Something old, something new, something borrowed….

A practical look at the procedural rule changes in Chapter 42A cases

Something old: debates

- Very much out of fashion over at least last 10 years, but can still be valuable
- D v Fife Health Board, unreported, Sheriff Appeal Court, 20 September 2022
- Facts
- Arguments: (1) Meadows v Khan; (2) ex turpi causa
- First instance decision
- Appeal

Something old: debates

- Fenwick v Paton and others – not clinical negligence, but useful further short example
- Procedure:
  - R42A.3
  - Motion
  - Include legal argument on which preliminary plea should be sustained
  - Include principal authorities
  - Hearing

Something new: Practice Note No 2 of 2019

- 5 months old today
- Deadline for exchange of expert reports: 3 weeks after record
- Problems
- Was it really a problem? RCS 42A.5(2)(d)
- Welcome clarification

Something borrowed: witness statements

- Form – brief guidance in Practice Note No 2 of 2019
- Other sources:
  - Commercial Court guidance
  - Practice Direction 32 from English Civil Procedure Rules
- CCG. Witness statement should:
  - Be in language witness would use
  - Court does not expect a document framed by lawyers which uses language witness would not
  - Wants evidence of the witness in written form

Something borrowed: witness statements

- Witnesses to draft own statements?
- Should/must they be signed?
- Practice Direction 32. Two particularly useful points:
  - Paragraph numbering
  - Chronological ordering
- Use of witness statements – further oral evidence

Something borrowed: witness statements

- Pitfalls
  - Content of witness statement
  - Dangers involved in witness statements

CHAPTER 42A ACTIONS

SOMETHING OLD, SOMETHING NEW, SOMETHING BORROWED…

SPEAKING NOTES

Introduction

1. Suspect most people very familiar – perhaps more so than we might want – with the new C42A rules. Chapter is entitled "Case Management of certain personal injuries action" and rules do indeed impose a case management regime with really very extensive frontloading.

2. Want to mention three things about new C42A rules this morning: debates; Practice Note No 2 of 2019; and witness statements.

Something old: Debates

3. Debates very much out of fashion over last few years but my view remains that there is very much a role for them. Debates can be useful not just if a case is felt to be completely irrelevant – which is rare nowadays – or if parts of a case are felt to be irrelevant and it is worth having a debate to exclude parts of a case that might otherwise occupy a lot of time at a proof.

4. Can perhaps illustrate this best by reference to an unreported case that I recently argued before the Sheriff Appeal Court: D v Fife Health Board.

5. Facts of case simple. Pursuer had psychiatric problems and became the subject of a short-term detention certificate. After a period of detention he was reviewed by a psychiatrist who felt that he no longer met the criteria for detention. The STDC was revoked and he discharged himself from the psychiatric unit.

6. In the days after his discharge he went on what I think could fairly accurately be described as a relatively low-grade crime spree which included some threatening behaviour and an assault. He was subsequently convicted in relation to that behaviour.

7. He raised proceedings against the health board, with his essential contention being that the psychiatrist was negligent to have revoked the STDC and that if the certificate had not been revoked then he would have been detained, and if he had been detained he could not have committed the crimes of which he had been convicted. He said, perhaps not unreasonably, that convictions had interfered with his reputation and ability to work.

8. Case went to debate with Ds advancing two arguments: (1) that based on Meadows v Khan it was not within the scope of the psychiatrist's duty to prevent P committing crimes; and (2) that he could not recover damages that arose from his criminal convictions by virtue of the operation of the rule ex turpi causa non oritur action – "no action can arise from an illegal act".

9. On first question the Sheriff said that he did not consider the Meadows v Khan test helpful. Still not sure what he meant by that. Certainly, case not helpful to the pursuer, but it is a decision of the Supreme Court and while it is an English case so not binding still respectfully not sure that it is for a Sheriff to decide that it is not helpful. On second question he applied doctrine ex turpi causa and excluded the pursuer's averments to the effect that his criminal convictions had been caused by the negligence.

