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of witness statements all relevant documents should have been disclosed, but if a document not previously disclosed is referred to in a witness statement the opposing party may require disclosure of it. It is a common practice amongst solicitors to attach to the witness statement copies of all documents referred to in that witness statement. 67 This is not necessary, but it is clear what documents are being referred to, and the paper list of documents has been served by the party it is perfectly sensible to save the copying and refer, for example, to 'the invoice no. 123' or 'the Claimant's list of documents'. 68. Related: When you have to make a witness statement for court, you can then slip-ups. Slip ups in witness statements make your life harder. They force you to take steps to defend what you say in court. That might be avoidable. Getting it right the first time has other advantages. Avoiding mistakes gets you into a position to focus on advancing your own case. Structure your witness statements properly and cover what needs to be covered. Below, we give some suggestions on how to prepare witness statements. We also give the low down on some of the processes that courts are likely to go through to assess and verify what you say in your witness statement. We've also included a template witness statement below to get you started. What are witness statements? Witness statements are formal court documents. They're made by witnesses to: Witness statements: are the main way courts receive evidence may be made for the purposes of supporting an application for interim relief (such as an injunction) or relied on at the trial in court disputes have the same general form in civil proceedings in England, whether they are used in disputes relating to contracts, work, car accidents, or disciplinary proceedings. It's important to get right the first time (or as right as possible), because when they are signed, they're supported by a statement of truth. First, the basics. Then we show how witness statements are tested and challenged. Contents of witness statements Overview If you are making a witness statements it should: be written in your own words, in the first person state facts within your personal knowledge, and if not specify the source of the information or belief is not within your direct knowledge not give opinions, unless you're an expert exhibit documentary evidence to support the statements made follow the chronological order of events use numbered paragraphs so that different parts of it can be referred to quickly and easily. It should include all the evidence that you are able to give to assist the court decide the case. More on this later under the heading, "Testing your Witness Statement". Format wise, statements should be printed on a single side of A4 paper, and have a left margin of 35 mm. (We've been using 20 mm margins for years, and have never been criticised for it). The conclusions and opinions that I come to below is sourced from a wide variety of disputes in civil proceedings. I don't pretend that there is only one way to draft a witness statement. Each witness statement will depend upon the circumstances in which it is required. What is clear is that you need to think through what you say your witness statement, and the corroboration that you can use to support what you say. It will give you more credibility and make it harder to criticise what you say in your witness statement. There are at least two ways that you can prove what you say. You can: produce evidence that directly supports what you say. For instance, if you say a company exists, you would exhibit a page from the relevant Register of Companies in your statement, from here; or produce evidence which tends to show what you say is true. Let's say you wanted to prove that you were in a particular place at particular time. You could produce credit card statements showing that you bought something from a shop near the venue, or a WhatsApp conversation which shows communications with the person you were about to meet, that you were running late. When are witness statements used? Witness statements are a fundamental tool in the civil justice system. There are only 3 ways to for the court to receive evidence. Witness statements (and affidavits with them), oral evidence (in cross-examination and re-examination) and by judicial notice. Courts use the evidence filed to decide issues: at the trial: The trial takes place after all of the preparation been completed. All of the parties, their witnesses, their experts (if any) come to court for the dispute to be heard and decided by the judge. At the trial, the witness statements prepared for the trial will almost always include "lay witness statements" (lay evidence). Lay evidence is just evidence which is not expert evidence. Expert evidence is given in the form of witness statements by people specially qualified to assist the court decide technical issues. Experts in a case could include IT experts, doctors, engineers, quantity surveyors or mechanics. They are qualified to give opinions in the areas of their expertise. In interim applications: when an application is filed, the application notice (called a notice of motion in some countries) is supported by evidence. This is known as "evidence in support". Evidence may be made up of one or more witness statements. The