

Witness Statements

A witness statement is a formal document that ultimately forms the basis of your witness evidence in the event that the matter proceeds to a trial or other hearing. This summary focuses on new rules for witness statements used at trials in the Business and Property Courts, but the principles will apply more generally to all witnesses of fact notwithstanding the location of proceedings.

WHAT IS A WITNESS STATEMENT?

A witness statement is a vital part of any legal proceedings. The purpose of a trial witness statement is to set out in writing the evidence in chief that a witness of fact would give if they were allowed to give oral evidence at trial without having provided the statement. It must be accurate, true to the best of your knowledge and written in your own words. A witness statement must set out only matters of fact of which the witness has personal knowledge that are relevant to the case.

DRAFTING A WITNESS STATEMENT

New rules aimed at reducing the risk of a witness's recollection being altered or influenced, have changed best practice in relation to the preparation of witness statements. The starting point will be an interview between the witness and legal representative during which the witness will provide their account. Such interview may be recorded.

Witness statements should only refer to documents where absolutely necessary i.e. to confirm what a witness understood from a certain document, or to confirm whether or not they saw such document at the relevant time. Witness statements should not provide a narrative, seek to argue the case or seek to take the Court through the documents. On important disputed matters of fact, the witness should state how well they recall the matters addressed and state whether, and if so how and when, the witness's recollection has been refreshed by reference to documents. Such documents should be identified by list.

Whilst we normally draft the witness statement, it must be in your own words. It is therefore vital that you are involved in the drafting process, understand what is included and that the statement accurately reflects your account. New rules aim to reduce the number of drafts of any witness statement, as the process of revisiting a draft statement may corrupt rather than improve recollection.

Once a draft is completed, we will provide you with a copy to review and, if necessary, amend. Once the witness statement is in a final format, you will be asked to sign a confirmation of compliance and statement of truth.

CONFIRMATION OF COMPLIANCE

This is a new requirement following the introduction of new rules for the preparation of witness statements. The confirmation of compliance is as follows:

“I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge. I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case. This witness statement sets out only my personal knowledge and recollection, in my own words. On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when. I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge.”

STATEMENT OF TRUTH

By signing a statement of truth, you are confirming that you believe that the facts stated in the document are true. If it transpires that you have purposely misled the court and made a false statement, it is possible that you would be found to be in contempt of court and could be imprisoned.

If the document is missing a signed statement of truth, it is likely that the validity of the document will be questioned and challenged by your opponent. The court could also decline to take into account the document in deciding your case.

NEXT STEPS

Once you have signed the witness statement, we will arrange with the opponent to simultaneously exchange witness statements.

Once we have received the opponent’s witness statements, they will be reviewed by us and you. On occasion a further witness statement (known as a supplemental witness statement) may be needed from you. This may be required to rebut factual inaccuracies within the opponent’s witness statement.

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