10. The pursuer appealed against the Sheriff's decision to exclude the ex turpi averments and the defenders cross appealed against the Sheriff's decision on the question of scope of duty.

11. The SAC refused the appeal and cross appeal. Perhaps interestingly it concluded that the Sheriff was wrong not to apply Meadows, but said that evidence was required before a decision could be made in relation to the scope of the psychiatrist's duty. On the ex turpi point it upheld his decision and excluded the pursuer's averments.

12. Point of telling you about this case is as a reminder that even if a case isn't going to be dismissed at debate but there are parts of it that seem irrelevant then it is worth considering seeking a debate. In D the averments that were excluded were essentially a significant head of claim and the time taken for the debate will, I hope, be time well spent in respect that it is not not necessary to spend time investigating that head of claim or hearing evidence about it at proof.

13. There has been another recent case where having a debate served a purpose: Fenwick v Paton and others. Not a clinical negligence case and facts aren't really relevant for today – mention it only because it went to debate and certain averments by the pursuer (including a res ipsa loquitor case) were not admitted to probation. The case continues but from the defenders' perspective at least the debate served a very useful function in restricting the scope of the proof.

14. On procedure, there are very strict time limits involved if you want a debate. R42A.3 – you only have a week from the lodging of the closed record to make an application. Application must:

- Be by motion;
- Include the legal argument on which preliminary plea should be sustained or repelled; and
- Include the principal authorities on which the application is founded.

15. In practical terms what I think this means is that you need to have identified your debate point well before the record closes and be ready to go with a motion as soon as the record closes.

16. Once the motion is enrolled a hearing is mandatory, and after having heard from the parties the court will decide whether or not to appoint the case to a debate. If it is appointed to a debate then the court may order that written arguments are to be submitted. In today's world I think we should all understand that "may" means "will".

17. If at the hearing the court isn't persuaded that a debate should be fixed then the timetable starts running from the date of that hearing.

Something new: Practice Note No 2 of 2022

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18. This PN is five months old today. That makes it unquestionably new in litigation terms, but I suspect its terms will be well known to all of you. For those who aren't familiar with it the background to PN 2 of 2019 was that, as you will all know, the new C42A rules impose an early deadline for the exchange of draft expert reports – three weeks after the record closes.

19. Questions arose as to whether that was a reasonable or realistic expectation – could parties really be in a position to exchange quantum reports three weeks after the record closed?

20. I understand that parties, and defenders in particular, were finding it extremely difficult to obtain expert reports on quantum by that time. One of the main problems as I understand it was that in most clinical negligence actions both parties require a foundation condition and prognosis report from an expert. That C&P report tends to require an in-person examination, and those can take time to arrange. To give a practical example, in a birth injury case the foundation C&P report tends to be from a paediatric neonatologist and that needs to be sent to all the other quantum experts (care, employment, accommodation etc) so that they can base their reports on it. Experience suggested that it was simply not possible to have all of those reports by the stage at which draft reports were to be exchanged.

21. The problem was not necessarily a fundamental one: while RCS42A.5(2)(a) did require the exchange of apparently all reports, RCS42A.5(2)(d) made it clear that if parties had experts instructed but no report available yet then the expert could simply be listed.

22. Nevertheless the PN provided welcome clarification about quantum reports explaining that the court did not expect that parties should have completed quantum investigations by this stage. What parties are to do is to exchange what is available and for the defenders do what is possible and disclose what is available. In short, the sensible seeming idea that a proof can be fixed and that the time before the proof can be used to investigate quantum remains an appropriate way to proceed.

Something borrowed: Witness statements

Form

23. Witness statements now require to be disclosed three weeks after the record closes. Obviously, the content of a witness statement is a very case specific matter. When thinking about preparing the witness statements there is limited guidance that is specific to C42A. The only specific C42A guidance that I have identified is found in paragraph [9] of PN 2 of 2019 which instructs that witness statements "should contain full and clear factual accounts".

