

# Preparing your Witness Statement for Court

## Overview

If you are making a witness statement, it should:

1. Be written in your own words, in the first person
2. State facts within your personal knowledge, and if not
3. Specify the source of the information or belief is not within your direct knowledge
4. Not give opinions or arguments
5. Exhibit documentary evidence to support the statements made
6. follow the chronological order of events
7. 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.

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.

Everyone drafts witness statements differently. To make it easy to read:

1. Use short sentences and paragraphs, where possible
2. Keep it as concise and to the point as possible
3. Use correct capitalisation and punctuation
4. Avoid huge blocks of text
5. It is OK to introduce documents and explain them if they need it, but do not provide extensive commentaries or opinions. That is for arguments to be put to the judge at the hearing.

In this narrative, you are telling your story.

You can only give evidence of what is in your personal knowledge. It helps to have documents which back it up. The exceptions include when someone has told you something, and you believe it. Again, preferably with documents, such as emails or instant message transcripts, if they exist.

It is difficult to overemphasise the importance of making it clear that facts of information and belief (and not within your own personal knowledge), indicating the source for any matters of information and belief. It is an important distinction to make, because one is direct evidence, the other is not.

Other things to bear in mind:

1. If you refer to someone, introduce them by giving their full name and position or role with their employer, or some other description to explain why you are mentioning them
2. If you refer to a company or incorporated legal entity, state its full name, address and the sort of business it is engaged in (software developers, mechanics, consultants or suppliers as the case may be)
3. If you have any doubts or reservations about what you say, state them. You do not want to be accused of misleading the court by leaving a false impression.

If possible, include answers to questions that you are likely to be asked by someone reading your statement. You are likely to be asked in cross-examination anyway in due course.

It is a good idea to exhibit documents:

1. The documents support your case.
2. It serves as a reminder to you of why you said something in your witness statement.
3. It is more difficult to criticise your witness statement for lack of documentary support.
4. You protect yourself by ensuring that what you say is referable to a specific document.
5. 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.
6. If there is anything unusual about the document, you are able to comment on it.
7. 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 (and then seek clarification at the hearing).
8. Your cross-examination will be either be harder or more focused, because you have kept yourself what you can say, without sounding like a strange person that draws wild and baseless conclusions.

## Writing a Good Witness Statement

### The Importance of Context

When preparing your witness statement it is a good rule of thumb to exhibit documents to the witness statement which support the facts you state.

### Omissions

Often a story can be told and details are left out for brevity or impact. Witness statements are not the place to do this. If you know anything and it is left out, which leaves what is said in the witness statement untrue or misleading, you need to include the extra information.

You need to be able to stand by the statement and tell the truth, the whole truth and nothing but the truth.

## Opinion Evidence

Courts 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.

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 - 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 devalue your witness statement when you state opinions.

So your witness statement is not the place for:

1. Personal opinions
2. Prejudicial comments criticising others
3. 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 Truth in Witness Statements

Even if you are a party to the proceedings, it is 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:

1. The truth: Simple. Tell the truth.
2. The whole truth: Do not leave anything out that would make your evidence misleading. For instance, if you were told that something happened and did not see it yourself, say so.
3. Nothing but the truth: Do not 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.

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.