Advice on writing a Position Statement

When you attend Court, in the majority of cases it is helpful to have prepared a **Position Statement**. Sometimes the court will have ordered you to prepare one and exchange it with the other side a few days prior to the hearing, but if that is not the case, it is still a very useful document for you to prepare and take to court with you.

There is a difference between a Statement and a Position Statement. They both serve different purposes and contain different information. Be certain which is required because they are not a substitute for each other.

A Position Statement is useful for a variety of reasons, explained below, but first it is worth explaining what it is, and how it can be used in Court.

What is it?

A Position Statement is a short statement, limited to one or two pages, in which you set out your current position with regard to the proceedings and what you think is the best way forward and why. It is not a place for rhetoric, making accusations or raising numerous issues.

It needs to be a document which the Judge will be able to quickly read and digest, usually in only a few minutes, and which will inform them of your position. It does not need to do anything else. It does not prevent you from making the same points, or elaborating on those points in the hearing, indeed the Judge is likely to ask you to add weight to what has been said, so keeping your comments short and to the point is preferable.

If the document is too long, or attempts to deal with issues that are not relevant, the effectiveness will be lost and the Judge may skim through or ignore whole sections, or simply disregard the document entirely. So, in essence, it has to be a focused and concise work which is entirely relevant to your position.

Why write one?

As you approach your hearing, as a Litigant in Person for the first time you will be unaware how your hearing will drain you. It will be emotional, and will cause everything that you wanted to say to disappear from your mind, leaving you blank and you a gibbering wreck!

Being involved in your own case can be a nightmare, and all the best intentions and preparation may well disappear from your mind on the day. If you are facing a lawyer/barrister who is representing the other party, you will find that they are able to stand up in court, reel off all of the relevant points they wish to make, and be very clear and focused.

The principle reason for writing a Position Statement is for you to consider the points that you need to make, hone each of them into a focused and relevant point, and word it correctly and effectively. Having it written down serves as a reminder in the hearing so that you don't leave the hearing thinking to yourself 'I wish I had remembered to say….'

Your statement should be handed to the Judge before you go into the Hearing. For your first hearing it can be emailed to the court but to ensure the Judge gets it before the case is heard hand a copy to the usher when you sign in on the court date. In the majority of cases the Judge will read it, and will then know everything that you want him or her to know.
They will understand your situation and should be grateful for your considered and thoughtful approach.

Writing the statement allows you to put to paper your thoughts, and to actually sit and think about them. It gives you time to consider different approaches, to rationalise what is happening and to justify your position. You do not have to try to remember everything that is important to you in the hearing when placed on the spot, and you do not have to try and think on your feet at a time when you will be emotional. Everything you want the Judge to know has been carefully thought about and explained in a clear and rational way.

To make sure it says what you hope it says always ask a friend to read it over for you. You may want to get the help of a McKenzie Friend for this at you branch meetin.

If as sometimes happens, the Judge refuses to accept your statement, or has not had time to read it, you have lost nothing, because you will have it on the desk before you, and can refer to it, and know that everything you have written is logical and makes sense. You can use it as a guide to explain your position or even ask the Judge if you can read it to him or hand him a cop.

The Layout

Your Statement should include a properly set out heading as most Court statements require. As a Litigant in Person you are not necessarily bound to follow the established Court rules, and if you do an entirely different document you will not be criticised for it, but when dealing with a professional, it helps to make your best efforts to appear professional too.

The sample included at the back of this document has the correct layout and can be easily followed.

You will notice that the Applicant and Respondent need to be named. It can sometimes become confusing as to who is who, as you may make the original application which makes you the applicant, the other side may then become the applicant in a cross application.

If in doubt, the Court will sent you a letter with the next hearing time and date listed on it. That document will state who the applicant is and who the respondent is. If, as is sometimes the case, you still have conflicting information choose one or the other and state in the first paragraph words to the effect of:

I make this statement as applicant in this matter and ……

Within the tram lines beneath the names you need to title the statement. Position Statement will work for the first hearing, but can become confusing as further hearings produce more Position Statements, so it is acceptable to call it **'First Position Statement'** or better still, **'Position Statement for Hearing on 10th April 2017'**

The first line should say something like:

I, John Smith of 23, Rosemary Court, Leicester will say as follows:…

You may see documents which commence '*I, John Smith of 23, Rosemary Court, Leicester will swear on oath and state as follows:'* This is not a statement but an affidavit. The difference is that an affidavit is sworn on oath by a Solicitor or at Court, and is used for a different purpose than a Position Statement.

