

Practice Direction 57AC – Trial  
Witness Statements in the  
Business and Property Courts

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## Practice Direction 57AC – Trial Witness Statements in the Business and Property Courts

On 06 April 2021, Practice Direction 57AC (**PD 57AC**) on Trial Witness Statements in the Business and Property Courts<sup>1</sup> came into effect; this means that *PD 57AD* applies to trial witness statements signed on or after 06 April 2021, in both existing and new proceedings within the jurisdiction of the Business and Property Courts.

It should be noted that *PD 57AC* applies to witness statements relied upon in preliminary issue trials and other types of final trial hearings, and not witness statements created for interim applications, as explained further below:

*PD 57AD* defines "trial" as meaning: a *final trial hearing*, whether of all issues or of only one or some particular issues, in proceedings ..... in any of the Business and Property Courts under CPR Part 7 or Part 8 or upon an unfair prejudice petition under section 994 of the Companies Act 2006 or a contributory's just and equitable winding up petition under section 122(1)(g) of the Insolvency Act 1986. (Emphasis added)

*PD 57AD* defines "trial witness statement" as a witness statement that is served pursuant to an order made under rule 32.4(2), or pursuant to rule 8.5 or an order made under rule 8.6(1)(b), or that is prepared for the trial of an unfair prejudice petition or a contributory's just and equitable winding up petition, including supplemental or reply witness statements where allowed by the court

## Scope of Witness Statements and Proceedings Covered by PD 57AC

Proceedings to which *PD 57AC* applies:

- The Commercial Court
- The Circuit Commercial Courts
- The Technology And Construction Court
- The Admiralty Court

Proceedings to which *PD 57AC* does not apply:

- King's Bench Division (unless there is overlap with the Business and Property Courts)
- Matters under *CPR 64*
- Technology and Construction Court matters relating to adjudication awards under section 9 of the TCC Guide

*PD 57AC* does not apply to some of the following proceedings:

- Applications under the Financial Services and Markets Act 2000
- IP Enterprise Court matters
- Matters that fall within CPR 57 (unless where there is factual evidence)<sup>2</sup>

<sup>1</sup> PD 57A.1. PD 57AC also applies to proceedings in the CLCC; witness statements for this court are required to be produced in accordance with PD 57AC.

<sup>2</sup> Chancery Guide, 29 June 2023 (paragraph 23.3), where there is likely to be contested factual evidence, the court is likely to direct- that trial witness statements should comply with PD 57AC.

*PD 57AC* prevails where there is inconsistency with another Practice Direction<sup>3</sup>. If a rule of other Practice Direction requires some matter to be stated in a witness statement that will be a trial witness statement, that requirement still applies<sup>4</sup>.

Note, where *PD 57AC* does not apply, parties to proceedings may still apply for a direction for its applicability, or in the alternative the court may grant its own order of *PD 57AC*'s applicability.

## The Purpose of a Trial Witness Statement

The purpose of a trial witness statement is to state in writing the evidence in chief that a witness of fact would give orally at trial, if they were to do so without having provided the statement<sup>5</sup>.

*PD 57AC, 2.2* stresses the importance of trial witness statements with respect to the evidence the parties and the court intend to rely on at trial. The use of trial witness statements promotes the overriding objective by helping the court to deal with cases justly, efficiently and at proportionate cost, including by helping to put parties on an equal footing, saving time at trial and promoting settlement in advance of trial.

## What should be generally included in trial witness statements?

*PD 57AC, 3.1* provides that a trial witness statement must contain:

- 1) evidence as to matters of fact that need to be proved at trial by the evidence of witnesses in relation to one or more of the issues of fact to be decided at trial, and
- 2) the evidence as to such matters that the witness would be asked by the relevant party to give, and the witness would be allowed to give, in evidence in chief if they were called to give oral evidence at trial and rule 32.5(2) did not apply.

*Rule 32.5(2) CPR* provides that where a witness is called to give oral evidence at trial, their witness statement shall stand as their evidence in chief unless the court orders otherwise.

*PD 57AC, 3.1* provides that 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 their trial witness statement. The requirement to identify documents the witness has referred to or been referred to does not affect any privilege that may exist in relation to any of those documents.

