

Dispute Resolution  
Case Law Update  
Rosling King LLP



### Case Summary

The High Court held that it was unable to give any weight, at trial, to three witness statements relied on by the Claimants, due to significant non-compliance with PD 57AC.

### Background

The claim related to declarations as to a beneficial interest in a company held by the Defendant. The Claimants sought declarations of their respective beneficial interests in the shares of the relevant company and an order that Defendant execute a stock transfer form transferring to them the shares in which they claimed beneficial ownership.

### The elements of non-compliance

PD 57AC has applied to trial witness statements for use in the Business and Property Courts since 6 April 2021.

Importantly, it provides:

*"A trial witness statement must set out only matters of fact of which the witness has personal knowledge that are relevant to the case, and must identify by list what documents, if any, the witness has referred to or been referred to for the purpose of providing the evidence set out in the trial witness statement."*

In this case, the Judge determined that three of the witness statements submitted by the Claimants were clearly inadequate and failed to comply to comply with PD 57AC for the following reasons:

1. None of the witness statements include the witness' confirmation of compliance;
2. One of the witness statements did not include a Solicitor's Certificate of Compliance;
3. None of the witness statements included a list of documents to which the witness was referred;
4. Two of the witness statements were simply a recitation of events based on the documents, sought to argue the case, and commented on other evidence in the proceedings;
5. One of the witness statements included legal submissions, and included matters of which the witness could have had no direct knowledge; and
6. A further witness statement repeated the errors in the witness statement referred to at 5 above and was very similar in its wording appearing to have been copied from it. For example, both witness statements included the following statement: "During the course of this litigation, I have been transparent, and I have disclosed all relevant information as part of initial disclosure and extended disclosure". The Court determined that not only is that statement irrelevant, but its appearance in both witness statements strongly suggested the absence of independent creation as the result of an interview formed of open questions.

For these reasons, the Judge was unable to give the three witness statements any weight in these proceedings.

It was clear that the witness statements were based heavily on advice received from solicitors as to what the witnesses should and should not say and was not an independent recollection of events. The Judge considered that it was a carefully constructed analysis of the documents then available to the Claimants and determined that no reliance could be placed on it.

Further, where the contents of the witness statements were not corroborated by other sources (such as contemporaneous documents), the Judge concluded that he could have no confidence that the statements were truthful and they were given no weight at trial.

#### Practical Considerations

Practitioners and their clients must ensure that they are familiar with the contents of PD 57AC and that the requirements are complied with fully, even when dealing with reluctant witnesses. Proper witness proofing is essential and should be undertaken in the form of open questions without reliance on contemporaneous documents. Legal representatives must resist the temptation to pre-empt what witnesses will say, even where the answers to the questions appear obvious, and should take great care to avoid leading questions with the intent of eliciting a particular answer.

Whilst the process may appear laborious and can often take clients away from the important task of managing their businesses, the risk that their evidence is disregarded by the Court could be highly damaging, or even fatal, to their case.

Practitioners should also ensure that they carefully consider any issues of non-compliance by their opponents and draw significant non-compliance to the attention of the Court.

For further information, please contact [Camilla Pratt](#) or the Partner with whom you usually deal.