

# PRACTICE DIRECTION – WRITTEN EVIDENCE

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 32

### EVIDENCE IN GENERAL

- 1.1 Rule 32.2 sets out how evidence is to be given and facts are to be proved.
- 1.2 Evidence at a hearing other than the trial should normally be given by witness statement<sup>1</sup> (see paragraph 17 onwards). However a witness may give evidence by affidavit if he wishes to do so<sup>2</sup> (and see paragraph 1.4 below).
- 1.3 Statements of case (see paragraph 26 onwards) and application notices<sup>3</sup> may also be used as evidence provided that their contents have been verified by a statement of truth<sup>4</sup>.  
  
(For information regarding evidence by deposition see Part 34 and the practice direction which supplements it.)
- 1.4 Affidavits must be used as evidence in the following instances:
  - (1) where sworn evidence is required by an enactment<sup>5</sup>, Statutory Instrument, rule, order or practice direction,
  - (2) in any application for a search order, a freezing injunction, or an order requiring an occupier to permit another to enter his land, and
  - (3) in any application for an order against anyone for alleged contempt of court.
- 1.5 If a party believes that sworn evidence is required by a court in another jurisdiction for any purpose connected with the proceedings, he may apply to the court for a direction that evidence shall be given only by affidavit on any pre-trial applications.
- 1.6 The court may give a direction under rule 32.15 that evidence shall be given by affidavit instead of or in addition to a witness statement or statement of case:
  - (1) on its own initiative, or
  - (2) after any party has applied to the court for such a direction.
- 1.7 An affidavit, where referred to in the Civil Procedure Rules or a practice direction, also means an affirmation unless the context requires otherwise.

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1 See rule 32.6(1).

2 See rule 32.15(2).

3 See Part 23 for information about making an application.

4 Rule 32.6(2) and see Part 22 for information about the statement of truth.

5 See, e.g., s. 3(5)(a) of the Protection from Harassment Act 1997.

## AFFIDAVITS

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### Deponent

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- 2 A deponent is a person who gives evidence by affidavit or affirmation.

### Heading

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- 3.1 The affidavit should be headed with the title of the proceedings (see paragraph 4 of the practice direction supplementing Part 7 and paragraph 7 of the practice direction supplementing Part 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)

- 3.2 At the top right hand corner of the first page (and on the backsheet) there should be clearly written:
- (1) the party on whose behalf it is made,
  - (2) the initials and surname of the deponent,
  - (3) the number of the affidavit in relation to that deponent,
  - (4) the identifying initials and number of each exhibit referred to, and
  - (5) the date sworn.

### Body of Affidavit

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- 4.1 The affidavit must, if practicable, be in the deponent's own words, the affidavit should be expressed in the first person and the deponent should:
- (1) commence 'I (*full name*) of (*address*) state on oath .....,
  - (2) if giving evidence in his professional, business or other occupational capacity, give the address at which he works in (1) above, the position he holds and the name of his firm or employer,
  - (3) give his occupation or, if he has none, his description, and
  - (4) state if he is a party to the proceedings or employed by a party to the proceedings, if it be the case.
- 4.2 An affidavit must indicate:
- (1) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief, and

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

#### 4.3 Where a deponent:

- (1) refers to an exhibit or exhibits, he should state 'there is now shown to me marked '...' the *(description of exhibit)*', and
- (2) makes more than one affidavit (to which there are exhibits) in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each affidavit.

## Jurat

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- 5.1 The jurat of an affidavit is a statement set out at the end of the document which authenticates the affidavit.

#### 5.2 It must:

- (1) be signed by all deponents,
- (2) be completed and signed by the person before whom the affidavit was sworn whose name and qualification must be printed beneath his signature,
- (3) contain the full address of the person before whom the affidavit was sworn, and
- (4) follow immediately on from the text and not be put on a separate page.

## Format of Affidavits

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#### 6.1 An affidavit 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 deponent and of the person before whom it was sworn,
- (4) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file),
- (5) be divided into numbered paragraphs,
- (6) have all numbers, including dates, expressed in figures, and
- (7) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the affidavit.

- 6.2 It is usually convenient for an affidavit to follow the chronological sequence of events or matters dealt with; each paragraph of an affidavit should as far as possible be confined to a distinct portion of the subject.