*PD 57AC, 3.3* provides that a trial witness statement must comply with paragraphs 18.1<sup>6</sup> and 18.2<sup>7</sup> of Practice Direction 32 CPR, and for that purpose a witness's own language includes any language in which the witness is sufficiently fluent to give oral evidence (including under cross-examination) if required, and is not limited to a witness's first or native language.

Note that *paragraph 18.1 of Practice Direction 32 CPR (PD32)* requires a trial witness statement to be in the witness's own words, if practicable, and to be drafted in the witness's own language and in the first person; *paragraphs 18.1(1) to (5) and 18.2 CPR* set out further requirements; *paragraph 23 of Practice Direction 32 CPR* provides that a party who relies on a witness statement in a foreign language must also file a translation.

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<sup>3</sup> PD 57AC, 1.5

<sup>4</sup> PD 57AC, 1.4

<sup>5</sup> PD 57AC, 2.1

<sup>6</sup> PD 32, 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, the statement should be expressed in the first person and should also state:

(1) the full name of the witness,

(2) his place of residence or, if he is making the statement in his professional, business or other occupational capacity, the address at which he works, the position he holds and the name of his firm or employer,

(3) his occupation, or if he has none, his description,

(4) the fact that he is a party to the proceedings or is the employee of such a party if it be the case; and

(5) the process by which it has been prepared, for example, face-to-face, over the telephone, and/or through an interpreter.

<sup>7</sup> 32, 18.2: A witness statement must indicate:

(1) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and

(2) the source for any matters of information or belief.



In *Bahia v Sidhy & Anr* [2022] EWHC 875, in circumstances where a witness spoke English and Punjabi, the claimant's solicitors prepared the trial witness statement in English. The High Court found that there was no serious breach of PD32 and PD 57AC.

Finally, PD 57AC, 3.4 requires that trial witness statements should be prepared in accordance with the Statement of Best Practice contained in the *Appendix of PD 57AC*, and any relevant court guide<sup>8</sup>.

## Specifically, what should the trial witness statement include by way of example?

- Hypothetical evidence (which is viewed as evidence as to matters of fact, which falls within PD 57AC, 3.1 (1))
- Evidence which a witness would be allowed to give as evidence in chief (in oral evidence)
- Identification of documents that the witness has been referred for the purpose of the trial witness statement

## List of Documents

PD 57AC, 3.2 requires that a trial witness statement must list the documents (if any) that the witness referred to or was referred to; this places an onus on legal representatives to catalogue the documents provided to a witness for the purpose of providing evidence (and the date on which such documents were provided).

Separately, witnesses should be made aware before they commence preparation of their trial witness statements that they are required to list of whatever documents they consult on their own accord.

The requirement to list documents does not affect the privilege status of any of those documents. Although there is no set guidance on where the list of documents should appear in the trial witness statement, in *Blue Manchester Ltd v Bug-Alu Technic GmbH & anr* [2021] EWHC 3095 (TCC) the court held that the list of documents a witness refers to when preparing his/her statement must be referenced in the statement.

In *Mansion Place Ltd v Fox Industrial Services Ltd* [2021] EWHC 2747 (TCC), the court found that the list of documents required under PD 57AC is not exhaustive in that a witness is not required to enumerate every document reviewed during the course of the proceedings. Rather, witnesses are required to list documents relied upon as an aide memoire or contemporaneous documents that were referred to, which thereby assisted with the trial witness statement content.

In *Elias v Mamistvalov & anr* [2022] EWHC 1930 (Ch), one of the matters that the judge took issue with was that the first defendant's witness statement omitted a list of documents used to refresh his memory. The judge found issue with other issues with the witness statement and determined that he could not rely on the trial witness statement evidence, unless it was corroborated by other evidence or likely to be accurate version of events.

The situation where a witness materially alters his/her evidence after reviewing evidence from the opposing party/parties has not been prescribed for, however best-practice would suggest that a supplemental witness statement should be served alongside an updated document list.

