

If you have a civil claim at Court and are unable to resolve it amicably, the likelihood is that it will have to be resolved by way of a trial. In order to prove a case or defence, parties need to rely on evidence. This will usually take the form of documentary evidence and/or witness evidence. At the trial, the Court will hear from witnesses for both parties. Not only are they able to comment on any documents that have been introduced into evidence, but they will also be able to provide any background information to the case that is not set out in those documents.

Witness evidence is normally provided in two ways. Firstly, anyone who intends to give oral evidence at Court will usually provide a written statement in advance of the trial. Secondly, any witness that has provided a statement may then be questioned about that statement at the trial itself.

Witness statements are a key stage of civil proceedings. Good witness statements can assist a party immensely with their claim, whilst weak statements can hinder a party, even if their claim is a good one. Witness statements also assist barristers in their preparation for trial. Witness statements not only provide barristers with an indication of what witnesses are going to say in the witness box, but also may give them an idea of whether the witness will be strong or weak, and areas where they may be vulnerable.

WHO GIVES A WITNESS STATEMENT?

Only individuals can provide witness statements. As such, if one of the parties is a company, then evidence on behalf of the company must be given by a person holding a senior position within the company or organisation. This would usually be a director, treasurer, secretary, chief executive, manager or other officer of the company.

The reason for this is that the person giving the statement will need to provide oral evidence in Court. Even though a company is a legal entity, they cannot provide oral evidence, so someone needs to do it on the company's behalf. Further, as discussed below, witness statements need to be sworn by a statement of truth and these can only be signed by individuals.

WHAT IS THE FORMAT OF A WITNESS STATEMENT?

Depending on the type of claim you are involved in and the Court in which your claim has been issued, there are different rules about what should and should not be included in the witness statement. It is important that a statement complies with such rules as the Court has the power to reject statements that do not comply with those rules.

Subject to any specific rules as discussed above, there are other set rules (as set out in Practice Direction 32 of the Civil Procedure Rules) about the format and content of a witness statement. These include:

- The statement should be on A4 paper and should normally be typed on one side of the paper only.
- Pages should be numbered consecutively, and the statement should be divided into numbered paragraphs.
- It is also good practice to use at least size 11 font and 1.5 or double line spacing.

THE CONTENTS OF A WITNESS STATEMENT?

The statement should be headed with the title of the action, the claim number and the Court in which the claim is taking place. The statement should also confirm (on the top right-hand corner of the front page) the following:

- The party on whose behalf the statement is made.

- The date of the statement (and if appropriate the date of any translation).
- Whether it is the witnesses first, second, third statement etc.
- The initials and number of any exhibits.
- The initials and surname of the witness.

The witness statement should be written in the witness's own words (i.e. expressed in the first person and drafted in the witness's own language). As such, if a witness's first language is not English, then a party who wishes to rely on that statement should have the statement translated and file both the original and translated statement at Court. Further, the translator should sign the original statement and verify the translation is accurate.

If the statement is being made in a professional capacity, the witness should state their work address, occupation (and position held within the company) and the name of their employer or business. If the statement is not being made in a professional capacity, the witness should state their home address. If a person does not wish to provide their home address, they can apply for an anonymity order.

Since April 2020, it has been a requirement that the statement should also confirm how the witness statement has been prepared. For example, in person, over the phone, via email or via an interpreter. Often, as solicitors are involved in the preparation of statements, details of the solicitors who have assisted should also be provided.

The witness should provide facts from their own knowledge. If certain facts are from the witness's own information or belief, they are required to state the source of such information or belief. For example, if a person wishes to rely on information contained in an email they have received, they should state who sent them the email and when.

If a witness wishes to refer to documents within their statement, the documents should be set out in a separate exhibit. Within the statement, the witness should then identify that document by referring to the relevant page number of the exhibit. Again, some Courts now discourage the use of exhibits, so careful consideration needs to be given to whether they should be included or not.

Parties also need to remember that any document that is referred to in a witness statement is available to be inspected by their opponent. Although witness statements are usually completed after disclosure has taken place, if a party wishes to include reference to a document that has not been previously disclosed, they need to disclose its existence prior to its inclusion in the statement.

Witnesses should avoid including hearsay evidence within their statements (i.e., information from a person other than the person giving evidence).

This is because the Court or your opponent will not have an opportunity to question hearsay evidence, as the person to whom the evidence is apportioned is not present at the hearing. As such, hearsay evidence is usually given less weight. If you therefore wish to rely on the evidence of that third party, it is important that they provide their own statement, upon which they can be questioned.

Witnesses should not provide opinion evidence within their statement or seek to include some form of expert evidence. Such evidence is dealt with separately and the Court will view a statement dimly if a party seeks to do this.

Finally, the statement should be verified by a statement of truth, signed by the person making the statement. The wording of the statement of truth is as follows:

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

As set out above, if a person signs a witness statement in the knowledge that some of the information contained in the statement is not true, they could find themselves being found liable for contempt of Court, which can carry a prison sentence.

As such, before a witness signs their statement, they need to review it very carefully and double check everything within the statement to ensure they are happy with its accuracy.

WHAT HAPPENS IF I CANNOT OBTAIN A STATEMENT FROM A WITNESS?

If a person refuses to provide a witness statement or you are unable to obtain a statement from a person you intend to call as a witness, then you can consider using witness summons or witness summaries.

If a person is refusing to give a statement, but you require them to give evidence at the hearing, you can serve them with a witness summons which compels them to attend Court to give oral evidence at a particular date and time, and/or for them to provide documents to the Court.

A witness summons is served on the witness by the Court and in some instances, the Court's permission is required to serve a witness summons, particularly if the trial is due to take place shortly after the date of the summons.

If a witness is prepared to attend Court, but has been unable to provide a statement, then a party will need to serve a witness summary. Permission is required from the Court to rely on a witness summary.

If permission is given, then the witness summary should set out a summary of the evidence that would

have ordinarily been included in a witness statement, and where evidence is not known, details of the matters upon which it is intended to question the witness when they give oral evidence.

The use of both witness summons and witness summaries should be given careful consideration before deciding to use them or not. This is because a party will not know what a witness will say when they give oral evidence and as such, it could cause more damage to your case than not calling them as a witness. A person who does not want to give evidence may be hostile and this could hinder your case. However, they do provide a party with an opportunity to question a person, and may be able to obtain useful evidence from that person as a result.

GET IN TOUCH



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The lawyers have incomparable client service skills. They are very clear and always make sure they understand the picture, even if it is a complicated one.

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