### Inability of Deponent to read or sign Affidavit

- 7.1 Where an affidavit is sworn by a person who is unable to read or sign it, the person before whom the affidavit is sworn must certify in the jurat that:
  - (1) he read the affidavit to the deponent,
  - (2) the deponent appeared to understand it, and
  - (3) the deponent signed or made his mark, in his presence.
- 7.2 If that certificate is not included in the jurat, the affidavit may not be used in evidence unless the court is satisfied that it was read to the deponent and that he appeared to understand it. Two versions of the form of jurat with the certificate are set out at Annex 1 to this practice direction.

### Alterations to Affidavits

- 8.1 Any alteration to an affidavit must be initialled by both the deponent and the person before whom the affidavit was sworn.
- 8.2 An affidavit which contains an alteration that has not been initialled may be filed or used in evidence only with the permission of the court.

### Who may administer oaths and take Affidavits

- 9.1 Only the following may administer oaths and take affidavits:
  - (1) Commissioners for oaths<sup>6</sup>,
  - (2) Practising solicitors<sup>7</sup>,
  - (3) other persons specified by statute<sup>8</sup>,
  - (4) certain officials of the Supreme Court<sup>9</sup>,
  - (5) a circuit judge or district judge<sup>10</sup>,
  - (6) any justice of the peace<sup>11</sup>, and
  - (7) certain officials of any county court appointed by the judge of that court for the purpose<sup>12</sup>.
- 9.2 An affidavit must be sworn before a person independent of the parties or their representatives.

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6 Commissioner for Oaths Act 1889 and 1891.

7 Section 81 of the Solicitors Act 1974.

8 Section 65 of the Administration of Justice Act 1985, s.113 of the Courts and Legal Services Act 1990 and the Commissioners for Oaths (Prescribed Bodies) Regulations 1994 and 1995.

9 Section 2 of the Commissioners for Oaths Act 1889.

10 Section 58 of the County Courts Act 1984.

11 Section 58 as above.

12 Section 58 as above.

## Filing of Affidavits

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- 10.1 If the court directs that an affidavit is to be filed<sup>13</sup>, it must be filed in the court or Division, or Office or Registry of the court or Division where the action in which it was or is to be used, is proceeding or will proceed.
- 10.2 Where an affidavit is in a foreign language:
  - (1) the party wishing to rely on it –
    - (a) must have it translated, and
    - (b) must file the foreign language affidavit with the court, and
  - (2) the translator must make and file with the court an affidavit verifying the translation and exhibiting both the translation and a copy of the foreign language affidavit.

## EXHIBITS

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### Manner of Exhibiting Documents

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- 11.1 A document used in conjunction with an affidavit should be:
  - (1) produced to and verified by the deponent, and remain separate from the affidavit, and
  - (2) identified by a declaration of the person before whom the affidavit was sworn.
- 11.2 The declaration should be headed with the name of the proceedings in the same way as the affidavit.
- 11.3 The first page of each exhibit should be marked:
  - (1) as in paragraph 3.2 above, and
  - (2) with the exhibit mark referred to in the affidavit.

## Letters

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- 12.1 Copies of individual letters should be collected together and exhibited in a bundle or bundles. They should be arranged in chronological order with the earliest at the top, and firmly secured.
- 12.2 When a bundle of correspondence is exhibited, the exhibit should have a front page attached stating that the bundle consists of original letters and copies. They should be arranged and secured as above and numbered consecutively.

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<sup>13</sup> Rules 32.1(3) and 32.4(3)(b).

## Other documents

- 13.1 Photocopies instead of original documents may be exhibited provided the originals are made available for inspection by the other parties before the hearing and by the judge at the hearing.
- 13.2 Court documents must not be exhibited (official copies of such documents prove themselves).
- 13.3 Where an exhibit contains more than one document, a front page should be attached setting out a list of the documents contained in the exhibit; the list should contain the dates of the documents.

## Exhibits other than documents

- 14.1 Items other than documents should be clearly marked with an exhibit number or letter in such a manner that the mark cannot become detached from the exhibit.
- 14.2 Small items may be placed in a container and the container appropriately marked.