24. Doubt anyone could argue with that idea that that is a good thing. Doesn't really tell us much though, and we must borrow from other sources to try and understand what makes a good witness statement.

25. Other relevant sources of guidance when preparing witness statements:

25.1. Commercial court guidance;

25.2. Practice Direction 32 from English Civil Procedure Rules

26. CCG contains specific guidance about witness statements:

> *"The purpose of a statement is to record the evidence of a witness. The court does not expect to receive a document which is in large measure framed by lawyers and which uses language which the witness would not use. Words should not be put into a witness's mouth. If a party produces such a document as the evidence of the witness, it is likely that it will receive little weight from the court and it may in some circumstances significantly damage a party's case. Equally, if it appears that a witness has been improperly tutored in his evidence, the court is likely to discount his evidence. In preparing such statements, legal advisers should bear in mind that a witness may have to justify on cross-examination things contained in his statement.*
>
> *What the court is looking for is the actual evidence of the witness in written form. It seems that the best approach is for the witness to give a precognition in the normal way. As the statement has a different role from a precognition, it is likely that the legal advisers will want to consider the draft statement carefully.*
>
> *The legal advisers, including - where appropriate - counsel, can consider the draft statement to ensure that the witness has covered the relevant matters to which he can speak. They can also seek to clarify ambiguous statements within his evidence when his statement is in draft, and seek his comments on documents and other materials which might appear to raise questions about the accuracy of his recollection. Where there are matters, which the legal advisers think he might be able to address, they can properly ask him whether he can give evidence on those subjects. They can show him documents which he might have seen at the time, and if he had seen them, ask for his comments on them. Where the witness comments on documents which he had not seen at the relevant time, the fact that he had not seen them then should be made clear in his statement.*

We recognise that the process of taking a precognition means that the product involves input from the precognoscer. We expect that care will be taken to ensure that the witness's testimony is accurately represented. He is also to be given the opportunity to consider carefully what the draft statement says and to confirm its terms or instruct its amendment before he is asked to sign the statement. The legal advisers should also inform him that he may be cross-examined on his statement in court."

27. Nothing inherently wrong with asking witnesses to prepare their own first draft witness statements. Obviously no difficulty in medical witnesses having their records to hand at the time of preparation of their witness statement. It may be important to be clear in some cases what parts of medical records a witness had seen at the time (or shortly after) and what parts they had not seen.

"A witness statement which is not an affidavit should include a declaration that the evidence is true to the best of the witness's knowledge and belief and the witness should sign the statement. The witness should confirm in witness box (i) that the statement is his, (ii) that after giving a statement, he has considered the terms of the written statement and signed it, and (iii) that he adopts it as his evidence. Thus the statement will become part of his sworn testimony."

28. Important to say that this is CCG and not therefore directly applicable to C42A cases. Views vary about whether it is necessary for witnesses to sign C42A witness statements. Think two things can be said about that with reasonable confidence. First is that it is not mandatory for statements to be signed – neither the Rules nor the Practice Notes provide for that. Second is that there is however some attraction to having them signed – makes it clearer that the witness has approved the statement, and might focus the witness's attention too.

29. English Practice Direction 32 guidance also interesting. Makes many of the same points as the CCG but contains two specific instructions with which I very much

agree. First is that it should be divided into numbered paragraphs. I think judges are likely to become very frustrated in the modern era if they are faced with witness statements that are not divided into numbered paragraphs. The second instruction is that "it is usually convenient for a witness statement to follow the chronological sequence of the events or matters dealt with". Again experience suggests that witness statements that are chronologically drafted are easier to follow.

