

Practice Direction 57AC (Witness Evidence at Trial)

1. General

1.1 This Practice Direction is made under rule 57A.3. It concerns witness statements for use at trials in the Business and Property Courts and applies to new and existing proceedings, but only to trial witness statements signed on or after [date].

1.2 In this Practice Direction (including the Appendix) –

“relevant court guide” means any of the court guides referred to by paragraph 1.7 of Practice Direction 57AA that is applicable to the proceedings,

“relevant legal representative” means, in relation to a trial witness statement, a legal representative authorised to conduct litigation who has had responsibility for ensuring that the purpose and proper content of trial witness statements and proper practice in relation to their preparation have been explained to and understood by the witness (and “legal representative” has the meaning given in rule 2.3),

“trial” means a final trial hearing, whether of all issues or of only one or some particular issues, in proceedings (except as provided in paragraph 1.3 below) in any of the Business and Property Courts under CPR Part 7 or Part 8 or upon an unfair prejudice petition under section 994 of the Companies Act 2006 or a contributory’s just and equitable winding up petition under section 122(1)(g) of the Insolvency Act 1986,

“trial witness statement” means a witness statement that is served pursuant to an order made under rule 32.4(2), or pursuant to rule 8.5 or an order made under rule 8.6(1)(b), or that is prepared for the trial of an unfair prejudice petition or a contributory’s just and equitable winding up petition, including supplemental or reply witness statements where allowed by the court, and

“relevant party” means the party by or on behalf of whom the witness statement is served (and for the avoidance of doubt includes a party who is also a witness, as regards their own trial witness statement).

(Rule 32.4(2) requires the court to order service of witness statements for use at trials; rules 8.5 and 8.6 provide for the service and use of written witness evidence in proceedings under Part 8.)

1.3 This Practice Direction does not apply to the following proceedings, unless the court at any stage directs that it is to apply:

- (1) an application under Part VII of the Financial Service and Markets Act 2000 for an order sanctioning an insurance business transfer scheme, a banking business transfer scheme, a reclaim fund business transfer scheme or a ring-fencing transfer scheme;
- (2) an application under Part XXV of the Financial Services and Markets Act 2000 for an injunction or restitution in connection with contravention of relevant requirements, as defined in that Act;
- (3) an application for an order under the Insolvency Act 1986 (other than a contributory's just and equitable winding up petition under s.122(1)(g) of that Act), under the Insolvency (England and Wales) Rules 2016, under any enactment or statutory instrument providing for a special insolvency or administration regime, and under Schedule 2 to The Cross-Border Insolvency Regulations 2006;
- (4) a claim made under the Companies Act 2006 listed in Part II of Practice Direction 49A of the Civil Procedure Rules (whether in relation to limited companies or limited liability partnerships), an application for an order under Part 26A of that Act, a claim to restore a company to the register under section 1029 of that Act and a claim under Council Regulation (EC) No 2157/2001 listed in Part III of Practice Direction 49A;
- (5) an application under Part II of The Companies (Cross-Border Mergers) Regulations 2007;
- (6) 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, the Presumption of Death Act 2013 and the Guardianship (Missing Persons) Act 2017;
- (7) proceedings in the Intellectual Property Enterprise Court falling within Section V of Practice Direction 63;
- (8) proceedings under CPR Part 64, which applies to certain claims relating to the administration of estates of deceased persons or trusts (Section I of Part 64), and to charity proceedings (Section II of Part 64);
- (9) proceedings in the Technology and Construction Court relating to adjudication awards under Section 9 of the TCC Guide.

- 1.4 For the avoidance of doubt, nothing in this Practice Direction affects—
- (1) affidavit evidence,
 - (2) evidence in a witness statement other than a trial witness statement,
 - (3) the application to a trial witness statement of any provision of a rule or other Practice Direction that prescribes in any respect what must be stated in a witness statement, or
 - (4) the powers of the court under rule 32.1, to control, exclude or limit factual witness evidence.

(Rule 32.6 provides for evidence in proceedings other than at trial; rule 32.15 provides where evidence may or must be given in the form of an affidavit.)

- 1.5 Subject to paragraph 1.4(3) above, in the event of inconsistency between this Practice Direction and any other Practice Direction the provisions of this Practice Direction shall prevail.

2. The purpose of a trial witness statement

- 2.1 The purpose of a trial witness statement is to set out in writing the evidence in chief that a witness of fact would be allowed to give if they were called to give oral evidence at trial without having provided the statement.

