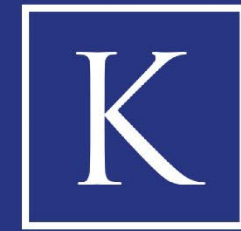


# County Court witness statements in the light of PD 57 AC



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# County Court witness statements in the light of PD 57 AC

- Applicability, or otherwise, of PD 57AC to specialist B&P proceedings in the County Court
- Sanctions under PD 57AC for non-compliance

# Practice Direction 57 AC – trial witness statements in the Business and Property Courts

- Applies to statements from 6 April 2021 “for use at trials in the Business and Property Courts”
- Also explicitly includes
  - Unfair prejudice petitions under s.994 of Companies Act 2006
  - Winding up petition by contributory – s.122(1)(g) Insolvency Act 1986
- No reference within PD as to applicability or otherwise within the county court

# “The Business and Property Courts”

Defined broadly within Practice Direction at 57A.1:

*“(1) The courts listed in paragraph (2) together constitute the Business and Property Courts.*

*(2) The courts referred to in paragraph (1) are—*

*(a) the Chancery Division of the High Court, the Commercial Court, the Technology and Construction Court, the Circuit Commercial Court and the Admiralty Court located in the Royal Courts of Justice, Rolls Building; together with*

*(b) the Chancery Division of the High Court, the Technology and Construction Court and the Circuit Commercial Courts in the District Registries of the High Court specified in Practice Direction 57AA – Business and Property Courts”.*

# Specialist B&P work in the County Court

- Paragraphs 1.1 and 1.2 of PD57AA – includes B&PC District Registries of High Court in Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle and Cardiff
- No reference to specialist work in CC as included
- Paragraphs 4.1 to 4.4 of Practice Direction 57AA define specialist CC work
  - *Clear from PD – they are not considered to be part of BPCs, but rather in some way supplemental to them*

# The confusion

- On its face, therefore, PD does not apply
- BUT – some B&P CC judges appear to consider that it does
  - Directions for trials in Leeds and Central London include a requirement to comply
  - Manchester, for example, does not
- Tricky situation
  - Literal reading of provisions of PDs suggest that, in absence of specific direction, there is no need for CC B&P statements to be compliant with PD57AC
  - (BUT – contrast with PD57AD – explicitly excludes Ccs)

# Practical Approach

- No authority or guidance that addresses the point
- Two practical steps to avoid risk of sanction
  - Treat PD as applying in instances where directions are silent on its application
  - At CMC stage – confirm within directions whether PD does, or does not, apply to those proceedings

# Sanction for non-compliance with PD 57AC

- Paragraph 5 of the PD
- Wide discretion
- Not mandatory – *“the court may, upon application by any other party or of its own motion”* impose a sanction



# Enforcement in the courts

- Growing body of HC case law on sanctions for breach of PD 57AC
- In general – measured approach to imposing sanctions
  - Inclined to address specific non-compliance, rather than strike out a whole statement (e.g. *Mansion Place Ltd v Fox Industrial Services Ltd* [2021] EWHC 2747 (TCC));
  - Will not strike out where it is not “*reasonably necessary*” to do so;
  - Striking out of a whole Witness Statement is “*a very significant sanction which should be saved for most serious cases*” (*Blue Manchester Ltd v BLU-Alu Technic GmbH* [2021] EWHC 3095 (TCC), at [44]);
  - In that case – allowed WS with a “*useful core of compliant information*”, where breaches were “*not particularly egregious*”;
  - Parties should be pro-active in identifying alleged breaches and non-compliance in statements – case law clear that opportunism and “*unnecessary trench warfare*” will be viewed dimly

# Relevance of *Denton* to PD 57AC non-compliance

- Addressed in *Prime London Holdings 11 Ltd v Thurloe Lodge Ltd* [2022] EWHC 79 (Ch), at [42] – [44]:
  - C made application to strike out WS – D made separate application for relief from sanction for non-compliance with PD57AC
  - Rather than strike out WS, court directed WS be re-drafted in specific way – deletion of 11 paragraphs and 1 sentence
  - As to D’s application – *“I take it that primarily it was asking for relief from the sanction that C had at that point said it would be applying for”* – i.e. S/O. That sanction not arising, relief issue did not arise
  - However, at para [44] – held that it would be *“perverse”*, having concluded there was a need for redaction to allow inclusion of offending elements of WS under *Denton*
    - *Nonetheless, did consider Denton criteria and find they were not satisfied*

# Concluding thoughts

- As to applicability in County Court – unfortunately, uncertainty remains
  - Face of PD – does not apply in CC
  - Seek clarification in directions as to applicability
  - May be to comply out of caution
- Sanctions for non-compliance
  - Wide discretion
  - Courts have been reticent to strike out whole statements
  - *Denton* appears to only be relevant, if at all, in assessing whether sanction should be applied in first place

# Questions

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