

Writing Effective Position Statements for Mediation in Contentious Probate Disputes

A Practical Guide for Lawyers and Litigants (© Phil Hesketh, Hesketh Mediation, 2025)

1. Purpose of This Guide

This guide helps lawyers and self-represented parties prepare position statements for mediation in contentious probate or trust disputes.

A good position statement:

- Clarifies what the dispute is really about.
- Helps the other side's decision-maker understand the background and your client's perspective.
- Encourages constructive discussion and informed decision-making.

It is not a skeleton argument or a piece of advocacy. Its purpose is to help everyone — including your client — understand the key issues, interests and options for settlement.

2. Understanding the Role of the Position Statement

In mediation, the position statement is usually exchanged in advance. It:

- Introduces the parties and the background.
- Summarises the main factual and legal issues.
- Identifies what each party needs to reach a fair outcome.
- Signals constructive intent and realism.

It should be shared with the other side and the mediator. You can additionally provide the mediator with a separate **confidential statement** if there are matters you do not wish to share with the other side.

Important: The position statement will hopefully be read not only by the other side's lawyer and their client — your opponent in the dispute. Choose your words carefully. Aim to help the opposing party understand your position, reduce hostility, and see the potential for compromise. Use language that encourages dialogue and avoids entrenching conflict.

While the mediator will read the statement treat the other side's decision-maker as your primary audience. Think of it as the beginning of your effort to persuade them to engage in realistic, good-faith settlement discussions.

3. Contentious Probate Context

Typical issues include:

- Validity of a will or codicil.
- Allegations of undue influence, lack of capacity, or want of knowledge and approval.
- Claims under the Inheritance (Provision for Family and Dependents) Act 1975.
- Disputes between executors and beneficiaries.
- Trust and estate administration disagreements.

Mediation often succeeds when the parties balance their legal positions with their **personal, emotional, and relational interests** — especially in family disputes arising from bereavement.

4. The Core Structure

A. Introduction and Background

- Identify the parties and their relationship to the deceased (if relevant).
- Summarise the estate, key assets and any relevant procedural steps.
- Clarify the current stage of the dispute (letters of claim, issued proceedings, or pre-issue mediation).

B. Key Issues

- Outline the central factual and legal points **in plain language**.
- Highlight what is agreed, what is disputed and why it matters.
- Keep it proportionate: **a short summary**, not a pleading.

C. Interests and Concerns

- Set out what your client needs to move forward — not only in money terms but emotionally and practically. This might include:
 - Security of housing or income.
 - Fair recognition of contribution or relationship.
 - Closure, apology, or acknowledgment.
 - Preservation of family relationships where possible.

When preparing for mediation, think about both **tangible costs** and **intangible interests**:

- **Tangible costs** include legal fees, expert charges, and the time and energy spent on the case.
- **Intangible interests** cover non-financial factors such as stress, family relationships, reputation, or a wish for closure and dignity.

Considering both helps everyone make realistic and well-balanced settlement decisions.

D. Strengths, Risks, and Uncertainties

- Emphasise the evidence and reasoning that supports your client's case.
- Demonstrate confidence balanced with realism — recognise that there are always risks in litigation, including cost, delay, and unpredictability.
- A carefully framed, proportionate analysis builds trust and helps the other side engage seriously in negotiations.

E. Settlement History (if appropriate)

- Briefly record any pre-mediation offers or proposals.
- Emphasise willingness to negotiate in good faith.

F. Desired Outcomes

- State clearly what outcome your client would regard as fair.
- Where possible, describe a range or structure (e.g., transfer of an asset, life interest, agreed sale).
- Invite discussion of creative options.

5. Tone and Presentation

- Be concise (usually 2–4 pages).
- Use plain English and avoid legal jargon.
- Avoid inflammatory or accusatory language.
- Focus on future resolution, not blame.
- Use headings, spacing, and bullet points for clarity.
- Express appreciation for the mediation process and for the other party's participation.

Common Pitfalls to Avoid:

- Using inflammatory terms (e.g., "manipulated," "lied," "grabbed the money").

- Overstating your position or sounding rigid (e.g., "under no circumstances will we...").
- Relying heavily on legal jargon without explanation.
- Undermining the integrity or motives of the other party.

6. Checklist for Lawyers and Litigants

Reflective Questions

- ✓ Have you discussed your client's tangible and intangible interests?
- ✓ Have you helped your client value those interests and prioritise them?
- ✓ Have you assessed the likely court outcome and costs if no agreement is reached?
- ✓ Have you considered emotional or relational consequences of continuing litigation?
- ✓ Does your position statement promote understanding rather than hostility?
- ✓ Have you considered how your statement will be received by the opposing party's client?
- ✓ Does the statement begin to persuade the decision-maker on the other side to consider settlement?