(Rule 32.2(1)(a) provides that in general any fact which needs to be proved at trial by the evidence of witnesses is to be proved by their oral evidence given in public, and rule 32.4(1) defines a witness statement as a signed statement containing the evidence the witness would be allowed to give orally.)

- 2.2 Trial witness statements are important in informing the parties and the court of the evidence a party intends to rely on at trial. Their use promotes the overriding objective by helping the court to deal with cases justly, efficiently and at proportionate cost, including by helping to put parties on an equal footing, saving time at trial and promoting settlement in advance of trial.

(The overriding objective is defined in rule 1.1.)

3. The content of witness statements

3.1 A trial witness statement must contain only –

- (1) evidence as to matters of fact that need to be proved at trial by the evidence of witnesses in relation to one or more of the issues of fact to be decided at trial, and
- (2) the evidence as to such matters that the witness would be asked by the relevant party to give, and the witness would be allowed to give, in evidence in chief if they were called to give oral evidence at trial and rule 32.5(2) did not apply.

(Rule 32.5(2) provides that where a witness is called to give oral evidence at trial, their witness statement shall stand as their evidence in chief unless the court orders otherwise.)

3.2 A trial witness statement must state only that which the witness claims personally to recollect about matters addressed in the statement, and must identify what documents, if any, the witness has referred to or been referred to for the purpose of providing the evidence set out in their trial witness statement. The requirement to identify documents the witness has referred to or been referred to does not affect any privilege that may exist in relation to any of those documents.

3.3 A trial witness statement must comply with paragraphs 18.1 and 18.2 of Practice Direction 32, and for that purpose a witness's own language includes any language in which the witness is sufficiently fluent to give oral evidence (including under cross-examination) if required, and is not limited to a witness's first or native language.

(Paragraph 18.1 of Practice Direction 32 requires a trial witness statement to be in the witness's own words, if practicable, and to be drafted in the witness's own language and in the first person; paragraphs 18.1(1) to (5) and 18.2 set out further requirements; paragraph 23 of Practice Direction 32 provides that a party who relies on a witness statement in a foreign language must also file a translation.)

3.4 Trial witness statements should be prepared in accordance with –

- (1) the Statement of Best Practice contained in the Appendix to this Practice Direction, and
- (2) any relevant court guide,

for which purpose, in the event of any inconsistency, the Statement of Best Practice takes precedence over any court guide.

4. Statement of truth

- 4.1 A trial witness statement must be verified by a statement of truth in the following form, unless the court orders otherwise:

“I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I have read [*or if applicable* have had read to me], and understand, paragraphs 2 and 3 of Practice Direction 57AC, and paragraphs 1.3, 2.2 to 2.6 and 3.2 to 3.7 of the Appendix to that Practice Direction, in relation to the purpose and proper content of trial witness statements, and proper practice in relation to their preparation. [*If applicable*: The legal representatives of **[name of party]** have also explained those matters to me.]”

(Paragraph 3.2 of Practice Direction 22 provides that the statement of truth is to be signed by the witness; paragraph 3A of that Practice Direction applies if the witness is unable to read or sign a witness statement other than by reason of language alone.)

- 4.2 Any application for permission to vary or depart from the form of statement of truth set out in paragraph 4.1 above may be made, and generally should be made, without notice, for determination on paper.

5. Certificate of compliance

- 5.1 A trial witness statement must be endorsed with a certificate of compliance in the following form, signed by the relevant legal representative, unless the statement is signed when the relevant party is a litigant in person or the court orders otherwise:

“I hereby certify that:

1. I am the relevant legal representative within the meaning of Practice Direction 57AC.

2. I am satisfied that the purpose and proper content of trial witness statements, and proper practice in relation to their preparation, have been have discussed with and explained to **[name of witness]**.
3. I believe this trial witness statement complies with CPR Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32, and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to CPR Practice Direction 57AC.

Name:

Position:

Date:"

5.2 Any application to dispense with the certificate of compliance referred to in paragraph 5.1 above, or for permission to vary or depart from the form for it there set out, may be made, and generally should be made, without notice, for determination on paper.

6. Sanctions

6.1 The court retains its full powers of case management and the full range of sanctions available to it and nothing in paragraph 6.2 or paragraph 6.3 below confines either.

6.2 If a party fails to comply with any part of this Practice Direction, the court may, upon application by any other party or of its own motion, do one or more of the following –

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

6.3 The court may, upon application by any other party or of its own motion, strike out a trial witness statement not endorsed with a certificate of compliance pursuant to

paragraph 5.1 above if there is reason to consider that the relevant party was acting in person when it was signed in order to avoid the application of paragraph 5.1 above to the statement.

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