## Confirmation of Compliance

PD 57AD 4.1 prescribes that a trial witness statement must be verified by a statement of truth and, unless the court otherwise orders, must also include the following confirmation, signed by the witness<sup>9</sup>:

*"I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge.*

<sup>8</sup> PD 57AC, 3.4(2): In the event of inconsistency with any relevant court guide, the Statement of Best Practice takes precedence over any court guide.

<sup>9</sup> Paragraph 3.2 of Practice Direction 22 provides that the statement of truth is to be signed by the witness; paragraph 3A of that Practice Direction applies if the witness is unable to read or sign a witness statement other than by reason of language alone.

*I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case.*

*This witness statement sets out only my personal knowledge and recollection, in my own words.*

*On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when.*

*I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge.”*

Any application for permission to depart from this text may be made without notice, for determination on paper, without a hearing<sup>10</sup>.

Evidence was criticised by the judge in *Thomas Barnes & Sons PLC v Blackburn with Darwen Borough Council [2022] EWHC 2598 (TCC)*, which had been littered with commentary and opinion (which contracted the requirements of the certificate of compliance). The judge took this into account when assessing witness credibility.

## Trial Witness Statement Certificate of Compliance

PD 57AC, 4.3 requires that a trial witness statement is endorsed with a certificate of compliance, signed by a legal representative (unless the statement is signed when the relevant party is a litigant in person or the court orders otherwise).

The wording must state:

*“I hereby certify that:*

- 1. I am the relevant legal representative within the meaning of Practice Direction 57AC.*
- 2. I am satisfied that the purpose and proper content of trial witness statements, and proper practice in relation to their preparation, including the witness confirmation required by paragraph 4.1 of Practice Direction 57AC, have been discussed with and explained to [name of witness].*
- 3. I believe this trial witness statement complies with Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32, and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC.*

*Name: .....*

*Position: .....*

*Date: .....*”

The certificate of compliance is typically signed by a senior lawyer (who, as a matter of best practice should – if not already known – make enquiries about how the trial witness statement was prepared, to which satisfactory answers should be received). Note that PD 32, referred to in the certificate of compliance requires the witness to provide the following information:

- Name, address, occupation
- Witness's status as a party to proceedings or employee of a party to proceedings
- The process for preparing the statement
- Details of what was made from the witness's own knowledge and what are matters of information /belief (and the sources for such)

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<sup>10</sup> PD 57AC, 4.2

Where a party submits that another party's witness statement does not comply with *PD 57AC*, owing to the certificate of compliance, it is for the solicitor of the party whose witness statement was questioned to articulate why the statement did comply with *PD 57AC* (*McKinney Plant & Safety Ltd v Construction Industry Training Board [2022] EWHC 2361 (Ch)*).

Any application to dispense with the certificate of compliance, or for permission to vary or depart from the form set out above may be made, and generally should be made without notice, for determination on paper, without a hearing.

The court may, upon application by any other party or of its own motion, strike out a trial witness statement not endorsed with a certificate of compliance in the form above, if there is reason to consider that the relevant party was acting in person when it was signed<sup>11</sup>.

Best practice for legal practitioners should entail explaining in writing to witnesses providing trial witness statements the purpose and proper content of the statement, as well as the correct procedures for trial witness statement preparation (i.e. ensuring that the witness has read the wording of the witness's confirmation of compliance, which they must sign per *PD 57AC*, 4.1).

## Sanctions

Where a party fails to comply with *PD 57AC*, paragraph 5 allows the court, upon application by any other party or of its own motion, to use its discretion to impose the following sanctions:

- Refuse / withdraw permission to rely on / strike out<sup>12</sup>, part or all of the trial witness statement
- Order that the trial witness statement be re-drafted in accordance with *PD 57AC* / as the court may direct
- Make an adverse costs order against the non-complying party<sup>13</sup>
- Order a witness to give some or all of their evidence in chief orally

Notwithstanding this, the court retains full powers of case management and the full range of sanctions available to it.

