

# Further Guidance on Trial Witness Statements under PD 57AC

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A recent High Court decision has illustrated the court's approach regarding a failure to comply with provisions on trial witness statements under Practice Direction 57AC ("PD 57AC"). The Court noted that the defendant had no excuse for failing to comply with the requirements, although stopped short of striking out the witness statement, instead ordering that the witness statement be redrafted and replaced with a compliant one and indicating that indemnity costs may be appropriate for failure to comply with PD 57AC.

PD 57AC sets out requirements for trial witness statements signed on or after 1 April 2021 in the Business and Property Courts. For more detail on PD57AC and its implications, see our full analysis [here](#).

**Key Takeaways.** This decision acts as another useful example of cases that deal with PD 57AC and provides some important reminders for witness statements under PD 57AC going forward, including:

- The court expects all trial witness statements to comply with PD 57AC and there are few situations where non-compliance will be accepted.
- The court retains its case management powers under PDF 57AC and will exercise them in keeping with the Overriding Objective.
- There may be serious costs consequences for failing to comply with PD 57AC, including the possibility of indemnity costs.
- A party should raise issues of possible non-compliance at an early stage rather than delay. The court expects the parties to reach a resolution as best they can before troubling the court with applications.
- Striking out defective witness statements is reserved for the most serious cases of non-compliance.

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**Background.** The underlying claim in *Prime London Holdings 11 Ltd. v. Thurloe Lodge Ltd* [2022] EWHC 79 (Ch) concerned a dispute over property rights and access. Prime London Holdings (“**Prime London**”) wished to have access to Thurloe Lodge Ltd’s (“**Thurloe**”) land in order to make repairs to a wall. This was strongly resisted by Thurloe. Shortly before the commencement of trial, Thurloe made an application for the witness statement that had been produced by Prime London to be struck out on the basis that it did not comply with the requirements of PD 57AC. At around the same time, Thurloe made its own application for relief from sanctions and for a revised version of the non-compliant witness statement to be admitted.

**Decision.** The Court was clear that the witness statement, as it was originally drafted, failed to comply with both the formal and content requirements of PD 57AC. In coming to this conclusion, the Court emphasised that the purpose of PD 57AC is to primarily prevent witness statements becoming a vehicle for arguments and instead, should be confined to the knowledge of the witness.

In discussing the approach to non-compliance with PD 57AC, Deputy Judge Mr Nicholas Thompsell noted that the Court retains its full case management powers, including the ability to:

- order the non-compliant witness statement be struck out;
- order the witness statement to be redrafted; or
- order the witness to give some or all of their evidence in chief orally.

However, in the Deputy Judge’s view, strike out should be reserved for the most serious cases. As such, there was no need for the Court to consider the defendant’s application for relief from sanctions.

Additionally, the Deputy Judge was critical of how both parties had handled the matter. First, with regards to Thurloe, the Court considered it to be well represented in the matter, and therefore had no excuse for failing to comply with the requirements under PD 57AC, particularly the need for a Statement of Truth and Certificate of Compliance. With regards to the content of the witness statement which was contrary to PD 57AC, the Court noted that it was “*not much of an excuse*” to rely on a consent order providing for supplemental statements as the instructions of the Court should not be taken as “*ousting any element of the Practice Direction*”.

The Court was equally critical of Prime London, which it found to be at fault for not identifying and raising earlier its objections to the non-compliant witness statement with Thurloe, with a view of agreeing a revised version. Referring to *Mansion Place Ltd v*

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*Box Industrial Services Ltd* [2021] EWHC 2747 (TCC) and *Blue Manchester v Bug-Alu Technic GmbH, Simpsonhaugh Architects Limited* [2021] EWHC 3095 (TCC) in which the High Court held that the sensible course of action in light of a party's concern over non-compliance is to raise that concern with the other party before seeking assistance from the court – the Court was unimpressed by Prime London's attempts to excuse the delay by reference to absences over the Christmas period.

The Court concluded that the appropriate course of action, in light of *Blue Manchester*, was to order the replacement of the original, non-compliant witness statement, with a compliant one. In doing so, the Court confirmed that the striking out of a witness statement is a “*very significant sanction which should be saved for the most serious cases*” and that in this particular case, Thurloe's failures in relation to the content of the original witness statement “*were not particularly egregious in their non-compliance*”.

In his final remarks, however, the Deputy Judge did caution that his more tolerant approach in this instance should “*not be seen as providing any carte blanche to parties to play fast and loose with the Practice Direction*” and whilst reserving the question of costs to another occasion, indicated that indemnity costs may be appropriate.



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