
**WITNESS STATEMENTS: AN OVERVIEW OF THE RECENT CHANGES TO THE CIVIL
PROCEDURE RULES**

Introduction

1. Some significant changes have been made to the Civil Procedure Rules concerning witness statements, which take effect from 6th April 2020.

The Changes to the CPR

2. There have been **three** noteworthy amendments to [CPR PD32](#), insofar as it concerns witness statements.
3. **First, a witness statement must now explain “the process by which it has been prepared, for example, face-to-face, over the telephone, and/or through an interpreter” (new [paragraph 18.1\(5\)](#)).** Two preliminary observations may be made about this:
 - 3.1. It may be that merely being compelled to provide details of the process by which the statement has been compiled will reduce the temptation for lawyers:
 - 3.1.1. simply to produce a draft statement for the witness to sign, verify, or amend without taking proper proofs of evidence first; or
 - 3.1.2. to polish and re-polish numerous drafts, such that the final version of the statement is very far from the witness’s own words.
 - 3.2. There is, however, no indication in the PD about the level of detail that ought to be provided about the process. It is therefore unclear how much detail the courts will demand of those reluctant to provide a full explanation.
4. **Secondly, the witness statement must “be drafted in the witness’s own language” (new [paragraph 19.1\(8\)](#)).** The [website](#) which heralded this change to the rules explains the rationale for this change as being to: “address the issue of cases where a witness statement is presented in English but where, notwithstanding signature of the statement, the witness

cannot speak English and the statement is not necessarily 'in their own words'. The changes aim to make it possible for such cases to be identified much earlier in the process."

5. In all cases where foreign language statements are relied upon, the party adducing the statement must have it translated, file both the foreign language witness statement and translation with the court, and the translator must certify the accuracy of the translation ([paragraph 23.2](#)); the date of the translation must also be stated ([paragraph 17.2\(6\)](#)).
6. The current version of the *Admiralty and Commercial Courts Guide* ([10th ed, 2017](#)) sets out a slightly more nuanced approach to that outlined above. It states that:

"H1.4 If a witness is not sufficiently fluent in English to give evidence in English, the witness statement should be in the witness' own language and a translation provided.

H1.5 If a witness is not fluent in English but can be understood in broken English and can understand written English, the statement may be in English and need not be in the witness' words provided that these matters are indicated in the statement itself. It must however be written so as to express as accurately as possible the substance of the evidence of the witness."

7. However, even if the provisions of the *Guide* usually take precedence ([CPR r. 58.3](#)), those litigating in the Admiralty Court or Commercial Court may be more cautious, in light of the change of direction under the CPR, about proceeding with the approach outlined in paragraph H1.5 of the *Guide*.
8. **And thirdly, the statement of truth that must accompany all witness statements has changed (new [paragraph 20.2](#)).** The new statement of truth makes reference to the consequences of signing the statement without an honest belief in the truth of the statement and reads:

"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.”

9. No doubt this change is aimed at focussing the mind of the witness when applying his or her signature to the statement, particularly where the witness may not be aware of [CPR r. 32.14](#), which is not new and which already set out these consequences.

Further Changes Afoot?

10. Litigants in the Business & Property Courts can expect further changes in due course to the rules and procedures governing the production, content and delivery of witness evidence in light of the recommendations in the Witness Evidence Working Group [report](#) of 6th December 2019.

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