

Failure to comply with PD57AC — it can be costly!

Practice Direction 57AC (“PD57AC”) relates to witness evidence in trials and explicitly applies only to the Business and Property Courts. It applies to existing proceedings in which the witness statements for trial are signed on or after 6 April 2021.

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Practice Direction 57AC (PD57AC) relates to witness evidence in trials and explicitly applies only to the Business and Property Courts. It applies to existing proceedings in which the witness statements for trial are signed on or after 6 April 2021.

Witness statements must be drafted in accordance with PD57AC, the Statement of Best Practice, and any relevant court guide.

In McKinney Plant & Safety Ltd v Construction Industry Training Board [2022] EWHC 2361 (Ch) (20 September 2022), the court gave the claimant permission to file an amended witness statement after the original version failed to comply with PD57AC, and ordered the claimant to pay the defendant’s costs, which were summarily assessed, on an indemnity basis.

The claimant’s failure to identify breaches of the rules in the witness statement, coupled with its failure to engage with the defendant on the issues (accusing the defendant of “nitpicking”), led to **Deputy Judge Richard Farnhill** making this order.

The claimant accepted that the key witness statement was non-compliant — only seven of its 102 paragraphs remained unamended in the revised statement; however, whilst significant changes were proposed, no application for relief from sanctions was made.

The defendant made the following arguments:

- The proposed changes still involved substantial commentary.
- There was no application for relief.
- Problems remained with the other witness statements.
- The proposed amended statement still did not appropriately cross-reference documents.
- None of the statements set out the documents to which each witness had been referred in refreshing his or her recollection.

The Judge found that:

- The trial judge would be better placed to consider the alleged continuing non-compliance, as the non-compliance was not “readily apparent” on the papers, (following the guidance in Lifestyle Equities CV v Royal County of Berkshire Polo Club Ltd [2022] EWHC 1244 (Ch) at [98]).
- No application for relief was necessary as the issue was before the Court in any event.
- The other witness statements were prima facie adequate, subject to supplying lists of the documents used to refresh each witness’s memory.
- Where a document was referenced, it must be specifically identified.

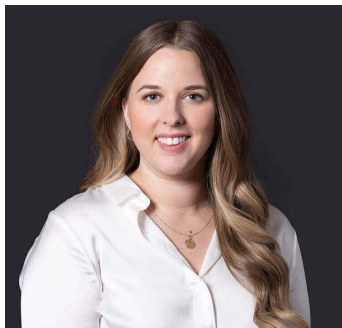
The Judge awarded indemnity costs against the claimant. He considered the following factors:

- The breach of PD 57AC was a serious one: the overwhelming majority of the statement needed to be deleted or amended.
- Despite the defendant raising detailed concerns the best part of two months before the pre-trial review, the claimant failed to engage until a few days beforehand, which precluded meaningful discussion.
- The claimant’s approach was dismissive, which aggravated the situation, as did the claimant’s failure to understand the concerns raised by the defendant.

- Permission to rely on the amended statement was given, subject to it being properly cross-referenced to documents upon which the witness relied, and to the claimant providing a list of the documents to which the witness had been referred.

This is a stark reminder to solicitors that compliance with PD57AC is crucial. For more information, please contact [Amba Griffin-Booth](mailto:Amba.Griffin-Booth@brownejacobson.com).

Contact



Amba Griffin-Booth

Principal Associate

Amba.Griffin-Booth@brownejacobson.com

+44 (0)330 045 2489

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