Where a party is served with a non-compliant trial witness statement, the party should raise it with the opponent without delay, in an attempt to reach agreement. If no agreement is made, the party should raise the issue with the court. Where trial witness statements do not comply with *PD 57AC*, the court will typically direct that the statement be replaced with a compliant version<sup>14</sup> or redacted<sup>15</sup>. In *Mansion Place Ltd v Fox Industrial Services Ltd [2021] EWHC 2747 (TCC)*, the court said that a court determination could be document-based or at a hearing, noting that the timing should not disrupt any trial preparation or incur any necessary costs.

## Best Practice Statement

The Appendix to Practice Direction 57AC includes a Statement of Best Practice in relation to Trial Witness Statements<sup>16</sup> ("**Statement of Best Practice**").

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<sup>11</sup> *PD 57AC*, 5.3

<sup>12</sup> *Primavera Associates Ltd v Hertsmere Borough Council [2022] EWHC 1240 (Ch)*; Certain passages in the claimant's witness statement were struck out for non-compliance where they were narrative or contained argument, rather than describing matters within the witness's own knowledge. *PD 57AC* allows for the court to use its discretion to strike out a witness statement where there is reason to think that a party was acting in person when the trial witness statement was signed in order to avoid the requirement for a certificate of compliance signed by the legal representative.

<sup>13</sup> *Kieran Corrigan & Co Ltd v OneE Group Ltd and ors [2023] EWHC 649 (Ch)*: Similar text in trial witnesses statements suggested that the defendant witnesses had collaborated with respect to the content. Additionally, the list of documents and statement of truth were omitted. Documents had been exhibited incorrectly. The court allowed for replacement witness statements to be served and awarded costs to the claimant on an indemnity basis.

<sup>14</sup> *Prime London Holdings 11 Ltd v Thurloe Lodge Ltd [2022] EWHC 79 (Ch)*: The court ordered that a non-compliant witness statement should be replaced with a revised one, along with any necessary redactions being applied. *Greencastle MM LLP v Payne & ors [2022] EWHC 438 (IPEC)*: The claimant was given permission to prepare a replacement compliant witness statement by the date when further outstanding evidence was due.

<sup>15</sup> *Mansion Place Ltd v Fox Industrial Services Ltd [2021] EWHC 2747 (TCC)*; The court ordered the parties to redact their statements (per *PD 57AC*, 5.2) to remove evidence that was non-compliant, i.e. the content commented on other documents or witness evidence, or contained an argument

<sup>16</sup> The court recommended that this statement of best practice should be used as a checklist to ensure compliance in *Mansion Place Ltd v Fox Industrial Services Ltd [2021] EWHC 2747(TCC)*.

The Statement of Best Practice sets out the following headliners:

- Witness of fact, and those assisting them, should understand the shortfalls and vulnerabilities of human memory<sup>17</sup>.
- A set of principles for witnesses giving trial witness statements<sup>18</sup>.
- Practice rules for all trial witness statements<sup>19</sup>, with particular paragraphs applicable to a trial witness statement where the relevant party is a litigant in person when the statement is prepared and signed<sup>20</sup>.

**Please see Appendix to Practice Direction 57AC below:**

## Appendix to Practice Direction 57AC

(Statement of Best Practice in relation to Trial Witness Statements)

### 1. Introduction

1.1 This Appendix contains the Statement of Best Practice referred to in paragraph 3.4(1) of Practice Direction 57AC that should be followed in relation to trial witness statements as defined in paragraph 1.2 of that Practice Direction. For the avoidance of doubt, nothing in this Appendix removes or limits any privilege that would otherwise attach to documents generated by or for the purpose of obtaining evidence for use in litigation.

1.2 In this Appendix –

a “leading question” means a question that expressly or by implication suggests a desired answer or puts words into the mouth, or information into the mind, of a witness.

1.3 Witnesses of fact and those assisting them to provide a trial witness statement should understand that when assessing witness evidence the approach of the court is that human memory:

(1) is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but

(2) is a fluid and malleable state of perception concerning an individual's past experiences, and therefore

(3) is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration.

