in the witness's own language first before being translated into English. The writer should also state the process by which it was created, for example by telephone or face to face. This was recognised by Peter Jackson J (as he was) in **NN v ZZ & Ors [2013] EWHC 2261 (Fam)**.
18. As for the contents of a witness statement, this should be confined to only those issues on which the Court is making determinations at the hearing (see CPR PD57AC for reference). A statement for use at trial should contain only:
  - (1) evidence as to matters of fact that need to be proved at trial by the evidence of witnesses in relation to one or more of the issues of fact to be decided at trial, and
  - (2) the evidence as to such matters that the witness would be asked by the relevant party to give, and the witness would be allowed to give, in evidence in chief if they were called to give oral evidence at trial and rule 32.5(2) did not apply.
19. With the above in mind, it is therefore essential that witness statements are only limited to issues that the Court is concerned with at the hearing and any irrelevant information is excluded.

20. For example, at a final hearing where the Court is considering an application by a party for child arrangements order and CAFCASS have determined that there are no safeguarding issues and the Court proceeded on that basis, the witness statement should be limited to each party's position in respect of the child arrangements order. The witness statement should not include the following:

(1) Any contested safeguarding issues between the parties;

(2) New allegations of domestic abuse;

(3) Historical safeguarding concerns; and

(4) Any attack on the other parent's ability to parent the child.

21. Clients often feel the need to address undetermined allegations, or assert facts which are extraneous to the Court's decision. There are many ways for this to be managed but it is not to be done through a cathartic jeremiad masquerading as a witness statement. Legal professionals are not permitted by reason of the Family Procedure Rules and professional standards from filing such a document and are able to remind their lay clients of that as necessary.

### **Statement of Truth**

22. The end of every witness statement should include a statement of truth and be signed by the witness (PD17A.2.2; PD22A.6.4). The wording of the statement of truth must be:



*"I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.*

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

23. FPR PD5C 6.1-6.2 deals with how original signed documents filed via email should be managed.
24. If the witness is unable to read or sign the witness statement, then the witness statement should include a certificate made by an authorised person. An authorised person must be someone who is able to administer oaths and take affidavits but does not need to be independent from the parties (PD22A.7.3).
25. The authorised person in the certificate must certify:
  - (1) That the witness statement has been read to the witness;
  - (2) That the witness appeared to understand it and approved its content as accurate;
  - (3) That the statement of truth has been read to the witness;
  - (4) that the witness appeared to understand the statement of truth and the consequences of making a false witness statement; and
  - (5) that the witness signed or made his or her mark in the presence of the authorised person.

26. A copy of the exact certificate that should be attached to the witness statement is set out at Annex 2 to PD22A and should be considered.

### **Exhibits**

27. If a witness wishes to refer to a document or item within their witness statement, PD22A.4.5 prescribes that this should be expressed in the statement as follows: 'there is now shown to me marked at "..."' (the description of exhibit)'.
28. This document or item should be shown to the witness and verified by them and remain separate from the statement. It should also be identified by a declaration of the person before whom the statement was sworn (PD22A.9.1).
29. This declaration should be headed in the same way as the statement as seen at paragraph 9 of this article and the first page of each exhibit should be marked with the exhibit number.
30. Whilst there is no limit on the number or the types of exhibits that can be referred to a witness statement, those drafting the statement should consider Family Procedure Rule 1.1 and only include exhibits that are relevant to the Court's determinations and proportionate. If the exhibit is not going to aid the Court, then it should not be referred to in the statement. Returning, briefly, to the finest of legal minds: it is the practice of exhibiting vast numbers of documents to statements which surely led to the eighth of Lord Justice Sedley's satirical *Laws of Documents*:

**First Law:** Documents may be assembled in any order, provided it is not chronological, numerical or alphabetical.

**Second Law:** Documents shall in no circumstances be paginated continuously.

**Third Law:** No two copies of any bundle shall have the same pagination.

**Fourth Law:** Every document shall carry at least three numbers in different places.

**Fifth Law:** Any important documents shall be omitted.

**Sixth Law:** At least 10 percent of the documents shall appear more than once in the bundle.

**Seventh Law:** As many photocopies as practicable shall be illegible, truncated or cropped.

**Eighth Law:**

(1) At least 80 percent of the documents shall be irrelevant.

