

CAYMAN ISLANDS



Supplement No. 3 published with Extraordinary
Gazette No. 33 dated 14 May, 2014.

PRACTICE DIRECTION No. 8/2014
(GCR O.1, r.12)

**TAKING EVIDENCE FROM NON-ENGLISH SPEAKERS IN THE FAMILY DIVISION
OF THE GRAND COURT**



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TAKING EVIDENCE FROM NON-ENGLISH SPEAKERS IN THE FAMILY DIVISION OF THE GRAND COURT

1. During the hearing in *NN v ZZ & Ors* [2013] EWHC 2261 (Fam) concerns arose about statements taken from witnesses in English, a language they did not speak. Mr. Justice Peter Jackson set out the following basic principles as to how evidence from non-English speakers should be obtained.
2. The guidance given by Mr. Justice Peter Jackson is applicable to cases in the Family Division of the Grand Court. In order to prevent valuable court time being used to explore the process by which statements are taken and to assist the court's task in assessing witnesses' evidence, due regard should now be paid to the guidance given.
3. An affidavit or statement by a non-English-speaking witness must be prepared in the witness's own language before being translated into English. The party wishing to rely on the affidavit/statement which is in a foreign language must (i) have it translated into English; and (ii) file the foreign language affidavit/statement with the court. The translator must sign the translation to certify that it is accurate.
4. There must be clarity about the process by which a statement has been created. In all cases, the statement should contain an explanation of the process by which it has been taken: for example, face-to-face, over the telephone, by Skype, or based on a document written in the witness's own language.
5. If an attorney at law has been instructed by the litigant, he or she should be fully involved in the process and should not delegate it to the client.
6. If presented with a statement in English from a witness who cannot read or speak English, the attorney at law should question its provenance and not simply use the document as a proof of evidence.
7. The witness should be spoken to wherever possible, using an interpreter, and a draft statement should be prepared in the native language for the witness to read and sign. If the attorney at law is fluent in the foreign language then it is permissible for him/her to

act in the role of the interpreter. However, this must be made clear either within the body of the statement or in a separate affidavit.

8. A litigant in person should where possible use a certified interpreter when preparing a witness statement.
9. If the witness cannot read or write in their own native language, the interpreter must carefully read the statement to the witness in his/her own language and set this out in the translator's *jurat* or affidavit, using the words provided by Annexes 1 or 2.
10. Once the statement has been completed and signed in the native language, it should be translated by a certified translator who should then either sign a *jurat* confirming the translation or provide a short affidavit confirming that s/he has faithfully translated the statement.
11. If a witness is to give live evidence either in person or by video-link, a copy of the original statement in the witness' own language and the English translation should be provided to the witness well in advance of the hearing.
12. If a statement has been obtained and prepared abroad in compliance with the relevant country's laws, a certified translation of that statement must be filed together with the original document.

DATED this 2nd day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice

Annex 1

Certificate to be used where a deponent to an affidavit is unable to read or sign it

Sworn at ... this ... day of ... Before me, I having first read over the contents of this affidavit to the deponent [if there are exhibits, add “and explained the nature and effect of the exhibits referred to in it”] who appeared to understand it and approved its content as accurate, and made his/her* mark on the affidavit in my presence. Or, (after “Before me”) the witness to the mark of the deponent having been first sworn that the witness had read over etc. (as above) and that the witness saw the deponent make his/her* mark on the affidavit. (Witness must sign.)

* delete as appropriate

Annex 2

Certificate to be used where a witness is unable to read or sign a witness statement

I certify that I [name and address of authorised person] have read over the contents of this witness statement and the statement of truth to the witness [if there are exhibits, add “and explained the nature and effect of the exhibits referred to in it”] who (a) appeared to understand the witness statement and approved its content as accurate and (b) appeared to understand the statement of truth and the consequences of making a false witness statement, and [signed the statement] [made his/her mark]* in my presence.

* delete as appropriate.