Spelling and grammar are worth checking and double checking.

Plain English is best. Do not try using legalese or complicated terms unnecessarily. Don't forget you want to make it easy for the Judge to read and digest quickly. You will need to refer

throughout your statement to yourself and the other party. You can call yourself 'I', or you could write it in the third person, using 'Mother' or 'Applicant' but avoid changing part way through. Some parents go to great pains not to mention their ex's name "the mother of my child...." but you can refer to her by her first name if you want and I think it makes you appear less aggressive and more reasonable.

At the end of your statement you will need to sign and date it. Using first names shows you show no animosity.

It is not necessary to include a statement of truth, which confirms that the contents of the statement are true and that you are aware they may be used in Court. That is necessary for a full statement, but not in this situation.

Try to use a clear font, and double space the lines if possible. This document is written in Calibri, 12pt and spaced at 1.5 line spacing.

The contents of the statement should be in numbered paragraphs so that they can be easily referred to.

Contents

As already stated your statement needs to be concise. Bear that in mind at all times.
The content of your Position Statement will depend on the purpose of the hearing, and the three examples included at the back will show the differences. Your Position Statement will be useful at all three of the different types of hearing included.

A Position Statement is not usually required for a Final Hearing or a Fact Finding Hearing unless directed by the court to provide one, and may not be necessary for a hearing when full statements have recently been filed and served unless there have been any new developments which necessitate writing one.

Progress of your case

Usually, the court process will commence with a **First Hearing, (First Hearing Dispute Resolution Hearing or FHDRH)** followed by **Directions Hearing (Directions Hearing Appointment or DRA).** Sometimes these are combined**.** They are generally quite short (half an hour). Your court appearances may follow on with a **Review Hearing**. Then there may be a **Final Hearing,** or indeed several Final Hearings, and there may be a **Fact Finding Hearing,** or any combination of these.

There are no hard and fast rules which must be strictly adhered to, and the content of your Position Statement may need to be adjusted to suit your situation, but essentially they should follow the approaches set out below.

First Hearing

At your first Court Hearing the Position statement should begin with a brief background, setting out the current position, list your concerns *regarding the children*, propose a way forward and justify why your proposal is worth considering. It is not wise to harp on about what you consider to be the injustices of the system, irrational behaviour of your partner or how biased CAFCASS have been. This will simply make you appear vengeful and argumentative, putting your own needs before the needs of the children. Far better to be reasonable and allow the other party to make all the negative accusations.

When approaching the hearing, try to consider the other parties position. What are the issues they will raise, and what are the arguments they may make. Often you will only find out at the

hearing, but if they have been saying that you cannot see the children because you are an alcoholic for example, it is a reasonable assumption that alcoholism will be raised at the hearing.

Unfortunately, allegations made in Family Courts seem to come from nowhere. They multiply and are exaggerate beyond what you would have thought possible, and the court has to attempt to unravel the situation keeping the children safe at all times.

When legal aid was abolished for family matters there was one exception. That is for Domestic Violence. Since then the definition of domestic violence has grown hugely and many groundless allegations appear to be made in order to obtain legal aid. Sometimes these allegations are a complete surprise to the applicant yet some with supporting evidence. These may include reports to GPs, requests for support from Domestic Violence Agencies or even Social Services. The applicant is then left in the unenviable position of proving that nothing happened. This all comes later during the Directions Hearings or Fact Finding Hearings.

However if alcoholism is going to be an issue, a way to head it off at the first hearing may be to undertake an alcohol test through your GP. A liver function test can help, or a laboratory test could be undertaken such as a hair strand test. You always run the risk that the allegations will change, but it is a decision you may want to consider.

With drugs, if the allegation is that you take 'drugs' then unless you have every possible drug tested, when you produce a report showing that you don't take cannabis, you may find that the allegation is related to cocaine. In those circumstances it may be better to wait for the allegation to be made in court and see if the court order a test.

If your parenting capacity is being questions you may want to sign up to a Local Authority Parenting Class or the Red Cross Paediatric First Aid Course.

By considering the allegations which may be made, it will assist you to focus your own approach to writing the Position Statement.

If the Judge finds the statement of the respondent includes allegations that have not been adequately addressed by you in your First Position Statement he/she may ask CAFCASS to undertake a Section 7 Report. This is an investigation into the parenting capacity of you and your child's mother. The CAFCASS officer will produce a report which you will comment on in your statement at the next hearing.

