

Preparing a Position Statement

A position statement outlines a parent or party's position. It can be a useful tool for litigants in person to explain who they are they are and allow a court to understand the background, current situation, and what a parent wants to happen. The focus is on what is in the best interests of your children.

Providing a position statement is not obligatory, but there are circumstances when the court will direct that both parties provide one.

The information should be clear and brief so that the court can quickly read and digest it. During the course of the court hearing, a court will often direct a parent to elaborate on a point that was made in the position statement.

A Position Statement is different from a Witness Statement. The position statement should not include evidence. The court will generally request that evidence be filed separately in a Witness Statement.

The statement can be sent in or handed to the court just before the hearing with a copy for the other parent. Always have a spare copy for the court if mislaid or for any other interested person, e.g. Cafcass.

The court should have read it before the hearing and will be aware of the situation for that parent at an early stage. A person's willingness to consider the case in a thoughtful manner prior to the hearing is appreciated by the court as it can lead to a more efficient process.

For the First Hearing Dispute Resolution Appointment (FHDR) it is advisable that the following points are in a position statement:

- Information regarding background information to the situation.
- Brief summary of what has arisen to bring the current situation to court.
- Any additional information that may support the proceedings.

- What outcome the applicant/respondent would like to see from court proceedings. (Make sure this is precise and realistic.)

The contents for future hearings can generally fit the same format but may deviate slightly according to how the previous hearings have been conducted and what has been discussed. For example, when writing a position statement for a directions hearing be aware of what the court are already considering and integrate what has occurred since the last hearing.

The Welfare Checklist (see below) is very important when preparing a position statement as this is what the court uses to determine what is in the best interests of a child.

How to write a position statement?

- Case number
- Names of the parties separated into “applicant” and “respondent”.
- Name of the court where the case is being heard.
- Title the position statement and make reference to the specific hearing in the title. For example, “Position Statement for First Hearing” or “Position statement for Fact-Finding Hearing”.
- Use plain English.
- Number paragraphs so reference can be made to a specific section quickly if required.
- Sign and date the statement.
- Use a clear font and double space the lines if possible.
- Try and limit the position statement to 1 or 2 sides of A4.

We can send you a template to help you lay your statement out correctly – please ask.

The Welfare Checklist

The overriding consideration in family proceedings is the question of “what is in the best interests of the child/children?”. In answering this question, the court and other professionals are guided by criteria known as the Welfare Checklist (Section 1 of the Children Act 1989).

They are:

1. The wishes and feelings of the child concerned (considered in the light of his/her age and understanding);

The court are required to take the wishes and feelings of the child into consideration. It is not defined in law at which age the court will begin to listen to the child, but the court will tend to place more weight on a child's wishes and feelings from the age of 11 or 12 onwards. However, it does depend on the individual circumstances of the child in question; The court will assess their maturity and understanding of the situation.

Ordinarily it will be the role of CAFCASS (Cafcass stands for Children and Family Court Advisory and Support Service) to speak to the child and find out their wishes and feelings. In exceptional circumstances the Judge may speak to the child themselves. It is important for the court to be satisfied that these are the true wishes and feelings of the child and they are not mirroring the views of a parent. It is important to be aware that the wishes and feelings of the child are viewed with other factors.

2. his/her physical, emotional and educational needs;

The court are required to consider the child's short term and long term physical, emotional and educational needs. They will consider which parent is best placed to provide these to the child and this will usually be based on evidence that has been submitted to the court. Physical needs tend to be straightforward whereas emotional needs may require more investigation. A child's needs will change as they become older and therefore the court must be satisfied that the parents can manage these changes and provide stability for the child at the same time.

3. likely effect on him/her of any change in his circumstances;

The court are required to consider the potential impact of any change in circumstances on the child. The court will often take a decision that will cause the least disruption to a child's life. An example of this may be where the non-resident parent applies for residence of the child. The court will need to consider the potential impact that the change in residence would cause, i.e. change of school, change of social environment.

4. his/her age, sex, background and any characteristics of his which the court considers relevant;

The court are required to consider the child's age, cultural and religious background and other characteristics which are specific to the child and the wider family.

5. any harm which he/she has suffered or is at risk of suffering;

The court will examine harm that the child has suffered and harm that the child is at risk of suffering in the future. Harm is defined as "ill treatment or the impairment of health or development". The court will weigh up the potential risk to the child and issue an order which is reflective of this. The order could contain protective measures which are aimed at safeguarding the child. This

particular issue will require the court to examine allegations of domestic abuse.

6. how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

The court will want to ensure that both parents are putting the child first and are able to meet all the child's needs. This will therefore require the court to consider the respective accommodation that both parents are able to provide and the extent to which both parents can meet the child's needs. This will be case specific and therefore it will depend on the specific needs of the child and the abilities of the parent. There is no assumption that a mother is better placed to meet a child's needs compared to the father.

7. the range of powers available to the court under this Act in the proceedings in question.

The court will consider every option and can make a wide range of orders, even if they have not been applied for. For example, there may be a case determining contact, but it emerges that the resident parent intends to go abroad on a permanent basis with the child without seeking the consent of the other parent with Parental Responsibility. The court may therefore think it is appropriate to grant a prohibited steps order preventing the moving parent from leaving the jurisdiction.

Please remember, you should not talk to your children about your family court case.

Please contact us if you would like this guide in another language.

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