

EVIDENCE

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I GENERAL RULES

22.1 Power of court to control evidence

- (1) The court may control the evidence by giving directions as to –
 - (a) the issues on which it requires evidence;
 - (b) the nature of the evidence which it requires to decide those issues; and
 - (c) the way in which the evidence is to be placed before the court.
- (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.
- (3) The court may permit a party to adduce evidence, or to seek to rely on a document, in respect of which that party has failed to comply with the requirements of this Part.

- (4) The court may limit cross-examination^(GL).

22.2 Evidence of witnesses – general rule

- (1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved –
- (a) at the final hearing, by their oral evidence; and
 - (b) at any other hearing, by their evidence in writing.
- (2) The general rule does not apply –
- (a) to proceedings under Part 12 for secure accommodation orders, interim care orders or interim supervision orders; or
 - (b) where an enactment, any of these rules, a practice direction or a court order provides to the contrary.

(Section 45(7) of the Children Act 1989 (emergency protection orders) is an example of an enactment which makes provision relating to the evidence that a court may take into account when hearing an application.)

22.3 Evidence by video link or other means

The court may allow a witness to give evidence through a video link or by other means.

22.4 Witness statements

- (1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.
- (2) A witness statement must comply with the requirements set out in the Practice Direction 22A. (Part 17 requires a witness statement to be verified by a statement of truth.)

22.5 Service of witness statements for use at the final hearing

- (1) The court may give directions as to service on the other parties of any witness statement of the oral evidence on which a party intends to rely in relation to any issues of fact to be decided at the final hearing.
- (2) The court may give directions as to –
- (a) the order in which witness statements are to be served; and
 - (b) whether or not the witness statements are to be filed.
- (3) Where the court directs that a court officer is to serve a witness statement on the other parties, any reference in this Chapter to a party serving a witness statement is to be read as including a reference to a court officer serving the statement.

22.6 Use at the final hearing of witness statements which have been served

- (1) If a party –
- (a) has served a witness statement; and
 - (b) wishes to rely at the final hearing on the evidence of the witness who made the statement, that party must call the witness to give oral evidence unless the court directs otherwise or the party puts the statement in as hearsay evidence.

(Part 23 (miscellaneous rules about evidence) contains provisions about hearsay evidence.)

- (2) The witness statement of a witness called to give oral evidence under paragraph (1) is to stand as the evidence in chief^(GL) of that witness unless the court directs otherwise.
- (3) A witness giving oral evidence at the final hearing may with the permission of the court –
 - (a) amplify his witness statement; and
 - (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.
- (4) The court will give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of the witness statement.
- (5) If a party who has served a witness statement does not –
 - (a) call the witness to give evidence at the final hearing; or
 - (b) put the witness statement in as hearsay evidence,any other party may put the witness statement in as hearsay evidence.

22.7 Evidence at hearings other than the final hearing

- (1) Subject to paragraph (2), the general rule is that evidence at hearings other than the final hearing is to be by witness statement unless the court, any other rule, a practice direction or any other enactment requires otherwise.
- (2) At hearings other than the final hearing, a party may rely on the matters set out in that party's –
 - (a) application form;
 - (b) application notice; or
 - (c) answer,if the application form, application notice or answer, as the case may be, is verified by a statement of truth.

22.8 Order for cross-examination

- (1) Where, at a hearing other than the final hearing, evidence is given in writing, any party may apply to the court for permission to cross-examine^(GL) the person giving the evidence.
- (2) If the court gives permission under paragraph (1) but the person in question does not attend, that person's evidence may not be used unless the court directs otherwise.

(Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes.)

22.9 Witness summaries

- (1) A party who –
 - (a) is required to serve a witness statement for use at any hearing; but
 - (b) is unable to obtain one,may apply, without notice, for permission to serve a witness summary instead.
- (2) A witness summary is a summary of –
 - (a) the evidence, if known, which would otherwise be included in a witness statement; or
 - (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.