Use

30. CCG suggests the following approach to witness statements:

> *"We recognise that controversial issues within a witness's evidence, where issues of credibility and reliability arise, will usually have to be addressed in oral evidence in chief as well as in the statement. This assists the judge to form a view of the witness in the more relaxed circumstance of evidence in chief and also when under the stress of cross-examination.*
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> *We do not intend to have all evidence in chief presented solely in written form. In some cases, where significant cross-examination is foreseen, it may not be appropriate to have a witness adopt his statement and be subjected immediately to cross-examination. Counsel leading a witness can, for example, clarify matters in his statement which appear to be in controversy or, where it is relevant and appropriate to do so, ask him to comment on points raised in the statements of other witnesses.*
>
> *In many cases it may be necessary to take an early witness through his evidence in some detail to introduce the court to the relevant documentary evidence. Later witnesses may have to introduce further documents or be asked about points which have arisen in the evidence of earlier witnesses. Otherwise, it is intended that the substance of a witness's evidence be contained in the witness statement or affidavit and extensive and prolonged evidence in chief be avoided. Counsel should use their professional judgement in deciding how much oral evidence in*

chief is needed in the particular case, though the judge must be free to intervene if he feels that this is tending to subvert the purpose behind the use of statements."

31. I think it important here again to remember that this guidance is explicitly applicable only to commercial actions. In some straightforward clinical negligence cases one could see that it might be possible for a witness to just adopt his or her statement and move straight to cross. However in the vast majority of cases I would expect evidence, possibly quite considerable evidence, explaining terminology and the medicine involved. It doesn't feel at all reasonable to me for example to expect a judge to read witness statements by an obstetrician or midwife and understand from them what that person is saying about a CTG. It seems to me in that example that the only appropriate way to proceed is going to be to supplement the witness statement with oral evidence, that may well duplicate what is said in the witness statement to an extent, but is nevertheless (in my view) likely to be at least helpful and more likely essential.

Pitfalls

32. First pitfall is one that will be avoided if CCG guidance is followed: make sure witness understands that witness statement must be his or her evidence. There is at least one commercial case where a witness statement included a complicated word and it became clear, in the course of the proof, that the witness did not know what the word meant! Disaster obviously for the witness, who will have signed the statement, but not good either for the drafter of the statement.

33. Second pitfall to avoid comes when trying to agree witness evidence. There are many situations where parties wish to agree the evidence of a witness. Two ways of doing this. One way would be to agree that the evidence of the witness is accurate. Other way would simply be to agree that the witness statement contains the evidence of the witness, but that the opposing party does not necessarily accept that the witness statement is accurate. For that scenario suggest that something along the following lines is appropriate:

"For the purposes of [this action/the proof] the parties agree: (1) that the witness statement [process number] constitutes the evidence of [witness name]; (2) the [other side] do not accept that the evidence contained in the witness statement is accurate, but simply that it is the evidence of the witness; and (3) no adverse inference can be drawn from the absence of cross examination of [the witness]."

34. Necessary to be cautious though on both sides of such an agreement. For the opposing party, while no adverse inference can be drawn from your lack of cross examination of the witness, the position does of course remain that the witness's evidence was not challenged and so unless there is other evidence (testimony or documentation) available to contradict it then it seems highly likely that the court will simply accept the content of the witness statement as proved. Suggest therefore that you only agree to this formulation if you do in fact accept the witness's evidence.

35. On the other hand, for party whose witness this is, be aware that by agreeing a joint minute in these terms you are likely to be giving up your entitlement to lead any further evidence from the witness. In the relatively recent case of *O'Grady v Greater Glasgow Health Board*, unreported, Sheriff KJ Campbell QC, 5 May 2022 heard a preliminary proof on time bar in a clinical negligence case. The pursuer lodged affidavits by him and his partner which were intended to support his averments on date of knowledge and, if he lost on that front, to support his averments that he should be allowed to proceed anyway under section 19A. The parties agreed the affidavits in generally the terms I have mentioned above.

36. At the preliminary proof the pursuer's counsel sought to lead oral evidence from the pursuer in addition to the affidavits. The defenders objected and the Sheriff sustained that objection holding that the joint minute constituted an agreement that there would be no further witness evidence from the pursuer or his partner.

