

Witness Statements and being a Witness in a Dispute

If you are the Claimant, Defendant or have relevant factual information in relation to a contested probate or contested Court of Protection matter, then it is very likely you will be asked to provide a formal Witness Statement.

If the case you provide your Witness Statement for goes to trial, then you may have to attend Court and give evidence about the matter in person. This help guide provides you with some of the key information that you will need to give a Witness Statement and/or attend trial.

What is a Witness?

A witness in the context of a civil case (as opposed to a criminal one) is someone who has relevant factual information that relates directly to whatever issue the Judge is being asked to make a decision about.

In contested probate cases, this is often evidence about the deceased person's physical or mental health, and their ability to manage their own affairs and make their own decisions. It can also relate to the person who is bringing or defending the claim and their conduct either before or after the death of the deceased person.

Who should be a Witness?

In short, it can be anyone over the age of 18, who has mental capacity to provide a Witness Statement, and who has factual knowledge relevant to the claim.

Exactly who the best witnesses are for a specific claim will depend entirely on the circumstances of each case. In some instances, it will be a close relative – perhaps the spouse, child, or sibling – of the person who has died. In other circumstances, it will be a professional such as a solicitor or doctor.

There may be some instances when a Witness Statement is taken from someone, but they are not selected to continue with the claim. This may be because their evidence is unhelpful to the person they are trying to assist, or because their evidence is not relevant, not sufficiently factual, or already covered by another witness.

What is a Witness Statement?

A Witness Statement is a formal document, addressed to the Court, in which a witness sets out all the facts that they are aware of that apply to the case.

Witness Statements are in the name of the witness providing them and it is them who must sign it. It must therefore be entirely accurate from their own recollection only. We do not

therefore recommend discussing your Witness Statement with anyone else.

They may also include some expressions of opinion in certain circumstances, but this is not always necessary or appropriate.

Every Witness Statement must comply with certain rules from the Civil Procedure Rules, and the solicitor taking the statement will ensure that these rules are all met.

The most important rule to be aware of is that the Witness Statement will be finished with a Statement of Truth. Signing the Statement of Truth amounts to confirmation to the Court by the witness that the facts in the statement are true. Accordingly, if the Court took the view that any facts were stated without an honest belief in the truth of those facts, proceedings for contempt of Court could be taken against the witness. This is rare and requires the witness to have been dishonest, or to have disregarded the truth.

What happens at trial?

Most contested probate cases settle 'out of Court', which means that they never go to trial. It is therefore likely that you will never have to step foot in a Court room as a witness.

That said, if the matter you are a witness for does go to trial, this can seem very daunting. Please rest assured however that civil Courts in England and Wales bear very little resemblance to the trials you may have seen on TV!

If you are required to attend trial, then the Barrister acting for the person you are helping will call you when it is your turn to give evidence. They will ask you to look at a copy of your signed Witness Statement and confirm that it is your statement and that you do not wish to change anything. If you have therefore realised in the time between making your statement and the trial, that something needs to be amended, this is your best chance to say so.

The Barrister acting for the person you are helping may ask you to expand on some of the points you have made in your statement, perhaps padding out bare facts with a bit more context or clarifying something they think could be ambiguous.

Once they have finished with their questions, then the opposing side's Barrister will be allowed to ask you questions if they want to.

It is often the case that the opposing side will want to challenge parts of your witness evidence. Their Barrister may therefore try to get you to change what you have said in your statement, for instance by suggesting that you are mistaken, or have forgotten what actually happened. It is extremely rare however for them to accuse any witness of lying, of being deliberately dishonest, or to raise their voice to a witness.

If you are a Witness in a case that we are acting in, we will always discuss the trial process

with you in further detail nearer the time and ensure you have the opportunity to ask any questions you may have.

Do you need Further Advice?

The circumstances of every civil claim are different, and therefore so are the requirements for witnesses and Witness Statements.

If you wish to discuss your circumstances in more detail, please contact us.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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