evidence that a party files in response to the evidence in support is known as the "evidence in response". After that, the party filing the application notice has a further opportunity to file evidence, to respond to the evidence in response. This is known as "evidence in reply", and sometimes "evidence in answer". Typical interim applications include: The form of witness statements First page: Case Title Witness statements have a prescribed form. Witness statement should set this information out on the first page: the title of the proceedings the name of the person making the statement the party to the proceedings on whose behalf the statement was made the exhibits made in conjunction with the witness statement the date it was made the number of witness statement of the witness making the witness statement. The case title makes it clear on the first page the legal proceedings witness statement is made for, and who made it. Section: Identifying yourself Following the case title some a statement identifying the deponent - the person signing the witness statement. It has a prescribed form: "I, [name], [occupation], [of address] will say as follows:": If the witness statement is made in a business capacity, the address should be your work address. Otherwise it is your home address. If you are unemployed or retired, those words replace the space provided for the "occupation" of the person. Why does it say, "will say as follows"? Aren't I saying it now, when I sign it? Good question. Court procedure in England changed in about 2000. Prior to that, witness statements were not prepared before the trial. The witnesses just showed up and gave oral testimony in person. That would be the first the other party ever heard what the witness would say. Each party had their own witnesses which they would call to court to give evidence in their favour. Their oral testimony for the party that calls them is known as their "evidence in chief". After they gave their evidence in chief, the opposing party would then have an opportunity to cross-examine them. After cross-examination, the party that called them would have another opportunity to ask them questions. This was done to clarify anything that came up during cross-examination. This is known as re-examination. This process still applies but witness statements replace evidence in chief given by oral testimony. Witnesses now give their evidence in chief in witness statements. When you appear at court, you are called for cross-examination. Section: Preliminary Source of Evidence Well drafted witness statements commence with a statement confirming the source of the evidence given. And then stand by it. It usually has words like: The facts set out in this statement are within my own knowledge save where I state otherwise. Where I refer to facts that are not within my own knowledge I will give the source of my knowledge of those facts, or Except where I indicate to the contrary, the facts and matters contained in this witness statement are within my own knowledge. Where the facts are not within my own knowledge, I have identified my sources of information or belief. Different words, same effect and message. You'll want to make sure you stand by it in your statement. It serves as a reminder what of evidence should be given, and what shouldn't - or can't - be given. It may sound trivial. It's not. In one case, words similar to those above were used in witness statements. But the witness statements didn't stand true to the statement. In Starbucks v British Sky Broadcasting Group, the Judge said: Despite [using words similar to the words in blue above], some of [the] statements contained information that, as she readily acknowledged during cross-examination, was not within her own knowledge, but without making this clear or stating the source of the information. This is a breach of CPR PD32 18.2 [...] [I]t inevitably causes unnecessary difficulties for the witness when cross-examined. [...] The fault lies with the solicitors who drafted the witness statements. [...] This slipshod approach to the preparation of witness statements must cease. Those "difficulties" translate to being asked in cross-examination: whether the witness statement as a whole contains the whole truth whether there are any other parts of the witness statement which aren't true getting you on the back foot, and unsure of yourself when you're under pressure. Where the source of the information or belief is not provided, it's likely to lead to the evidence given being (at least) heavily discounted and perhaps excluded from evidence which the court is prepared to consider altogether. If it's not within your direct knowledge: you didn't see it or experience it, it's hearsay evidence, and of little weight at all. The purpose of using the wording at the beginning of a witness statement is, in a way, to remind witnesses of the limits of the evidence they can give, and protect you from one of the harsh technicalities of the law, and preserve your credibility in the witness box. Introducing the Deponent - You Next, introduce yourself, in brief - in one or two sentences. Say who you are, and your background. Some people like to start the narrative (see below) to introduce themselves. Making a brief statement here, and then expanding on it in the narrative section (if necessary) might work better. Also, this preliminaries section is: a good place