Guidance on use signed witness statements or affidavits

Guidance by the Commercial Judges

The use of signed witness statements or affidavits in commercial actions

The use of signed witness statements or affidavits in commercial actions is now fairly well established. The First Division in *Luminar Lava Ignite Ltd* v *Mama Group plc* 2010 SC 310 (at paragraphs [70]–[75]) has recognised the practice. Since that decision we have considered further improvements in practice and have discussed the use of such statements with the Consultative Committee on Commercial Actions.

We are aware that some practitioners are uncertain about best practice in the preparation of witness statements and that they would welcome some guidance on their use. This note, which we have discussed with the Consultative Committee, is intended to give that guidance.

In this note we use the term "statements" to cover both affidavits and signed witness statements which are adopted as part of a witness's evidence; also "he" includes "she".

The purpose of signed witness statements or affidavits

The purpose of the statements is to assist the court to hear cases expeditiously. It is our experience that the use of statements has helped parties to complete hearings within the times allocated to them, which are often shorter than would be the case without statements being used. If the diet fixed for a case is shorter, this in turn has a beneficial effect on the ability of the court to fix cases without undue delay. While we acknowledge the work that has to go into the preparation of statements, it is hoped that there will be a net financial saving to the parties from shortening the length of the court hearing.

There is also, we think, a benefit in parties knowing sooner rather than later the evidence likely to be adduced by the other side, since it enables them more confidently to assess the likelihood of success or failure and thereby facilitates settlement.

We are of the view that it is generally desirable that a witness, who is speaking to events which occurred some time previously, should give his evidence after he has had an opportunity to consider documents which he had seen at the relevant time. He should also have had the opportunity to re-read his statement shortly before he gives oral evidence. We consider that it is consistent with justice that a witness is placed in a position to give truthful evidence to the best of his ability.

Supplementing statements by oral evidence in chief

We recognise that controversial issues within a witness's evidence, where issues of credibility and reliability arise, will usually have to be addressed in oral evidence in chief as well as in the statement. This assists the judge to form a view of the witness in the more relaxed circumstance of evidence in chief and also when under the stress of cross-examination.

We do not intend to have all evidence in chief presented solely in written form. In some cases, where significant cross-examination is foreseen, it may not be appropriate to have a witness adopt his statement and be subjected immediately to cross-examination. Counsel leading a witness can, for example, clarify matters in his statement which appear to be in controversy or, where it is relevant and appropriate to do so, ask him to comment on points raised in the statements of other witnesses.

In many cases it may be necessary to take an early witness through his evidence in some detail to introduce the court to the relevant documentary evidence. Later witnesses may have to introduce further documents or be asked about points which have arisen in the evidence of earlier witnesses. Otherwise, it is intended that the substance of a witness's evidence be contained in the witness statement or affidavit and extensive and prolonged evidence in chief be avoided.[1] Counsel should use their professional judgement in

deciding how much oral evidence in chief is needed in the particular case, though the judge must be free to intervene if he feels that this is tending to subvert the purpose behind the use of statements.

The content of the affidavit or witness statement

The following principle must be respected: the statement should be the evidence of the witness and should cover only those matters to which he can properly speak.

The role of legal advisers or other parties in the preparation of the statements

The purpose of a statement is to record the evidence of a witness. The court does not expect to receive a document which is in large measure framed by lawyers and which uses language which the witness would not use. Words should not be put into a witness's mouth. If a party produces such a document as the evidence of the witness, it is likely that it will receive little weight from the court and it may in some circumstances significantly damage a party's case. Equally, if it appears that a witness has been improperly tutored in his evidence,[2] the court is likely to discount his evidence. In preparing such statements, legal advisers should bear in mind that a witness may have to justify on cross-examination things contained in his statement.

What the court is looking for is the actual evidence of the witness in written form. It seems that the best approach is for the witness to give a precognition in the normal way. As the statement has a different role from a precognition, it is likely that the legal advisers will want to consider the draft statement carefully.