- (3) Unless the court directs otherwise, a witness summary must include the name and address of the intended witness.
- (4) Unless the court directs otherwise, a witness summary must be served within the period in which a witness statement would have had to be served.
- (5) Where a party serves a witness summary, so far as practicable rules 22.4(2)(form of witness statements), 22.5 (service of witness statements for use at the final hearing) and 22.6(3) (amplifying witness statements) apply to the summary.

22.10 Consequence of failure to serve witness statement

If a witness statement for use at the final hearing is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.

22.11 Cross-examination on a witness statement

A witness who is called to give evidence at the final hearing may be cross-examined^(GL) on the witness statement, whether or not the statement or any part of it was referred to during the witness's evidence in chief^(GL).

22.12 Affidavit evidence

- (1) Evidence must be given by affidavit^(GL) instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule, a practice direction or any other enactment.
- (2) In relation to proceedings which are pending or treated as pending in a divorce county court or civil partnership county court, section 58(1)(c) of the County Courts Act 1984, shall have effect as if after paragraph (c) there were inserted –
'or
(d) a district judge of the principal registry; or
(e) any officer of the principal registry authorised by the President under section 2 of the Commissioner for Oaths Act 1889¹; or
(f) any clerk in the Central Office of the Royal Courts of Justice authorised to take affidavits^(GL) for the purposes of proceedings in the Supreme Court.'

(Rule 7.3 sets out when proceedings are treated as pending in a divorce county court or civil partnership proceedings county court.)

22.13 Form of affidavit

An affidavit^(GL) must comply with the requirements set out in the Practice Direction 22A.

22.14 Affidavit made outside the jurisdiction

A person may make an affidavit^(GL) outside the jurisdiction in accordance with –

- (a) this Part; or
- (b) the law of the place where the affidavit^(GL) is made.

¹ 1889 c.10. Section 2 was amended by section 59(5) of and paragraphs 15(1) and (2) of Schedule 11 to the Constitutional Reform Act 2005.

22.15 Notice to admit facts

- (1) A party may serve notice on another party requiring the other party to admit the facts, or the part of the case of the serving party, specified in the notice.
- (2) A notice to admit facts must be served no later than 21 days before the final hearing.
- (3) Where the other party makes any admission in answer to the notice, the admission may be used against that party only –
 - (a) in the proceedings in which the notice to admit is served; and
 - (b) by the party who served the notice.
- (4) The court may allow a party to amend or withdraw any admission made by that party on such terms as it thinks just.

22.16 Notice to admit or produce documents

- (1) A party to whom a document is disclosed is deemed to admit the authenticity of that document unless notice is served by that party that the party wishes the document to be proved at the final hearing.
- (2) A notice to prove a document must be served –
 - (a) by the latest date for serving witness statements; or
 - (b) within 7 days beginning with the date of service of the document, whichever is later.

22.17 Notarial acts and instruments

A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.

II RULES APPLYING ONLY TO PARTICULAR PROCEEDINGS

22.18 Scope of this Chapter

This Chapter of this Part applies to affidavits^(GL) and affirmations as it applies to witness statements.

22.19 Availability of witness statements for inspection during the final hearing

- (1) This rule applies to proceedings under Part 7 (matrimonial and civil partnership proceedings).
- (2) A witness statement which stands as evidence in chief^(GL) is open to inspection during the course of the final hearing unless the court directs otherwise.
- (3) Any person may ask for a direction that a witness statement is not open to inspection.
- (4) The court will not make a direction under paragraph (2) unless it is satisfied that a witness statement should not be open to inspection because of –
 - (a) the interests of justice;
 - (b) the public interest;
 - (c) the nature of any expert medical evidence in the statement;
 - (d) the nature of any confidential information (including information relating to personal financial matters) in the statement; or
 - (e) the need to protect the interests of any child or protected party.

- (5) The court may exclude from inspection words or passages in the witness statement.

22.20 Use of witness statements for other purposes

- (1) This rule applies to proceedings under Part 7 (matrimonial and civil partnership proceedings) or Part 9 (financial remedies).
- (2) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.
- (3) Paragraph (2) does not apply if and to the extent that –
- (a) the court gives permission for some other use; or
 - (b) the witness statement has been put in evidence at a hearing held in public.