to say you are related to any of the parties, such as "I am an employee of the Claimant" or "I am the brother of a director of the defendant", if you are, and a handy place to define terms and abbreviations that will be used throughout the witness statement, if there are any. Section: This Witness Statement It's a good idea to explain why the statement is being made, or the purpose the witness statement is being made early on. This is the place to do it. Although it may be obvious, your witness statement may be one of many in the legal proceedings. State why the witness statement has been prepared. You will also save the judge some aggravation by having to work it out for themselves. This may be a statement that it is made in support of an application notice, in response to an application, or for the trial. Section: Exhibits You will often need to refer to documents upon which you rely to state the facts that you state. If documents are exhibited, it is a good idea to introduce them at this stage. Also, it is usually a good idea to group exhibits by categories and make separate exhibits for each category. If they are dated, put them in date order within each exhibit. See also the heading "Exhibits" below for guidance to arrange them. If there is one exhibit, it could be introduced with words like: There is now produced and shown to me a paginated bundle of relevant documents marked [exhibit reference] which I will refer to in the course of this statement in the format "[exhibit reference] / page number". Where there is more than one exhibit, it is a good idea introduce the contents of each exhibit with a summary of its contents. More on that further down. Section: The Narrative This is the business end of the witness statement. Having set out the context of your witness statement, the reason why it was written, the truth of what you say. You sign and date the witness statement under the statement of truth. The capacity of the person making the witness statement should be made clear. For instance, where the claimant is an individual and signs the statement of truth, it might appear like this. 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. ......... Ralph Rogers The Claimant. [date] If the witness statement is made for a company which is say the second defendant in the case, it would read like this: 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. [signed] ..... Ralph Rogers [Director] [Chief Operating Officer] for the [Second] Defendant. [date] The exhibits should be completed, printed and in front of you, with the witness statement at the time that you sign it. Sure you can do it electronically. But you'll want the exhibits to be in a single document (usually a PDF), paginated and with the exhibit coversheet so that there can be no confusion about what the exhibits contain. We prefer to print everything and then scan everything after it's all signed. It's a safer approach to avoid muddling the order of documents. Nothing should be changed in the document after you sign it. If you want to make changes, you should re-prepare another version for signing and sign it all over again. Before you serve it. The consequences of signing a witness statement or other document verified by a statement of truth - without a genuine belief in the truth of what is said in it - are well, serious. Changing your witness statement After you finish and sign your statement, your recollection may change. You need to consider whether you need to put in another witness statement to avoid the other party - and the court - being misled by your witness statement. The change should be part of a further witness statement, which is served on the other parties. Statements of truth used for expert evidence differ. The reason is that experts owe an overriding duty to the court. More on that below. Preparing Exhibits to Witness Statements Documents which are referred to in a witness statement are organised into one or more exhibits. They are part of the witness statement, although the exhibits may not be attached to it. When you sign the witness statement, each exhibit should be complete have numbered pages (bottom right-hand corner: "1", "2", "3" and so on), or even better [Exhibit Reference] / [page number], and have an exhibit cover-sheet. The numbered pages allow you to refer to page numbers of the exhibit in your witness statement. You can find the page to the exhibit in your witness statement at hearings quickly. It is better for both you and the judge (which is the person you're trying to impress). An index to exhibits really helps as well when they contain many documents, because it helps locate individual documents in large exhibits. If there are many documents and they can be categorised, they really should be split up into different exhibits. Suppose a person named Ralph Rogers makes a witness statement. It has 3 exhibits. Let's say it's his second witness statement. His first witness statement had two exhibits, "RR01" and "RR02". The exhibits to his second statement would be marked "RR03", "RR04" and "RR05". Each would be stapled separately or put into a folder where there are lots of pages which are too big to be stapled. Check out the template exhibit cover sheet below. It is a good idea to exhibit documents in this way because: the documents support your case it serves as a reminder to you of why you said something in your witness statement