The legal advisers, including - where appropriate - counsel, can consider the draft statement to ensure that the witness has covered the relevant matters to which he can speak. They can also seek to clarify ambiguous statements within his evidence when his statement is in draft, and seek his comments on documents and other materials which might appear to raise questions about the accuracy of his recollection. Where there are matters, which the legal advisers think he might be able to address, they can properly ask him whether he can give evidence on those subjects. They can show him documents which he might have seen at the time, and if he had seen them, ask for his comments on them.[3] Where the witness comments on documents which he had not seen at the relevant time, the fact that he had not seen them then should be made clear in his statement.

We recognise that the process of taking a precognition means that the product involves input from the precognoscer. We expect that care will be taken to ensure that the witness's testimony is accurately represented. He is also to be given the opportunity to consider carefully what the draft statement says and to confirm its terms or instruct its amendment before he is asked to sign the statement. The legal advisers should also inform him that he may be cross-examined on his statement in court.

When the statements should be prepared and exchanged

We will normally order parties to exchange the documents on which they wish to found at proof at a date not less than two weeks before they are appointed to lodge and exchange statements. Often, if time permits, we will allow four weeks. This is to give the legal advisers an opportunity to peruse the documents and identify any matters which they need to raise with a witness before he finalises the statement.

Legal advisers or other people involved in taking evidence from a witness to prepare his statement should finalise the statement without showing the witness the other statements which are being obtained for their client. By fixing a date on which the parties are to exchange their statements, the court seeks to prevent a witness's initial statement from being influenced by the evidence of the witnesses put forward by another party.

Where, exceptionally, a witness finalises a statement (other than a supplementary statement) after the exchange of statements of other witnesses, the solicitor tendering the statement should write a letter to the court either (i) certifying that the witness has not seen or been informed of the evidence of others, or (ii) if he has, specifying the statements which the witness has seen or been told about and the circumstances in which that occurred.[4]

The statements of a party's other witnesses or of another party's witnesses may be disclosed to a witness after the exchange of statements between the parties. If in the light of that information a witness needs to expand or qualify the evidence which he has already given in written form, a supplementary statement may be lodged. The court will normally allow for this in the timetable which it fixes.[5] The purpose of the supplementary statement is to correct or qualify what the witness has already stated. It is not intended that the witness should lodge a supplementary statement to comment on or rebut the evidence of other witnesses.

A court order which fixes a proof diet may therefore set out a four-stage timetable.[6] First, it will fix a date for the exchange of the documents which parties intend to rely on at the proof. Secondly, it will specify a date for the parties to exchange and lodge in process their statements. The date for that exchange should be fixed to allow parties' advisers time to analyse the documents exchanged under the first stage before they have to finalise the statements. Thirdly, it will specify a date for the exchange and lodging of supplementary statements. Finally, it will fix a By Order hearing at which parties can give notice of any issues of the admissibility of the written evidence or other pertinent matters.[7]

Signature and adoption of statements

A witness is to swear an affidavit in normal way. At the start of his evidence from the witness box, he should identify the affidavit as his.

A witness statement which is not an affidavit should include a declaration that the evidence is true to the best of the witness's knowledge and belief and the witness should sign the statement. The witness should confirm in witness box (i) that the statement is his, (ii) that after giving a statement, he has considered the terms of the written statement and signed it, and (iii) that he adopts it as his evidence. Thus the statement will become part of his sworn testimony.

Whether statements are evidence if the witness is not called to give oral evidence

As is well known, the Civil Evidence (Scotland) Act 1988, section 2(1)(b) allows a person's statement, including a written statement, to be admitted as evidence of any matter of which direct oral evidence by that person would be admissible.[8] But when the court orders the preparation of a statement as a witness's evidence in chief in a case on the Commercial Roll, it will normally not admit the statement in evidence if the witness is not made available for cross-examination. In such circumstances the court will admit the statement only if (i) parties agree the evidence, or agree to its admission as the evidence of the witness, or (ii) a party makes an application by motion for the evidence to be admitted and the court assents to that motion.

