

# High Court Considers the Appropriate Language for a Witness Statement

5 May 2022

## INTRODUCTION

In *Bahia v Sidhu* [2022] EWHC 875 (Ch), a decision of the High Court arising out of a partnership dispute between Jaswinder Singh Bahia (“Mr. Bahia”) and Tara Singh Sidhu (“Mr. Sidhu” and, together, the “Partners”), the Court found that there was no serious breach of the Civil Procedure Rules (the “CPR”) where witness statements were drafted in English in circumstances where the witness spoke a mixture of languages.

## BACKGROUND

The Partners had formed two partnerships—one in 1972 and another in 1990. The Partners managed their businesses in harmony for many years, but in around 2007/2008, a dispute arose over partnership income and assets.

By November 2018, Mr. Sidhu had passed away and Mr. Bahia had dissolved both partnerships and commenced proceedings against the representatives of Mr. Sidhu’s estate. On 8 November 2019, the High Court ordered that both partnerships should be wound up and that there would be the taking of a dissolution account and such inquiries as may be necessary. On 9 July 2020, the High Court ordered a trial of 17 separate inquiries arising in the dispute. The present judgment dealt with all but two of these inquiries.

During the trial in early 2022, the Court heard from a total of ten witnesses (including Mr. Bahia himself), many of whom were dealing with events which occurred in as early as 1972. Further, in respect of a number of the inquiries, there were few, if any, contemporaneous documents. Against this backdrop, the Court’s assessment of the individual witnesses, and their witness statements, was especially important.

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## MR. BAHIA'S WITNESS EVIDENCE

Mr. Bahia provided two witness statements. Paragraph 3 of Mr. Bahia's second witness statement stated:

- *“English is not my first language, but I have an understanding of it. My usual way [of] communicating is by speaking a mixture of Punjabi and English. The meaning of certain words and phrases used in the case have been explained to me by my solicitors. The discussions I have had with my solicitors for the preparation of this witness statement have mostly been in English.”*

Notably, during the course of Mr. Bahia's oral evidence, it transpired that:

- a Punjabi translation of Mr. Bahia's statement had been prepared after the date he had signed his English statement, but had not been lodged with the Court;
- Mr. Bahia appeared to understand and speak simple English, but often switched to Punjabi to answer more demanding questions;
- Mr. Bahia required an interpreter for the entirety of his evidence, even requesting that certain paragraphs of his witness statement be translated; and
- there were, as revealed by Mr. Bahia himself, “many” words in his English witness statement that he did not understand.

In light of the above, counsel for Mr. Sidhu's estate, Mr. Clarke, argued in closing that Mr. Bahia's statements were in breach of [CPR Practice Direction 32](#) (“PD32”) and [Practice Direction 57AC](#) (“PD57AC”). Mr. Clarke submitted that, *inter alia*, the statements:

- were not in his own words ([PD32 §18.1](#)); and
- had not been drafted in his own language (i.e., in a language in which Mr. Bahia was sufficiently fluent to give oral evidence, including under cross-examination) ([PD32 §18.1](#) and [PD57AC §3.3](#)).

Thus, Mr. Clarke submitted that the Court should approach Mr. Bahia's statements with a “*considerable degree of caution*”, and afford his statements no weight,<sup>1</sup> as the

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<sup>1</sup> Note that, Mr. Clarke acknowledged that an order striking out Mr. Bahia's statements would be inappropriate. This was on the basis that authorities on the exercise of a court's case management powers in relation to

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breaches “*affect the weight which the court should give to that evidence because they concern the extent to which the court can be sure that the contents of the witness statement truthfully reflect the evidence of non-English speaking witnesses*”.<sup>2</sup>

### MR. BAHIA'S SUBMISSIONS

Mr. Bahia's counsel, Mr. Temmink, submitted that the recent proliferation of witness statement rules and guidance had become a “legal minefield”, and a particularly hazardous one where a witness speaks in a mixture of two languages.

Mr. Temmink referred to guidance in the [Equal Treatment Bench Book](#), including:

- “...an individual's communication style will be a result of both cultural patterns and the structure of their mother tongue” (§87);
- “...it can be easy to over-estimate an individual's ability to cope with language as used in court and under the stress of proceedings...[and] the level of their fluency may reduce...under cross-examination” (§99);
- “when giving evidence, people for whom English is not a first language may not always understand what they are being asked...” (§109); and
- “some people...‘code switch’ as they talk, switching unconsciously between languages as they search for the [best] way to express themselves...” (§113).

Mr. Temmink also pointed to [PD32 §18.1](#), which provides that the “*witness statement must, **if practicable**, be in the intended witness's own words...*” (**emphasis added**). Mr. Temmink argued that where Mr. Bahia's usual way of communicating was by speaking a mixture of Punjabi and English, and where the meaning of certain English words needed to be explained to him, it was not practicable to do anything other than to prepare his statements in English, in words which were not necessarily his own.

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deficient witness statements identified in advance of trial are of little assistance where the deficiencies have come to light during trial.

<sup>2</sup> Citing *Diamond v Secretary of State for the Home Department* [2020] EWHC 3313 (Admin) at [49].

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## THE JUDGMENT

The Court acknowledged that it was doubtful as to whether Mr. Bahia's statements should have been prepared in English, and noted that it was concerned that Mr. Bahia did not properly understand his statement, and that it was not in his own words.

Nonetheless, the Court accepted that whilst the statements were "overly lawyered" to some degree, there had been "no serious breach" of the relevant Practice Directions. Further, the Court noted that "*Mr Bahia's solicitors were faced with a difficult decision over the language to use in the preparation of his statements and, on balance, their decision to prepare them in English [was] not open to criticism*".

## COMMENTARY

In circumstances where a witness speaks a blend of English and another language, choosing to draft the witness's statement in English can be justified.

Notably, the Court has acknowledged that current witness statement rules do not adequately cater to situations where a witness speaks a mixture of two languages.

Accordingly, solicitors and their clients must ensure that where a decision is taken to prepare a statement in English, rather than another of the witness's spoken languages, the decision is taken by reference to the requirements of PD57AC and what is practicable in the circumstances.

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Please do not hesitate to contact us with any questions.

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