it's more difficult to criticise your witness statement for lack of documentary support you protect yourself by ensuring that what you say is referable to a specific document when you refer to a document, you are able to refer to different parts of it, with the context of what you say in your statement if there is anything unusual about the document, you are able to comment on it the judge will be able to see what you are talking about, rather than have to work it out or guess what you are talking about at the hearing) your cross-examination will be either be harder or more focused, because you've kept yourself what you can say, without sounding like a removed stranger person that draws wild and baseless conclusions. Also: if any of the pages are illegible because the printing is poor, you should type up a copy and exhibit it with the best copy you are able to make of the poor quality document No point putting in evidence that the judge and the other parties can't read bundles of letters, emails and messages (such as WhatsApp and text messages) should be in chronological order, so that the earliest letter is at the top and the most recent at the bottom. Finally, at the same time you sign the statement of truth, you must verify that each exhibit is authentic. You do so by signing (or writing and signing) a statement on the exhibit cover sheet. The statement usually says: I verify that this is the exhibit marked '[exhibit reference]' to my [number] witness statement dated [date]. By the way, it's a good idea to spell out the date, rather than use the format "04/05/[year]". You'd use "4 May [year]". Writing a Good Witness Statement The Importance of Context When preparing your witness statement it's a good rule of thumb to exhibit documents to the witness statement which support the facts you state. For instance, suppose you are in a case where the other party alleges that you misappropriated their confidential information, and then used it to make a copy their invention. In this hypothetical, you didn't. You made it yourself, independently of the other party over a period of months or years. To make out your defence, you need a witness statement for trial. The court will be interested to find out how you developed your own invention. It would make sense to cover the development process, step-by-step over time. Turn of Events You could just tell the story that: In one month you were doing research, then you created the proof of concept in the next month. After that might come the internal testing and analysis of results. Then you released the minimum viable product and did marketing, testing and received some feedback. And it was after that was the first you heard of the claimant: when they wrote to you claiming that you'd copied their invention. Bare statements of fact setting out a chronology of events is, well, better than nothing. But it has little weight. There's no independent evidence to support what you say. Software-as-a-Service, you might add that it is services delivered by software from a central server in a web browser, where the user does not have a locally installed copy of the software. Proofing your Statement Hopefully, you will not find yourself in a position where you need to sign your witness statement on the same day that you have to file and/or serve it. You're better off if you plan to have a final version ready for proofing 7 days before it needs to be filed and/or served. When you are reading over your statement, try to spot ambiguities and gaps in reasoning or the flow of the statement. If there are gaps, fill them in so that each step follows logically and sensibly from the previous statement (or heading). If you've told the story - the narrative - in the sequence that they took place (ie chronological order), they'll be obvious. Don't think that if you mix up the order of events that the other party won't spend time finding the gaps and inconsistencies. Assume that effort will be made, because cross-examination is truly devastating to a witnesses' credibility: ie "believability". Opinion Evidence Some straight-talking. Court decide facts based on the evidence, on the balance of probabilities. Witness statements are used to prove facts which are alleged in statements of case. It is not for witnesses to express opinions or arguments. Sure explain the evidence presented if it does not make sense. One of the unique features of courts is that the judges form their own view from the evidence, and decide the facts. The advocate - usually a barrister if the other party is legally represented - present arguments to the judge based on the evidence before the court. They also make submissions on glaring omissions and inconsistencies in witnesses' evidence. You really do devalue your witness statement when you state opinions. If a court needs an opinion, it will make orders in case management directions for the parties to have a qualified expert to receive relevant evidence from the parties and prepare a formal expert report. In that report, the expert may express a reasoned opinion based on the evidence set out in the report. Otherwise, some courts have some tolerance for opinions. You'll want to make sure the opinion is supported by what you say in your witness statement. This is so that opinion can be proved - or at least demonstrated - objectively. So your witness statement is not the place for personal opinions