## General provisions

- 15.1 Where an exhibit contains more than one document:
  - (1) the bundle should not be stapled but should be securely fastened in a way that does not hinder the reading of the documents, and
  - (2) the pages should be numbered consecutively at bottom centre.
- 15.2 Every page of an exhibit should be clearly legible; typed copies of illegible documents should be included, paginated with 'a' numbers.
- 15.3 Where affidavits and exhibits have become numerous, they should be put into separate bundles and the pages numbered consecutively throughout.
- 15.4 Where on account of their bulk the service of exhibits or copies of exhibits on the other parties would be difficult or impracticable, the directions of the court should be sought as to arrangements for bringing the exhibits to the attention of the other parties and as to their custody pending trial.

## Affirmations

- 16 All provisions in this or any other practice direction relating to affidavits apply to affirmations with the following exceptions:
  - (1) the deponent should commence 'I (*name*) of (*address*) do solemnly and sincerely affirm ....., and
  - (2) in the jurat the word 'sworn' is replaced by the word 'affirmed'.

## WITNESS STATEMENTS

### Heading

- 17.1 The witness statement should be headed with the title of the proceedings (see paragraph 4 of the practice direction supplementing Part 7 and paragraph 7 of the practice direction supplementing Part 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, and
  - (5) the date the statement was made.

### Body of Witness Statement

- 18.1 The witness statement must, if practicable, be in the intended witness's own words, 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, and
  - (4) the fact that he is a party to the proceedings or is the employee of such a party if it be the case.
- 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, and
  - (7) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the statement.
- 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 that he believes the facts in it are true<sup>14</sup>.
- 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'

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14 See Part 22 for information about the statement of 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.

### **Inability of witness to read or sign statement**

- 21.1 Where a witness statement is made by a person who is unable to read or sign the witness statement, it must contain a certificate made by an authorised person.
- 21.2 An authorised person is a person able to administer oaths and take affidavits but need not be independent of the parties or their representatives.
- 21.3 The authorised person must certify:
- (1) that the witness statement has been read to the witness,
  - (2) that the witness appeared to understand it and approved its content as accurate,
  - (3) that the declaration of truth has been read to the witness,
  - (4) that the witness appeared to understand the declaration and the consequences of making a false witness statement, and
  - (5) that the witness signed or made his mark in the presence of the authorised person.
- 21.4 The form of the certificate is set out at Annex 2 to this practice direction.

### **Alterations to witness statements**

- 22.1 Any alteration to a witness statement must be initialled by the person making the statement or by the authorised person where appropriate (see paragraph 21).
- 22.2 A witness statement which contains an alteration that has not been initialled may be used in evidence only with the permission of the court.

### **Filing of witness statements**

- 23.1 If the court directs that a witness statement is to be filed<sup>15</sup>, it must be filed in the court or Division, or Office or Registry of the court or Division where the action in which it was or is to be used, is proceeding or will proceed.
- 23.2 Where the court has directed that a witness statement in a foreign language is to be filed:
- (1) the party wishing to rely on it must –
    - (a) have it translated, and
    - (b) file the foreign language witness statement with the court, and

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<sup>15</sup> Rule 32.4(3)(b).

- (2) the translator must make and file with the court an affidavit verifying the translation and exhibiting both the translation and a copy of the foreign language witness statement.

### Certificate of court officer

- 24.1 Where the court has ordered that a witness statement is not to be open to inspection by the public<sup>16</sup> or that words or passages in the statement are not to be open to inspection<sup>17</sup> the court officer will so certify on the statement and make any deletions directed by the court under rule 32.13(4).

### Defects in affidavits, witness statements and exhibits

- 25.1 Where:
  - (1) an affidavit,
  - (2) a witness statement, or
  - (3) an exhibit to either an affidavit or a witness statement,
 does not comply with Part 32 or this practice direction in relation to its form, the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation.
- 25.2 Permission to file a defective affidavit or witness statement or to use a defective exhibit may be obtained from a judge<sup>18</sup> in the court where the case is proceeding.

### STATEMENTS OF CASE

- 26.1 A statement of case may be used as evidence in an interim application provided it is verified by a statement of truth<sup>19</sup>.
- 26.2 To verify a statement of case the statement of truth should be set out as follows:
 

‘[I believe][the *(party on whose behalf the statement of case is being signed)* believes] that the facts stated in the statement of case are true’.
- 26.3 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.
 

(For information regarding statements of truth see Part 22 and the practice direction which supplements it.)

