



SHIPPING | SEPTEMBER 2021

TRIAL WITNESS STATEMENTS IN THE ADMIRALTY COURT FROM 1 OCTOBER 2021: ANOTHER “SHOT ACROSS THE BOW” FOR LEGAL TEAMS AND CLIENTS ALIKE

Practice Direction 57AC of the Civil Procedure Rules (CPR) seeks to remind legal teams and clients how trial witness statements should be prepared. At the heart of Practice Direction 57AC, which applies to the Admiralty Court from 1 October 2021 onwards, is the aim (continually repeated by the courts) that the court will be able to evaluate witness statements, without those statements being influenced by the “polishing” of legal teams, continual reference to documents or the need to argue the overall case. Whilst none of this is new, the Practice Direction includes some changes to underline the importance that the courts place on this objective.

It is important that all parties involved in litigation (including lawyers, clients and witnesses alike) understand the significance of both the changes that Practice Direction 57AC brings and the reminders that it contains.

WHAT ARE THE CHANGES?

Judicial consternation over the increasing length and "over lawyered" content of trial witness statements is not a recent phenomenon. In his final report on "Access to Justice" in 1996 Lord Woolf said "Witness statements have ceased to be the authentic account of the lay witness, instead they have become an elaborate costly branch of legal drafting". Practice Direction 57AC (**PD 57AC**) serves as a reminder of this judicial consternation and a warning to legal practitioners about how trial witness statements should be prepared.

PD 57AC, released in April 2021, originally only applied to the Business and Property Courts. However, from 1 October 2021 onwards, PD 57AC will now apply to proceedings within the Admiralty Court, whenever commenced, and to trial witness statements signed on or after 1 October 2021².

The purpose of PD 57AC is to deal with the three greatest criticisms of civil litigation; cost, delay and complexity³. Provisions such as "trial witness statements to be in the witness's own words" are in no way new⁴. However, the repetition of these provisions constitutes a further reminder of the obligations upon the legal profession, and is perhaps the courts attempt to realign the litigation process with existing objectives.

That being said, what is new within PD 57AC is that both the practitioner and the witness have to confirm (or in the practitioner's case, certify) that the purpose of the witness statement, i.e. to set out the witness's own personal experience, has been followed. What is also new is the need for trial witness statements to be accompanied by a list of all the documents that the witness "referred to" in the course of preparing their statement. These measures are designed to prevent trial witness statements from being influenced by evidence from outside of the witness's own knowledge or experiences.

¹ Lord Woolf, "Access to Justice" 1996. [Link](#)

² Civil procedure (Amendment No.4) Rules 2021 & 133rd Practice Direction Update: [Link](#)

³ These were some of the reasons behind the Woolf Reforms (1998) and the latest CPR

⁴ See Civil Procedure Rules Practice Direction 32.18.1

HOW WILL THIS AFFECT YOU?

Trial witness statements (as strictly defined within PD 57AC) differ from other types of witness statements. Specifically, they are prepared with a trial in mind and must follow certain formalities (such as the need for a "statement of truth").

Clearly, legal practitioners and trial witnesses will have to bear PD 57AC's provisions in mind when preparing for trial. Sanctions for failure to comply can include, amongst others, the striking out of the statement, refusal to give permission to rely on the statement and adverse costs.

However, PD 57AC will also affect other industry practitioners who are involved in the collection of (non trial) witness statements. Often in a maritime setting, such witness statements are taken immediately after an incident and are collected by superintendents, surveyors and others who are not legal representatives. Such evidence has a habit of surfacing during the course of legal proceedings⁵ and, indeed, Mr Justice Andrew Baker identified that such evidence tends to be particularly useful to the courts⁶. However, if it is collected poorly and differs significantly from the eventual trial witness statements, it can be devastating to a party's case. In a shipping context this can sometimes manifest itself when witnesses are "assisted" by surveyors or overbearing superintendents, who may be unfamiliar with what the courts require from a witness. Such evidence may "stick to a script" and will therefore drift from describing what the witness actually did, saw, heard, touched or felt and may describe events outside of their knowledge.

Those who could potentially influence a witness should also be aware that, whilst they may employ the witness, they do not own them. They will not be able to hold the witness's hand when they are in the witness box; the witness will be alone. From the court's perspective, the role of the witness is to record the facts and they should do no more. The purpose of the trial witness statement is not to plead a case, advance opinions or adduce expert evidence. If the witness has committed these errors in a contemporaneous statement or report (and this ends up in evidence) there is a good chance that the trial judge will not give due weight to their subsequent trial witness statements.

WHAT SHOULD YOU DO NOW?

Parties approaching litigation should consider the following steps in relation to PD 57AC:

- collect witness evidence as soon as possible but in compliance with the guidance of PD 57AC;
- instruct lawyers who are familiar with English court procedure and ensure that witnesses (and anyone involved with witness interviews and preparation of statements) are aware of what the courts require from a witness. In particular the need for trial witness statements:
 - to be drafted in the witness's own words and to only set out personal knowledge and experience; and
 - to avoid attempting to argue a case or refer extensively to, or quote from, other documents.

For more information, please contact the author(s) of this alert



JIM CASHMAN
Partner, London
T +44 (0)20 7264 8800
E jim.cashman@hfw.com



SIMON MAXWELL
Associate, London
T +44 (0)20 7264 8841
E simon.maxwell@hfw.com



RUTH ALLAN DE MALDONADO
Professional Support Lawyer, London
T +44 (0)20 7264 8303
E ruth.allandemaldonado@hfw.com

⁵ Frequently by being attached to an Average Adjustment, a Surveyor's Report or an internal ISM Report into an incident.

⁶ Practice Note: CPR PD 57AC in Admiralty Claims [Link](#)

hfw.com

© 2021 Holman Fenwick Willan LLP. All rights reserved. Ref: HFWLDN\52450294-1

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please email hfwenquiries@hfw.com

Americas | Europe | Middle East | Asia Pacific