prejudicial comments criticising others opinions on the issues in dispute in the court proceedings, which the court needs to decide. Try to avoid giving opinions unless you are formally qualified to give one, and it is objectively provable. The Trial: Some Context The more important witness statements in legal proceedings are used at the trial. There's a lot to think through and do if you're representing yourself in court. When you are to appear at the trial as a witness though, you're usually invited to sit in court and listen to the evidence of the other witnesses. If however some unfair adversarial method be obtained - or perceived to be obtained - you might be asked wait outside court until you are called to give evidence. Above, we mentioned the old procedure of giving evidence in chief orally. You are at court to be asked questions about what you have said in your statement to assist the court arrive at the truth. The Truth in Witness Statements Even if you're a party to the proceedings, it's your overriding duty to tell the unvarnished truth, politely and respectfully. If you start to advocate your own case or take a side, everyone notices. All witnesses are still sworn in today. Part of the oath or affirmation are the words, that the evidence you will give will be "the truth, the whole truth, and nothing but the truth". Let's break this down: the truth: Simple. Tell the truth. The whole truth: Don't leave anything out that would make your evidence misleading. For instance, if you were told that something happened and didn't see it yourself, say so. nothing but the truth: Don't twist anything to give the wrong impression. And so it should be with your witness statement. Witness statements are taken as the evidence in chief of the witness at the trial unless the court orders otherwise. Evidence in chief is the evidence that the witness gives in support of the case of the litigant for whom the statement was made. At the trial, witnesses are usually limited to speaking to matters referred to in their witness statement, unless there is a good reason to expand upon those matters. Witnesses are required to attend court for cross-examination by the opposing parties in the litigation if required to do so by the court or the opposing parties. Where witnesses do not appear for cross-examination, the evidence is treated as hearsay evidence and of no value or weight. Cross-examination may relate any matter that the witness is able to deal with in respect to the issues in dispute in the litigation and your credibility. As such, cross-examination is not limited to matters referred to in the witness statement - including statements made outside court which are inconsistent with the evidence given in the witness statement. When you are questioned in court The dynamic in court is this. Barristers ask you questions. The barrister is really asking questions on behalf of the judge. So when the barrister asks you questions, you look at them. When you answer the question, you look at the judge. Once you've completed answering the question, you look back at the person asking you the questions. FAQs: How Witness Statements (and witnesses) are tested You may wonder how courts assess witness statements and your performance in court. There are a few established and fundamental principles on how courts go about testing witness statements and the evidence given by witnesses. Credibility of Witnesses One of the central concepts here is credibility. Where a witness maintains their credibility, they are more likely to be believed. Witnesses are assessed in the same way the evidence presented in their witness statement (ie scrutinised to the nth degree) and their performance in the witness box under cross-examination. Again, the court's overall job is to decide the truth. Courts have long recognised that it is difficult to tell whether a witness is telling the truth or not. Courts can take into account any material before the court, and the behaviour of the witness in court. Judges do this for a living. They are good at it. Common-sense also plays a large part when assessing a witness, especially where there is a conflict in the evidence. A witness's motives and overall probabilities of what they say also plays a large part: Robert Goff LJ in The Ocean Frost (Armagas Ltd v Mundogas SA [1983] UKHL 11). And then, the barristers will be able to make comments on any witness's performance in the witness box in closing submissions, long after the witness has left court. Basic methods of checking evidence which are likely to take place include: independently provable facts. When you say again that you are able to take place against facts and events which are provable independently of what you say. You can bet that what you say in a witness statement will be checked against all other documentation available, some of which you may not have seen or even know about, consider the overall probabilities of what you say. The more unreal and far-fetched your statement of fact, the better your evidence needs to be to prove it. The test here is the balance of probabilities. The balance of probabilities means that the court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. Is it more likely that your story (or part of it) took place, or another person's version of events on the evidence available? Or none of them? supporting evidence for serious allegations: This is an