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<sup>16</sup> Rule 32.13(2).

<sup>17</sup> Rule 32.13(4).

<sup>18</sup> Rule 2.3(1); definition of judge.

<sup>19</sup> See rule 32.6(2)(a).

(Practice directions supplementing Parts 7, 9 and 17 provide further information concerning statements of case.)

## AGREED BUNDLES FOR HEARINGS

- 27.1 The court may give directions requiring the parties to use their best endeavours to agree a bundle or bundles of documents for use at any hearing.
- 27.2 All documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents, unless–
  - (1) the court orders otherwise; or
  - (2) a party gives written notice of objection to the admissibility of particular documents.

## PENALTY

- 28.1
  - (1) Where a party alleges that a statement of truth or a disclosure statement is false the party shall refer that allegation to the court dealing with the claim in which the statement of truth or disclosure statement has been made.
  - (2) the court may–
    - (a) exercise any of its powers under the rules;
    - (b) initiate steps to consider if there is a contempt of court and, where there is, to punish it;  
(The practice direction to RSC Order 52 (Schedule 1) and CCR Order 29 (Schedule 2) makes provision where committal to prison is a possibility if contempt is proved)
    - (c) direct the party making the allegation to refer the matter to the Attorney General with a request to him to consider whether he wishes to bring proceedings for contempt of court.
- 28.2
  - (1) An application to the Attorney General should be made to his chambers at 9 Buckingham Gate London SW1E 6JP in writing. The Attorney General will initially require a copy of the order recording the direction of the judge referring the matter to him and information which–
    - (a) identifies the statement said to be false; and
    - (b) explains–
      - (i) why it is false, and
      - (ii) why the maker knew it to be false at the time he made it;
  - and
  - (c) explains why contempt proceedings would be appropriate in the light of the overriding objective in Part 1 of the Civil Procedure Rules.

- (2) The practice of the Attorney General is to prefer an application that comes from the court, and so has received preliminary consideration by a judge, to one made direct to him by a party to the claim in which the alleged contempt occurred without prior consideration by the court. An application to the Attorney General is not a way of appealing against, or reviewing, the decision of the judge.
- 28.3 Where a party makes an application to the court for permission for that party to commence proceedings for contempt of court, it must be supported by written evidence containing the information specified in paragraph 27.2(1) and the result of the application to the Attorney General made by the applicant.
- 28.4 The rules do not change the law of contempt or introduce new categories of contempt. A person applying to commence such proceedings should consider whether the incident complained of does amount to contempt of court and whether such proceedings would further the overriding objective in Part 1 of the Civil Procedure Rules.

# ANNEX 1

## CERTIFICATE TO BE USED WHERE A DEPONENT TO AN AFFIDAVIT IS UNABLE TO READ OR SIGN IT

Sworn at ..... this ..... day of ..... Before me, I having first read over the contents of this affidavit to the deponent [*if there are exhibits, add 'and explained the nature and effect of the exhibits referred to in it'*] who appeared to understand it and approved its content as accurate, and made his mark on the affidavit in my presence.

*Or, (after, Before me) the witness to the mark of the deponent having been first sworn that he had read over etc. (as above) and that he saw him make his mark on the affidavit. (Witness must sign).*

## CERTIFICATE TO BE USED WHERE A DEPONENT TO AN AFFIRMATION IS UNABLE TO READ OR SIGN IT

Affirmed at ..... this ..... day of ..... Before me, I having first read over the contents of this affirmation to the deponent [*if there are exhibits, add 'and explained the nature and effect of the exhibits referred to in it'*] who appeared to understand it and approved its content as accurate, and made his mark on the affirmation in my presence.

*Or, (after, Before me) the witness to the mark of the deponent having been first sworn that he had read over etc. (as above) and that he saw him make his mark on the affirmation. (Witness must sign).*

## ANNEX 2

### CERTIFICATE TO BE USED WHERE A WITNESS IS UNABLE TO READ OR SIGN A WITNESS STATEMENT

I certify that I [*name and address of authorised person*] have read over the contents of this witness statement and the declaration of truth to the witness [*if there are exhibits, add 'and explained the nature and effect of the exhibits referred to in it'*] who appeared to understand (a) the statement and approved its content as accurate and (b) the declaration of truth and the consequences of making a false witness statement, and made his mark in my presence.