

Witness Statements

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Witness evidence

- Many personal injury and clinical negligence claims rest on issues of witness credibility rather than issues of law
- Linked to, but not the same as honesty – although truthfulness is relevant, a witness can be honest but mistaken

Witness statements

- Must comply with formal requirements of PD32
- Remember in particular:
 - The statement must indicate which statements are witnesses own knowledge and which are matters of information or belief - r18.2(1)
 - The source of any matters of information or belief – r18.1(2)

Opinion evidence that has been allowed...

- “[Mr Braarup] said the deceased appeared a quite sober man ... He could hold his drink, he said.
- Mr Braarup said that on setting out from the Jenny Lind [public house] the deceased appeared to be all right. He was not in the witness’s opinion the worse for drink ... He drove perfectly well, he said ... there were two bends, moderate bends well able to be taken safely at 50 miles per hour in the opinion of Mr Braarup. That was the speed at which he estimated the car was travelling.
- Mr Braarup thought it possible that the skid was caused by wet or ice on the road ... He thought the deceased had acted properly to correct the skid. He said, ‘I thought his reactions extremely good.

Hearsay

- Pursuant to r18.2, if the statement contains hearsay, the witness must identify the individual
- Cases can be lost on this basis e.g. YXB v TNO [2015] EWHC 826 (QB) - claimant's failed application for an injunction in footballer's sex scandal case

Non-English speakers

- CPR PD32 18.1 – “the witness statement must, if practicable, be in the intended witness’s own words and must **in any event be drafted in their own language**”
- CPR PD32 19.1(8) – a witness statement “should be drafted in the witness’s own language”
- CPR PD32 20.1 - “A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence; it must include a statement by the intended witness **in their own language** that they believe the facts in it are true”

Non-English speakers

- Must not take the statement in English and have it translated – should be the other way around
- Translation services – costly but necessary
- Prepare a list of questions/topics for the person taking the statement so the statement covers all the issues

Illiterate witnesses

- Often confused with foreign language statements
- CPR PD22 3.A – if the statement of truth needs to be signed by someone who cannot read/sign the document *other than* by reason of language alone, you need a certificate from an authorised person
- ‘Authorised person’ – PD22 3A.2
- Form of certificate – annex 1 to PD 22

Defects in statements

- Potentially serious – if statement doesn't comply with CPR 32/PD32 the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation – PD32 25.1
- Although admissibility often depends on value and complexity of the case

Mansion Place Ltd v Fox Industrial Services Ltd

[2021] EWHC 2747 [25]

■ Generally, statements should:

- contain evidence that the maker would be allowed to give orally as provided in CPR 32.4
- cover those issues, but only those issues, which the party relying on the statement wants the witness to cover in chief
- not provide a commentary on the documents in the trial bundle
- not set out quotations from documents in the bundle
- not engage in matters of argument
- not deal with other matters merely because they may arise in the course of the trial
- not include opinion evidence, save where it's necessary as part of the witness' factual account in order to provide a full and coherent explanation and account
- BUT...the rules are not rigid statutes and circumstances might dictate they're relaxed in order to achieve the overriding objective of dealing with cases justly

Striking out part of a witness statement

- CPR 32.1 – the court can control evidence by giving directions re:
 - the issues on which it requires evidence
 - the nature of the evidence which it requires to decide those issues
 - the way in which the evidence is to be placed before the court

- CPR 32.1(2) – court can use that power to exclude otherwise admissible evidence

Common errors

- Statement is inconsistent
- Statement is incomplete
- Client denies knowledge of matters in the statement

Identical Statements

- CPR 32 PD 18.1:

“The witness statement must, if practicable, be in the intended witness’s own words”

Example table for skeleton argument

Witness 1 statement	Witness 2 statement
W2 was in the Seat because W2 and I were playing 5 aside [sic] football. W2 and I are more acquaintances than friends and I have probably only seen W2 around 5-6 times since the accident [1].	I was in the car because W1 and I were playing 5 aside [sic] football. W1 and I are more acquaintances than friends and I have probably only seen James around 5-6 times since the accident [2].
I recall we were travelling to School X. It would have been approximately 7.30pm [1].	I recall we were travelling to School X. It would have been approximately 7.30pm [2].
On the journey I was aware that the Defendant was initially travelling behind us... I mentioned this to W2 at the time [2].	On the journey I was aware that the Defendant was initially travelling behind us. I was aware of this because W1 mentioned to me that he was driving far too close [3].
I was aware that the Defendant at this time would drop back and then speed up and get close. I noticed that at times the Defendant was less than a car length behind us which made me feel uncomfortable [2].	I was aware that the Defendant at this time would drop back and then speed up and get close. I noticed that at times the Defendant was less than a car length behind us which made me feel uncomfortable [3].
At first I was unsure whether the Defendant wanted to overtake but I formed the view that this was not the case and I formed the opinion that the Defendant was trying to apply pressure on me to speed up and drive faster [2].	At first I was unsure whether the Defendant wanted to overtake but I formed the view that this was not the case and I formed the opinion that the Defendant was trying to apply pressure on W1 to speed up and drive faster [3].

Smith New Court Securities v Citibank **[1992] BCLC 1104 per Chadwick J**

- 2 substantially similar witness statements. They denied making them together and said it was a “sheer coincidence”
- “in the circumstances, it would, in my view, be unsafe to make a finding of dishonesty against Mr Roberts on the unsupported evidence of Mr Lewis and Mr Abrahams... Little, if any, weight can be given to their evidence when it is in conflict with that given by Mr Roberts.”

(Although other parts of his judgment were overturned on appeal to CA then reinstated by HL, this part of his judgment was not criticised)

Conclusions

- Comply with formal requirements - PD32 and PD22
- Stick to the facts, rather than commentary/argument
- Make sure the statement covers all relevant issues, including difficult ones
- Make sure the witness is 100% happy with their statement before trial