extension of what is said above, or a special case. Courts will assess the inherent probability or improbability of an event. It of itself is a matter to be taken into account when weighing the likelihood of what you say against the other evidence available. This does not mean that serious allegations require a higher standard of proof. Basically, the more improbable the event, the stronger must be the evidence to prove it. Much depends on the context within which the events are said to have happened. In the case of In Re Dellow's Will Trusts [1964] 1 WLR 451 it was said, "The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it". assessing motives for lying: Courts know that witnesses can regularly lie. This does not mean that all of the evidence of the witness is discarded or discounted. Court is likely to take into account and/or assess (EPI Environmental Technologies Inc -v- Symphony Plastic Technologies PLC [2004] EWHC 2945): whether the witness has lied in respect of a particular part of the case or all of the evidence given it may be that the entire case is a lie witnesses may lie in "a stupid attempt" to bolster a case. cross-examination: Witnesses must be challenged with the other side's case the other side disagrees with the evidence given. This involves putting the case positively, such as "you knew that the traffic light was red, and not green as you say it was, didn't you?". Questions like this are an ordinary part of cross-examination. The court is testing your version of events. First it gives you the opportunity to deal with an opposing view or inconsistency. It gives the judge an opportunity to assess your performance on critical issues in dispute, and your credibility in the overall context of the litigation. For these reasons, if your view is inconsistent or at odds with documents before the court, you are likely to be asked questions about it. This is probably the most important part of cross-examination. The more serious or outlandish the allegation, the better the evidence needs to be. Trivial or inconsequential statements in evidence are less likely to require documentary support. If a fact or event is in issue (ie the parties disagree), documentation is likely to be essential. Then documentation created at the time of the event is almost invariably more valuable than documentation created after the event. Template Downloads: Template: Witness Statement Template: Exhibit cover sheet Make sure you check out this to make sure you have got it right here before you sign off on the statement. Disputes & Litigation Solicitors We are experienced civil and commercial civil disputes solicitors, that have been tasked with preparing witness statements and affidavits for applications for interim injunctions and trials in business disputes. We've seen - and orchestrated - destabilising witness evidence, and picking apart the credibility of witnesses in civil matters. As a commercial litigation law firm, we've advised clients on civil lawsuits in many areas of law, including intellectual property, commercial contract disputes, trademarks, trade secrets & fraud claims. If you're headed for the trial as a witness in a civil dispute or an expert asked to give evidence, or are likely to receive unwelcome questions about what is said in your witness statement, contact us on +44 20 7036 9282 or contact@hallellis.co.uk for support to sort out your witness statement to: help check it over before you sign it minimise the potential of harsh cross-examination assess the credibility of your evidence, and how it can be improved check whether you've gone too far in what you've said, or need to recover from a position that you'd prefer not to be in. It may be that you'd prefer to talk through giving evidence, what to look out for and the tricks of the trade in cross-examination that can catch you out. Although we can't tell what you should say or not say at court, a better informed witness is usually a better witness for the party you give evidence for. FAQs: 1. Can you be forced to give a witness statement? The simple answer is no. However with most things in law, it's not that simple. A party can ask the court to issue witness summons. These used to be called subpoenas. A witness summons compels the witness to attend court to either: give oral evidence, or produce documents to the court. 2. What can happen if you do not go to court? It would be a contempt of court not to appear on the date specified in a witness summons. Also, if you still do not appear, you may be ordered to pay the costs wasted by the parties for your failure to appear. Where the parties are legally represented, sum is likely to be significant. 