Where a witness does not co-operate in giving a witness statement

If a witness whom a party wishes to call does not co-operate with solicitors in producing a signed witness statement or affidavit, the solicitors should explain the problem at a by order hearing and produce the correspondence to vouch the request and the witness's non-co-operation.

Expert witnesses

The court does not expect an expert witness to produce a signed witness statement if he has set out his evidence in a report.

Patrick S. Hodge

Duncan A. Y. Menzies

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Notes

[1] See Timeshare Management Services Ltd v Loch Rannoch Highland Club [2011] CSOH 23, Lord Glennie at para 130.

[2] See Watson v Student Loans Co Ltd [2005] CSOH 134: it is improper practice to brief or coach a witness with a view to his altering his evidence.

[3] If a witness statement containing references to documents is finalised before a joint bundle of documents is prepared, it would be help the court if a copy of the statement with the relevant page references from the joint bundle were produced later.

[4] See Luminar Lava Ignite Ltd at paragraph [74].

[5] Alternatively the witness can explain his position in oral evidence in chief.

[6] The practice is generally to fix this timetable by working back from the allocated proof diet, but there may be occasions (particularly where there is thought to be an opportunity of bringing the case forward if other cases settle) where it is more sensible to fix the timetable working forward from the procedural hearing.

[7] Notice should be given of fundamental issues of admissibility which may affect a party's case. Less important issues of admissibility can be covered at the start of the proof diet by the preparation and lodging of a note of objections to the evidence in the witness statements.

[8] A statement which is made in a precognition is not admissible: Civil Evidence (Scotland) Act 1988 s.9; See Walker & Walker on Evidence (3rd ed.) para 8.7.1 and the cases cited there.

WITNESS STATEMENTS

Heading

17.1 The witness statement should be headed with the title of the proceedings (see paragraph 4 of Practice Direction 7A and paragraph 7 of Practice Direction 20); where the proceedings are between several parties with the same status it is sufficient to identify the parties as follows:

	Number:
A.B. (and others)	Claimants/Applicants
C.D. (and others)	Defendants/Respondents
	(as appropriate)

17.2 At the top right hand corner of the first page there should be clearly written:

(1) the party on whose behalf it is made,
(2) the initials and surname of the witness,
(3) the number of the statement in relation to that witness,
(4) the identifying initials and number of each exhibit referred to,
(5) the date the statement was made; and
(6) the date of any translation.

Body of witness statement

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.

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.

18.3 An exhibit used in conjunction with a witness statement should be verified and identified by the witness and remain separate from the witness statement.

18.4 Where a witness refers to an exhibit or exhibits, he should state 'I refer to the (description of exhibit) marked'…''.

18.5 The provisions of paragraphs 11.3 to 15.4 (exhibits) apply similarly to witness statements as they do to affidavits.

18.6 Where a witness makes more than one witness statement to which there are exhibits, in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each witness statement.

Format of witness statement

19.1 A witness statement should:

(1) be produced on durable quality A4 paper with a 3.5cm margin,
(2) be fully legible and should normally be typed on one side of the paper only,
(3) where possible, be bound securely in a manner which would not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the witness,
(4) have the pages numbered consecutively as a separate statement (or as one of several statements contained in a file),
(5) be divided into numbered paragraphs,
(6) have all numbers, including dates, expressed in figures,
(7) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the statement ; and
(8) be drafted in the witness's own language.

19.2 It is usually convenient for a witness statement to follow the chronological sequence of the events or matters dealt with, each paragraph of a witness statement should as far as possible be confined to a distinct portion of the subject.

Statement of Truth

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[13].

20.2 To verify a witness statement the statement of truth is as follows:

'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.'

20.3 Attention is drawn to rule 32.14 which sets out the consequences of verifying a witness statement containing a false statement without an honest belief in its truth.
(Paragraph 3A of Practice Direction 22 sets out the procedure to be followed where the person who should sign a document which is verified by a statement of truth is unable to read or sign the document other than by reason of language alone.)