



DEANS COURT CHAMBERS

s.25 statements: the winning ingredients

1. Why a witness statement?

1.1 Statement on the EFFICIENT CONDUCT of Financial Remedy proceedings (11 January 2022).

(Derived from the President's Memorandum: Witness Statements (10 November 2021))^[1]

1.2 Para 19 c. Preparation for final hearing:

The court timetable for final hearing should not normally allow for any evidence in chief. Pursuant to FPR 22.6 (2), **the parties' section 25 statements will normally stand as their evidence in chief.**

2. Follow the rules

2.1 Para 22:

- a. The statement must be expressed in the first person **using the witness's own words.**
- b. Witness statements **may only contain evidence.** The statement must not
 - i) quote at any length from any document;
 - ii) seek to argue the case;
 - iii) take the court through documents or set out contentions as to the meaning of the documents, those being matters for argument;
 - iv) express the opinions of the witness; or
 - v) use rhetoric.
- c. Evidence may be given on matters of past and future fact and matters of information and belief. The statement may contain only those matters of fact of which the witness has personal knowledge and which are **relevant** to the case.

- d. The statement must indicate the **source of any matters of information and belief** (PD 22 A para 4.3 (b)). **Evidence about future needs will be a matter of information and belief.**
- e. The statement must identify in an annexed list 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. For documents previously disclosed **the list must identify where in the disclosure of the documents are located.** Documents relied on which are not privileged and which have not been previously disclosed, must be clearly identified in the list and disclosed with service of the witness statement. Privileged document should be identified in the list by category or general description. It is **acceptable for the key documents relied on to be exhibited** to the statement but their number must be limited so that the 350 page bundle limit (...) is not exceeded.
- f. **A person involved in preparing the statement must not, subject to the next subparagraph, in any way seek to alter or influence the recollection of the witness.**
- g. 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 was still fresh in their mind. Any such document must be listed under (e) above.
- h. Parties should understand that the court’s approach to witness evidence based on human memory will be in accordance with CPR PD 57 AC, Appendix para 1.3.^[2]
- i. The statement must be **as concise as possible without omitting anything of significance.**
- j. The 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 25 page limit in PD 27 A para 5.2A .1, which should be regarded as a maximum.[exclusive of exhibits]

(Note that pursuant to PD 27 A, that maximum will only be breached if the court is “satisfied that such direction is necessary to enable the proceedings to be disposed of justly”.)

3. The statement itself

- Should they be simultaneous or sequential?
- Might you need before the FDR?
- Who drafts- costs v scrutiny. Not therapy!
- Do not repeat what is in the Replies (and don’t say something different!)
- Tell an engaging narrative.
- Think about the outcome sought
- Make appropriate concessions
- Use own words-s/he is going to be cross examined.
- Use the other party’s name
- Make the DJ’s life simple: use sub headings.
- Make your statement eg “I am unable to work full time”- and then say why.

- Don't waste valuable pages setting out matters which are uncontested matters of fact for example the dates times et cetera now to be found in the ES1
- Do not waste time (and money) with s25 criteria which are uncontested.
- Consider what issues the court is actually going to have to adjudicate upon. At the end of the FDR think about this and try to get a direction limiting the ambit of the F/H evidence. (If the only issue is eg earning capacity, limit the statement to that in the direction).
- Chronologies can help the DJ see the picture on an issue.

For example:

- health

does it actually have an impact?

Is the impact agreed- eg been working part time for years?

What do you need? Medical report/ or will GP letter do?

Life expectancy- impact on pensions.

Consider at the FDA

- Contribution

Significant capital contributions: completion statements/ bank statements/ letter from donor.

Was it a gift or loan?

Third party evidence?

- Conduct

Peel J's strictures *Tsektov v Kharova* [2023] EWFC 130- needs to be properly pleaded: resolve at the FDA.

- matrimonial/non-matrimonial assets

do not argue the law: set out the history, any agreements/ understandings between the parties.

- Housing needs

Working from home: eg therapy studio; somewhere quiet to work/extra bedroom; decent area

School catchment

Family support

Critique of O/S's proposals

- capital needs

provide evidence of cost of eg vehicle

business set up costs

course fees

DJ's like a plan!

- income

current income and trajectory: why is there no overtime/ promotion prospects.

Conversely, the other party's future career progression assured.

- Earning capacity/Compensation

Clear evidence of income/ career foregone.

Investigate return to work training. Be realistic about prospects.

Is there further training/ education to be done?

A business plan- where will I be in 3 years?

Evidence of high-flying career sacrificed

- other financial resources/mortgage capacity

Is s/he in stable relationship?

Cohabitation- probably marginal anyway.

Family help.

Mortgage capacity

- income needs

do not compile bonkers schedules!

- Work with your counsel to evaluate the evidence
Provide the ammunition for him/her!

Appendices/footnotes

^[1] President's Memorandum: Witness Statements (10 November 2021)

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.

(...)

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 proceeding 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 and e: privileged documents]

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 a 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 was still fresh in their mind. Any such document must be listed under para 11.

14. (...) 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**.

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 a power under CPR 44.11 (1) (b) to disallow the costs incurred in preparation of a non-compliant witness statement.

[2] Witnesses of fact and those assisting them to provide a trial witness statement should understand that when assessing witness evidence the approach of the court is that human memory:

(1) is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but

(2) is a fluid and malleable state of perception concerning an individual’s past experiences, and therefore

(3) **is vulnerable to being altered by a range of influences**, such that the individual may or may not be conscious of the alteration.