<sup>17</sup> Appendix to Practice Direction 57AC, 1.3 (1) – (3)

<sup>18</sup> Appendix to Practice Direction 57AC, 2

<sup>19</sup> Appendix to Practice Direction 57AC, 3.2 – 3.8

<sup>20</sup> Appendix to Practice Direction 57AC, 3.9 – 3.13



## 2. Principles

2.1 The content of any trial witness statement should be limited to the evidence in chief the relevant party and its legal representatives (if the party is represented) believe the witness would give if

(1) rule 32.5(2) did not apply (so the witness statement would not stand as the evidence in chief of the witness), and

(2) the principles set out in paragraphs 2.2 to 2.6 were followed.

2.2 In trials in the Business and Property Courts, often many matters of fact do not require witness evidence, either because they are common ground or because witness testimony adds nothing of substance to the disclosed documents. The fact that there is or may be an issue concerning what the disclosed documents mean or show does not, without more, mean that witness evidence is required.

2.3 Factual witnesses give evidence at trials to provide the court with testimony as to matters of which they have personal knowledge, including their recollection of matters they witnessed personally, where such testimony is relevant to issues of fact to be determined at trial, and:

(1) a matter will have been witnessed personally by a witness only if it was experienced by one of their primary senses (sight, hearing, smell, touch or taste), or if it was a matter internal to their mind (for example, what they thought about something at some time in the past or why they took some past decision or action),

(2) for the avoidance of doubt, factual witness testimony may include evidence of things said to a witness, since the witness can testify to the statement made to them, if (a) the fact that the statement was made to the witness is itself relevant to an issue to be determined at trial or (b) the truth of what was said to the witness is relevant to such an issue and the statement made to the witness is to be relied on as hearsay evidence.

2.4 The duty of factual witnesses is to give the court an honest account of matters known personally to them (including, if relevant to the issues in the case, what they recall as to matters witnessed personally by them or what they would or would not have done or thought if the facts, or their understanding of them, had been different). It is improper to put pressure of any kind on a witness to give anything other than their own account, to the best of their ability and recollection, of the matters about which the witness is asked to give evidence.

2.5 The evidence in chief of a factual witness, if not given by witness statement, must be given to the court without the use of leading questions (except where their use has been permitted by the court).



2.6 During evidence in chief given otherwise than by witness statement, the witness's memory may be refreshed by being shown a document, but only if the witness created or saw the document while the facts evidenced by or referred to in the document were still fresh in their mind, so that they would have known if they were accurate or inaccurate.

## 3. Practice

### General

3.1 Paragraphs 3.2 to 3.8 below apply to all trial witness statements. Paragraphs 3.9 to 3.13 below do not apply to a trial witness statement where the relevant party (as defined in paragraph 1.2 of Practice Direction 57AC) is a litigant in person when the statement is prepared and signed. Paragraphs 3.14 to 3.16 below apply only to a trial witness statement where the relevant party is a litigant in person when the statement is prepared and signed.

3.2 Any trial witness statement should be prepared in such a way as to avoid so far as possible any practice that might alter or influence the recollection of the witness other than by refreshment of memory as described in paragraph 2.6 above.

3.3 Trial witness statements should be as concise as possible without omitting anything of significance.

3.4 A trial witness statement should refer to documents, if at all, only where necessary. It will generally not be necessary for a trial witness statement to refer to documents beyond providing a list to comply with paragraph 3.2 of Practice Direction 57AC, unless paragraph 3.7 below applies or the witness's evidence is required to:

- (1) prove or disprove the content, date or authenticity of the document;
- (2) explain that the witness understood a document, or particular words or phrases, in a certain way when sending, receiving or otherwise encountering a document in the past; or
- (3) confirm that the witness saw or did not see the document at the relevant time;

but in the case of (1) to (3) above if (and only if) such evidence is relevant. Particular caution should be exercised before or when showing a witness any document they did not create or see while the facts evidenced by or referred to in the document were fresh in their mind.

Where a trial witness statement does refer to a document, it should not exhibit the document but should give a reference enabling it to be identified by the parties, unless it is a document being produced or disclosed by the witness that has not been disclosed in the proceedings.

3.5 The document list to comply with paragraph 3.2 of Practice Direction 57AC should identify or describe the documents in such a way that they may be located easily at trial. Documents disclosed in the proceedings may be listed by disclosure reference. Privileged documents may be identified by category or general description.