3. Are witness statements confidential? Not quite. Once your witness statement is served, it may only be used for the legal proceedings for which it is produced. That rule applies unless or until: you give your permission (in writing) for your statement to be used for another purpose, other than in the proceedings for which it was made the court gives permission for it to be used for another purpose, or the witness statement has been put into evidence at a hearing to be held in public, ie in open court. At that stage any confidentiality which once existed in the document is lost. 4. Are Witness Statements on the Public Record? See above. The short answer is: almost. Witness statements are accessible by parties to proceedings by making an application to the court to inspect the Court's file. In the High Court, these sorts of applications are heard by a Master. The situation is different with persons who are not parties to the specific proceedings. This includes interested third-parties, newspapers, reporters and journalists. However, restrictions apply to documents which can be obtained from the Court file. The following are usually able to be obtained without much trouble, by anyone: Statements of Case, which includes the Claim Forms, Particulars of Claim, Defence, Reply to the Defence, Counterclaims, Defence to Counterclaim, Reply to Defence to the Counterclaim and Further Information and Clarification judgments and Orders made in public are usually able to be obtained without much trouble. Witness statements, communications between the parties, and the parties and third parties are available for production from the public record provided the court gives permission. An application notice must be filed to obtain a witness statement. A hearing is likely to be required. A party and/or any person named in a witness statement may apply for an order that production of the witness statement is: not available to person who is not a party to the proceedings restricted to specified classes of person or named persons subject to removal, redaction or otherwise edited in accordance with the order of the court prior to production In every case, the court will want to know why the application is made, and most likely what uses to which the witness statement will be put, if access is granted. 5. Who gets to see witness statements? Firstly, the party that asked you to prepare the statement will have a copy. If they are legally represented, their solicitors will see it. If they have a barrister, they will see it too. If there are other witnesses, it may be that they shown your witness statement. Then the party that asked you to prepare it will see it. It may be that your witness statement is relevant to an expert report which an expert needs to prepare for the trial. The expert would also receive a copy. As part of the preparation for trial, case management directions are made early in the case. These case management directions set the timetable for different stages, usually up to the trial. The trial is when the solicitors, witnesses and expert witnesses appear before a judge so that the case heard and the judge can decide the case. The case management directions will require the parties to exchange witness statements. A date is fixed for exchange in the case management directions. At that stage the other side will receive a copy. If the other side is represented their solicitors, barrister and perhaps an expert may also see it. When you appear at the trial for cross-examination, the judge will also have a copy. The Civil Procedure Rules also provide that a party must have copies of witness statements available for members of the public. This is so that the public are able to follow what happens in court. So, members of the public may also receive a copy. 6. What if a witness statement is not signed? In our language, the witness statement: would carry "no weight" because it is not endorsed - or verified - by a statement of truth may be excluded from evidence which the party is able to rely on altogether at the trial. That's not to say that the statement is not admissible in evidence. It's just that the weight given to it is less. Differences: Affidavits vs Witness Statements There are several differences between witness statements and affidavits. The main ones are: The form of an affidavit is slightly different to a witness statement. An affidavit commences with the words "I, [name], [occupation], say on oath: ...". In witness statements, the witness starts with, "I, [name], [occupation], will say as follows: ...". Affidavits must be sworn before a solicitor, legal executive or public notary Affidavits contain a jurat, whereas witness statements are endorsed with a statement of truth. Affidavits are used in applications for Freezing Orders and Search orders: Freezing Orders are court orders that prevent a person from disposing or dissipating their assets. Search Orders effectively permit a litigant to search someone's premises for evidence relevant to proceedings. In all other proceedings, witness statements are perfectly acceptable, unless a judge directs that affidavits be filed (with the court) and served (on the other parties). 8. Can a witness statement be signed electronically? The short answer is yes. Or at least: we've never had a problem with electronic signatures. However, a proper procedure should be adopted so that if anyone questions whether the witness statement was signed properly. The process should be verifiable - to show that the witness signed the statement (rather than somebody else). An email trail which shows that process of signing helps. It goes without saying that if the witness statement was signed, no changes should be made to it after it is signed. It should be re-made, although there is a procedure to hand-mark edits. It's not a recommended course. We've seen witnesses cross-examined on witness statements which have been changed, or revised in further witness statements after they've had a "re-think". It's not pretty, if you're on the opposing side. 9. Can you withdraw or retract a witness statement? Once a witness statement is approved by signing the statement of truth, it is your witness statement. It is your responsibility as deponent to ensure that your evidence is truthful. Keeping to the suggestions above can help steer clear from problems preparing it in the first place, but in the final analysis the witness is responsible for what they endorse with a statement of truth. If you have any reservations about your witness statement it should be revised before you sign it. This also applies when there's anything misleading in your witness statement. It's the court's job to arrive at the truth. If you have made a witness statement and no longer wish to give evidence, see the comments above on witness summonses. 