Directions Hearing

Once the court process has begun, the court will list hearings at a time period between them to enable any testing or reports to be carried out, and then have a Directions Hearing to consider the results and decide on the next step. Also following a First Hearing, a Directions Hearing will be used to consider how contact has progressed (if any) and whether there should be any increase.

When writing your Position Statement for a Directions Hearing you will be aware of the issues that the court is considering, and what has occurred since the last hearing. These should be addressed in your statement.

As with the First Hearing, it may be that you will be aware of any issues that may be raised at the hearing, and so can try to head those off in your own statement.

This will include concerns raised by a CAFCASS officer in a Section 7 report.

The Section 7 Report

There is a trick to reading a section 7 report. In involves turning to the back page and reading the recommendations first. Then read them again and consider if you can live with them before you decide to read the full report. If you find the recommendations are acceptable then it is most wise to say you accept the recommendations in the S7 report when you write your position statement. This can speed up the court process and bring forward the day you see your children again. Once you have established contact, supervised or unsupervised in a contact centre, essentially the court has decided there are no serious welfare issues to concern them and progress to normal community based overnight stays are within sight.

However if you are unable to accept the S7 proposals, because they are based on erroneous assumptions or acceptance of untrue allegations or for whatever reason you may decide to challenge the S7 report. This will be done at a Fact Finding Hearing which you will have to ask the Judge for. Here you can produce your evidence, answer allegations, question witnesses, the CAFCASS officer and your ex. These hearings can take one or two days.

To prevent the drawing out of the proceedings in this way you may wish to present your evidence that counters the assumptions as part of your statement in the hope your ex and her legal team might negotiate prior to the Directions Hearing.

Be sure to make recommendations as to how things should progress.

No Section 7 Report?
This statement is usually best written as an upbeat document, explaining how well things have been and why an increase in contact should be considered (if that is the case), and it is important to list at the end of the statement your proposals for extending contact, or what you would like the court to do next.

If you have attended or are still participating in courses explain how effective they have been, how much you enjoyed them, how insightful they were. You may even recommend them for your ex.

The court may have instructed you to undertake an SPIP course (Separated Parents Information Programme) run by CAFCASS. Do not delay attending this and have your certificate attached to your statement with any other documents the court has instructed you to obtain. These may include a letter from your GP, a Parenting Class certificate or copy of your immigration status.

Review Hearing

A review hearing will follow usually a Final Hearing or a Fact Finding Hearing, to see how things are progressing.

Your statement should set out the main outcomes from the last hearing and explain how they have worked in practise, any difficulties encountered, and then set out your proposals for moving forward and justify why your approach is worth considering.

By this point in the court process, the court will be fully aware of your case and what factors have brought it to this point. It may be worth very briefly setting out a background, but the main purpose of the hearing it to look to see if the case can be finished and closed down, or if more time is required to keep things on track, or to get them on track.

If your case is closed down, and problems occur, you will need to make a fresh application to get back in front of a Judge with more costs and delays, so often, depending on the situation, you

may want to request a further review just in case, which could be dispensed with if things are running smoothly and it is not needed.

Attaching Evidence

There is a balance to be struck in providing evidence to support your comments in the Position Statement. Bearing in mind that the purpose of the statement is to be brief, you do not want to attach so much evidence that the document appears too big for the Judge to quickly digest.

On the other hand, if an important item of evidence supports what you say, it is often advantageous to include it. You do not need to prove obvious things, and unless you know the other side are objecting to what you say, or will object, there is likely to be no point proving it's true. It is too easy to waste a lot of time trying to prove obvious things that don't need to be proven.

You should take all of your evidence into the hearing with you in case it is asked for, and it is a good idea to give copies of your evidence to the other party before you go into the hearing.

How to submit your statement

Ideally, your First Position Statement should be given to the Court and the other party three days or so in advance of the hearing. In practice however, they are usually handed across just before the hearing. Do not leave it to the last minute to do this, as it is underhanded and likely to be strongly objected to in Court, but when you arrive for the hearing, hopefully up to one hour early, hand a copy to the Usher when you sign in, and give a copy to the other party. (The Usher sometimes will only accept it once the other party have received their copy).

The purpose of giving the statement to the other side in good time is that your position may be something that can be discussed and agreement possibly reached before going into the hearing. For example, if you are suggesting that the children should be collected by the Mother, and the Mother is also suggesting the same, it is worth agreeing that before going into Court and telling the Judge that some agreement has been reached. Reaching an agreement outside court is something Judges generally welcome.

People tend to be reluctant to let the other party know their position, but in Family Law, there is no room for springing surprises in Court, or suddenly revealing something which should be already known to the other side. You are not Perry Mason!!