3.6 Trial witness statements should not –

- (1) quote at any length from any document to which reference is made,
- (2) seek to argue the case, either generally or on particular points,
- (3) take the court through the documents in the case or set out a narrative derived from the documents, those being matters for argument, or
- (4) include commentary on other evidence in the case (either documents or the evidence of other witnesses), that is to say set out matters of belief, opinion or argument about the meaning, effect, relevance or significance of that other evidence (save as set out at paragraph 3.4 above).

3.7 On important disputed matters of fact, a trial witness statement should, if practicable –

- (1) state in the witness's own words how well they recall the matters addressed,
- (2) state whether, and if so how and when, the witness's recollection in relation to those matters has been refreshed by reference to documents, identifying those documents.

3.8 The preparation of a trial witness statement should involve as few drafts as practicable. Any process of repeatedly revisiting a draft statement may corrupt rather than improve recollection.

### **Represented Parties**

3.9 Any witness providing a trial witness statement should have explained to them, by the legal representatives of the relevant party, the purpose and proper content of such a statement and proper practice in relation to its preparation, before they are asked to prepare or consider any draft statement and, wherever practicable, before any evidence is obtained from them (by interview or otherwise). This should include ensuring that the witness has read, or reading to them, the witness confirmation required by paragraph 4.1 of Practice Direction 57AC.



### 3.10 Wherever practicable –

(1) a trial witness statement should be based upon a record or notes made by the relevant party's legal representatives of evidence they obtained from the witness,

(2) any such record or notes should be made from, and if possible during, an interview or interviews (using any convenient format, for example face to face meeting, video or telephone call or conference, webchat or instant messaging),

If a trial witness statement is based upon evidence obtained from the witness by other means (for example by written answers to a questionnaire or the exchange of emails or other forms of correspondence, or by the witness preparing their own draft statement), the guidance set out in this Appendix should still be followed, so far as possible and modified as necessary.

### 3.11 An interview to obtain evidence from a witness –

(1) should avoid leading questions where practicable, and should not use leading questions in relation to important contentious matters,

(2) should use open questions as much as possible, generally limiting closed questions to requests for clarification of or additional detail about prior answers, and

(3) should be recorded as fully and accurately as possible, by contemporaneous note or other durable record, dated and retained by the legal representatives.

3.12 If a trial witness statement is not based upon evidence obtained by means of an interview or interviews, that should be stated at the beginning of the statement and the process used instead should be described (to the extent possible without waiver of privilege).

(Paragraph 18.1(5) of Practice Direction 32 provides that any trial witness statement should state the process by which it has been prepared.)

3.13 The legal representatives of the relevant party should assist the witness as to the structure, layout and scope of the statement and may take primary responsibility for drafting it, but in that case the content should be taken from, and should not go beyond, the content of the record or notes referred to in paragraph 3.10(1) above where such a record or such notes exists or exist. If the legal representatives wish to indicate in a draft for a trial witness statement that further evidence is sought from the witness to clarify or complete the statement, that should be done by non-leading questions for the witness to answer in their own words and not by proposing content for approval, amendment or rejection by the witness.



## Litigants in Person

3.14 Any witness providing a trial witness statement should read and understand the statement set out in paragraph 4.1 of Practice Direction 57AC, before any draft for the trial witness statement is prepared. That applies to a litigant in person in relation to their own trial witness statement, if there is one, as well as to other witnesses providing statements.

3.15 A litigant in person should understand that any trial witness statement must set out only what the witness providing the statement says are known personally to them or says they remember about matters witnessed personally by them. That applies to the litigant in person's own trial witness statement, if there is one, as well as to any witness statements provided by other witnesses. Witness statements must not be used to argue the litigant's case.

3.16 A trial witness statement may be prepared by reference to answers provided by the witness to questions posed by the relevant party. Where that is done, (1) leading questions should be avoided where possible, especially on important points, and (2) a full record should be kept by the relevant party of the questions posed and the answers provided, whatever form the trial witness statement takes. The content of any trial witness statement should be in the witness's own words so far as practicable and no one should suggest to any witness what factual account they should or might wish to give (or not give) in a statement.

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