

## Witness statements – new rules coming into effect from 6 April 2021



Practice Direction 57AC (“PD 57AC”), which is published on the Judiciary UK website, will come into force on 6 April 2021. It relates specifically to witness evidence at trial in the Business and Property Courts. PD 57AC is not intended to replace the existing provisions relating to evidence under the Civil Procedure Rules (“CPR”) but complement them.

The new rules will apply to witness evidence signed on or after 6 April 2021 for both new and existing proceedings. Certain types of proceedings are exempt from the new rules. For example, unless the court directs otherwise, PD 57AC does not apply to proceedings falling within: CPR Part 57, which applies to probate claims; claims for the rectification of wills; claims to substitute or remove a personal representative; and claims under the Inheritance (Provision for Family Dependents) Act 1975).

### Content

Witness statements should be confined to facts. However, in practice, they often contain argument, opinion, and commentary on documents in the trial bundle. PD 57AC requires the parties and their legal representatives to give careful consideration to both steps taken prior to the preparation of witness statements and the way in which they are prepared. All witness statements that PD 57AC applies to must therefore be prepared in accordance with the ‘Statement of Best Practice’ annexed to the practice direction.

Witness evidence should:

- only give evidence of facts within the witnesses’ personal knowledge;



- include a list of what documents (if any) they relied upon to prepare their witness statement;
- be written in a language that the witness is sufficiently fluent in to give oral evidence;
- make clear how well they recall the facts in question and if any documents or other information have been used to refresh their recollection, they should clarify to what extent they relied on those documents to refresh their memory; and
- be prepared using open-ended questions and be recorded as fully and accurately as possible by way of a contemporaneous note kept by the legal representative.

## Confirmation of compliance

The existing wording of the statement of truth in accordance with CPR 22.1 (c) and paragraph 20.2 of PD 32 still needs to be included. In addition, unless the court otherwise orders, the statement of truth must also include the following confirmation by the witness:

*"I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge. I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case.*

*This witness statement sets out only my personal knowledge and recollection, in my own words.*

*On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when.*

*I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge."*

A trial witness statement must also be endorsed with a certificate of compliance by the relevant legal representative. This puts an onus on the professional to ensure that the witness evidence was prepared in accordance with PD 57AC and PD 32.

## Sanctions

The Court can, by its own motion or by application by any party, impose the following sanctions for non-compliance with PD 57AC:

- refuse to give or withdraw permission to rely on, or strike out, part or all of a trial witness statement;
- order that a trial witness statement be re-drafted in accordance with this Practice Direction or as may be directed by the court;
- make an adverse costs order against the non-complying party;
- order a witness to give some or all of their evidence in chief orally.

## How we can help

PD 57AC applies equally to litigants in person. If you require any assistance with the preparation of witness statements for trial, please contact our [inheritance disputes team](#).