Advice and Support

If you require any assistance with preparing your Position Statement, you can obtain advice and assistance from a McKenzie Friends. There will be some people who act as McKenzie Friends at your FNF branch meeting or you can find them on the FNF website. A McKenzie Friend maybe a parent who has been through the court process already and knows the ropes. They may help you for a donation to the branch funds. Or they may be working professionally and have some law qualifications. They are however much cheaper than barristers or solicitors.

Dispelling some myths

Below are several examples of myths which do not apply:

The Courts are anti-father.

If you are a first timer you will certainly get this impression. In fact the courts are anti-risk. They will not allow a child to be placed in a situation where they may come to harm. If allegations are made against a non-resident parent, male or female, the courts will need to know that the allegations are either false, or can be contained to prevent harming the child. The same allegations are unlikely to work in reverse unless some evidence can be provided. If both

parents are accusing each other, the court cannot just place the child into care unless there is some evidence to prove they are at risk.

I have a Human Right to see my children

Although everyone has human rights, the child's human rights are superior to either parents. Again, protecting the child is of paramount importance to the court, as it should be to both parents.

If I can't see my children I won't pay child support

The law requires that parents of a child must provide support for them. The courts no longer get involved in child maintenance which is either dealt with on a private basis between parents, or through the Child Maintenance Service.

There is no justice

The way the courts work tends to leave some parents feeling that it is unfair and unjust. Often dads. Protection of the child often means that events run slowly and sometimes situations are impossible to repair, leading to a total loss of contact with a child. Behaviour that is usually acceptable within a marriage, such as arguing, tends to get highlighted, exaggerated and focused upon by the courts, and so can lead to an irreparable situation.

I will walk away and my children will find me when they are 16

Sad as it will be, some cases, although not many, result in one parent being prevented from seeing their child. If the child is very young, they will not grow up knowing the missing parent, and so are not as likely to know where to go looking for them when they are older, even if they decided that they wanted to and it may not be the happy reunion you expect when they ask why you abandoned them and ask for compensation! IN FNF we believe abandonment is NOT and option.

My son is 10 years old and wants to live with me, so the courts will listen to him

The courts will listen to the views of children, but they will always consider those views in relation to their age. The age of 13 tends to be when a child's wishes are based on their own knowledge of the consequences of what they say. Depending on the child's maturity, thirteen years may vary and so is not a definitive cut off point. Unfortunately more often courts rely upon the opinions of younger and younger children who of course are frequently influenced by the parent they live with.

Daughters need their fathers

All children, boys or girls, need two loving parents. Full stop.

Shared Residence

The court may make an order giving shared residence. This means that the child has 2 homes of equal standing and lives at both. It is not necessarily, and seldom is, an equal share of time. Shared residence is infrequently ordered. Most orders say something along the lines:

"The child will live with the mother and be made available to the father at the following times:..."

We in FNF are not happy with this arrangement. It appears make the father a 'secondary' parent and this is certainly how schools, hospitals, social services etc. interpret it. We would much prefer the following.

"The child will live with the mother on .... (dates times) and live with the father... (dates times)"

Even better, if you are able to mediate with your ex your final order could read:

"The child will live with both parents at times and agreed by both parties but not less than a total of XX months per year."

Domestic violence is men against women

The statistics show varying levels of violence against each gender, and can be initiated by either. Domestic violence in any form is wrong regardless of gender. Unfortunately an allegation of DV or a non-molestation order can result in legal aid for the accusing parent. We find more unscrupulous parents and lawyers resorting to groundless allegations in order to obtain legal aid.

My car was vandalised last night, I know it was him

The courts work with evidence. Thinking that you know something is not the same as knowing something. A gut instinct is of no value to the courts.

His friend said he vandalised my car so I know it was him

The courts work with evidence. Being told something is not the same as knowing something. Gossip is of no value to the courts.

I have never done anything to make her scared of me

People have different perceptions and levels of fear, and you cannot say what someone else is fearful of because you are not them. Only they know what they are scared of however an unscrupulous parent might well chose to say this and demand special arrangements at court or even refuse to attend to egg up a weak case.

The children don't talk about him, therefore they don't miss him

Children will take their cue from you and how you react to things. If you don't like to hear them talking about their father, they won't. Children also are very successful at dividing their lives into two sections and know how to behave in each. It's a tragic consequence of divorce that children shouldn't have to go through, caused by BOTH parents.

The children cried when they thought he would take them on holiday

In ordinary circumstances, why would a child not want to go on holiday?