10. What is a Lay Witness Statement? These are sometimes referred to witnesses of fact. Although it sounds silly, "lay evidence" and "lay witness statements" is evidence given by a person who is not appointed as an expert witness in the proceedings. To tell the difference between expert evidence and lay evidence, here's the terminology: "expert evidence" is given by an expert appointed by the court under CPR 35. The evidence is almost invariably given by lay evidence statement (rather by affidavit). The appointment of the expert will take place with the permission of the court. The permission is given in case management directions - these directions are usually made at the first case management conference. "lay evidence" is given by a person who is not an expert for the purposes of the proceedings. A "lay witness statement" is a witness statement made by a person who is not an expert. Suppose you are: a fully qualified and experienced civil engineer; and the claimant in your own legal case. You can't be an expert in your own case involving work which is the subject of the legal proceedings. That's because you would be perceived to be biased (even if you aren't). Suppose you have a friend who is a civil engineer. Your friend wants you to give evidence as an expert in his case. You can't (or at least shouldn't accept the appointment), because you wouldn't be seen to be independent of your friend, because of your prior relationship. 11. What is Expert Evidence? Lay witnesses have a limited ability to give opinions in their evidence. For the most part opinion evidence is inadmissible. It is likely be challenged by the other party, simply because lay witnesses are not qualified to give opinions in court. While there may be some leeway on the general rule, sometimes it's best just to leave it out! The facts stated in your statement should speak for itself. Let the qualified experts give their opinion if the court wants it. Experts have greater and overriding responsibilities to the court when they give evidence. Although they give evidence for party that they are for, experts owe an overriding duty to the court, and should confirm that they have done what they are meant to, in relation to the statement of truth. Those responsible transcend perceived obligations to the party for which they give evidence. See Philip v Symes (2004). 12. Is a Witness Statement a Statement of Case? Statements of case are prepared by parties to allege facts of the case on which they rely to succeed in their legal claim; their cause of action. Witness statements are there to prove the facts of alleged in the statement of case. When a statement of case is signed - endorsed with a statement of truth - the statement of case can be used as evidence of any of the matters set out in it. If you've worked through what is set out above, you may realise that: witness statements and statements of case serve fundamentally different purposes the role of a statement of case as evidence is limited. There is very little to decide a fact on the balance of probabilities based on a statement of case, because there will be little evidence of the allegation in the statement of case (which would appear in a witness statement) The court rules allow statements of case (such as particulars of claim or a defence) to be used as a matter of convenience. If an issue is dispute between the parties, a judge will be looking to receive independent evidence from the party to satisfy the burden of proof. Not rely on what is said in a statement of case. London Litigation Lawyers Want to say the right thing, the right way in a litigation case? Have an urgent hearing coming up, and need a hand with a witness statement? We've acted for, advised and assisted litigants and witnesses in commercial litigation to: prepare and firm up their evidence prior to hearings check over witness statements to iron out weaknesses that will prompt criticism avoid catastrophic mistakes in litigation that lead to adverse costs orders required to be paid within 14 days advised on the legal requirements to be successful at hearings culled bad arguments which almost certainly hold no sway with courts advanced and defended applications for: We know both sides of the story, and how your opinion is likely to come at you. helped witnesses prepare to maintain their credibility in the witness box in cross-examination prepared witness statements for trial appeared at case management conferences and pre-trial reviews for clients. We're local to the Rolls Building on Fetter Lane and the Royal Courts of Justice on the Strand in London, and the Central London County Court. They're a 5 minute walk for us. 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