(2) Counsel shall refer in court to no more than 10 percent of the documents, but these may include as many irrelevant ones as counsel or solicitor deems appropriate.

**Ninth Law:** Only one side of any double-sided document shall be reproduced.

**Tenth Law:** Transcriptions of manuscript documents shall bear as little relation as reasonably practicable to the original.

**Eleventh Law:** Documents shall be held together, in the absolute discretion of the solicitor assembling them, by:

(1) a steel pin sharp enough to injure the reader,

(2) a staple too short to penetrate the full thickness of the bundle.

*(3) tape binding so stitched that the bundle cannot be fully opened, or,*

*(4) a ring or arch-binder, so damaged that the two arcs do not meet.*

31. The aim should be for your documents to fall foul of these 'laws', for they are not to be observed where at all possible.

### **Frequent Offenders**

32. Lay clients often provide their solicitors with reams of evidence from electronic communications (emails, iMessages, WhatsApps and the like).

33. When used well, they can be a punchy and impactful way of proving a point where it is necessary to do so because there is a dispute about what was said on a material issue.

34. When not adduced with care and discretion, it can be akin to providing the Court with a haystack and asking it to find a needle. It will irritate judges, it will inflate the size of the bundle—and the costs of the litigation—unnecessarily.

35. The bundle, and the client's witness statement, should include the specific documents which it is necessary for the court to read or which will actually be referred to during the hearing. PD27A.4.1 states in mandatory terms that the following must **not** be included in the bundle unless specifically directed by the court:

(1) correspondence (including letters of instruction to experts);

- (2) medical records (including hospital, GP and health visitor records);
- (3) bank and credit card statements and other financial records;
- (4) notes of contact visits;
- (5) foster carer logs;
- (6) social services files (with the exception of any assessment being relied on by any of the parties);
- (7) police disclosure.

### **Consequences of non-compliance with the rules**

- 36. It is important that the rules relating to the contents and layout of witness statements are adhered to as Courts have the power to control evidence. This includes the ability to exclude evidence, including witness statements, that would otherwise be admissible.
- 37. Further, the Court can consider cost consequences if the Court is of the opinion that the rules have not been adhered to. This could result in a party being unable to recover costs for the preparation of their witness statement, or even to meet the costs of the other side in dealing with documents prepared in a negligent, unreasonable or improper fashion.

### **Conclusions**

- 38. A good witness statement will comply with the rules and guidance as drawn together in this document. By observing those rules, the court will be left with

the right focus and emphasis on the issues which it has already determined are relevant for it to consider in reaching its decision.

39. A concise and precise statement dealing sensibly with the salient and relevant facts will immediately get its reader (the judge) on-side and allow the evidence to shine through and easily be grasped.
40. Regardless of rank and experience, we are all grateful for reading something which clearly tells us what we need to know. Judges are no different. The judge will be well up to speed with the essence and the relevant detail of the witness's evidence before the witness gets into the witness box. That will be to your client's benefit.
41. What remains is left for the evidential process and cross-examination. Counsel will be the first to flatter themselves that cross-examination will expose even the most carefully crafted witness statement, but the reality is that the degree of ammunition is quite often drastically reduced by a statement which gives us only the essentials. A gratuitous list of irrelevant material which exposes an unhelpful aspect of a witness's evidence can be just about the most damaging thing to include. So, beware.



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**ST IVES CHAMBERS**

Law is correct as at 8 January 2023

Whilst every effort has been taken to ensure that the law in this article is correct, it is intended to give a general overview of the law for educational purposes. Readers are respectfully reminded that it is not intended to be a substitute for specific legal advice and should not be relied upon for this purpose. No liability is accepted for any error or omission contained herein.

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