It's in my diary so it must be true

The courts work with evidence, and the more independent that evidence, the more convincing it is. If a third party had written the diary it may have some weight, but your own records, although they may point to times and events, will be unlikely to be seen as convincing evidence. However the keeping of a diary is highly recommended to hlp you keep track of events and dates as your court hearings progress.

The balance of probabilities.

In a Criminal Court the accused is guilty "beyond reasonable doubt". The evidence needs to be secure and unshakeable before it is considered true and a judgement of guilt or innocence is based upon it.

In the Family Court the participants are not called 'the victim and accused' but the applicant and respondent. There is no *guilty* or *not guilty* judgement and the Judge makes his decisions about the future of your child based on the 'balance of probability' e.g. he/she will decide whose story is probably true. In coming to a conclusion they will look at all aspects of the evidence including your court room demeanour, organisation, how reasonable your proposals are, whether you

hold grudges, put vengeance before the children and whether you are willing to compromise for the sake of the children.
They are also aware that all children have a right to a relationship with both parents. The court will decide under what circumstances and how often that relationship can develop with the advice of CAFCASS or Social Services.

CAFCASS and Social Services are frequently biased towards the resident parent, most usually the mother, so try to convince them of your genuine intentions. Do not treat them as the enemy while at the same time they are not part of your therapy. They are listening for what you say that may give them concerns for the safety of the children.

Courts may make a range of decisions about how you see your children ranging through:

Indirect contact limited to occasional letters and presents
Limited contact in a contact centre supervised by a social worker
Limited contact in a contact centre but unsupervised
Limited contact in the community
A shared parenting arrangement

Any of the above may be combined with contact through Skype or Facetime

TEMPLATES

Use the template below to write your position statement. Remember it should follow the structure **Background, Concerns, Proposal.** Do not concern yourself with the layout as long as it is not over complicated and easy to read.

IN THE WEST LONDON FAMILY COURT **CASE No.LE09P1234**

IN THE MATTER OF THE CHILDREN'S ACT 1989
And in the matter of:
JASON PATRICK BLOGGS (dob 10.04.10)

BETWEEN:

MR PATRICK JOE BLOGGS Applicant
AND
MS LESLEY JOANNA BLOGGS Respondent

FIRST POSITION STATEMENT OF THE APPLICANT FATHER

I, **PATRICK JOE BLOGGS** of **34 Dingbat St London SW12 AQT** will say as follows:

1. I have made this application to the Court so that I can have an order permitting me to see my son Jason on a regular basis as the current situation is on an ad hoc arrangement and it is impossible for me to make plans to organise activities with him or make arrangements with my work and when I am offered time to spend with him it is always at short notice
2. The parties separated in June 2015 and arrangements for contact have always been dictated by Lesley, and depend on her own plans and whether it suits her for me to look after him so that she can have time to herself. I always try to accept but have recently been promoted and need more warning.
3. Jason is now six years old (nearly 7), and enjoys the park with me, which we do on Saturdays at Peckham Lakes where I am a member of the football club.
4. The club runs family and children events and Jason is now old enough to participate in the under 8s football. To date he has never been allowed to take part as we never know if he will be available on Saturdays. Jason has often been disappointed at not being able to take part in the fun, especially as some of his school friends attend the club.
5. There is a competition in August which Joshua has been asked to join with his friends and despite writing to Lesley to ensure that he will be available, she refuses to discuss the matter, and I now feel that the time has come for me to make this application to the Court so that proper arrangements can be made for Joshua so that not only can he take part in an activity which he enjoys, but so that we can make plans for holidays and weekends away with each other.
6. To date, Lesley has not allowed Joshua to stay overnight at my house, although I know that he has been asking for this for some time, and it has caused arguments between him and his mother.
7. I would like the Court to make a shared parenting order for contact in the following terms:
    a. That Jason should live with both parents
    b. That he should live on alternate weekends staying from Friday 5pm until Sunday 5pm with me. I will pick him up from school and return him to school on Monday.
    c. That he live for with me for three weeks in the summer holiday
    d. They he live with me for one week at Christmas and Easter
    e. That he live with me for an additional 2 days at half terms added to my weekend.

f. I would like telephone contact on Wednesdays between 6pm and 6.30pm
g. I would like the court to recommend that Lesley and I communicate through email and WhatsApp and negotiate changes to these arrangement by mediation.

8. I believe that the arrangements I am requesting will be beneficial to Jason and resolve the current situation which is causing friction and disagreement.

Signed Patrick Bloggs Dated 4th April 2011