

## Mind your (own) language!

Evidence: all change for statements of truth,  
and other key changes for witness statements.

### Main points:

- All statements of truth will have to include text that the person understands that they may be liable for contempt of court if they make a false statement.
- All statements of truth will have to be in the maker's own language.
- All witness statements will have to be in the witness's own language, and a certified translation provided.
- All witness statements will have to state the process by which they have been prepared (e.g. face to face, by telephone, through an interpreter).
- These changes are effective from 6 April 2020.

### Introduction

Coronavirus is, understandably, the big news story right now. It is having a great impact throughout the world, including on the law and the civil justice system in England and Wales.

However, it is important for practitioners, who at this time are busy trying to keep abreast of and deal with the pandemic-related developments, not to overlook other imminent changes which are also of significance.

A good example is the forthcoming changes to the Civil Procedure Rules in respect of statements of truth and witness statements.

### Statements of truth

Statements of truth underpin key documents in the civil litigation process: see CPR 22.1. Key instances include:

- They are used to verify statements of case.
- They corroborate Part 18 replies.
- They support the content of application notices.
- They serve to substantiate the contents of witness statements, themselves the bedrock of both interim applications and evidence at trial.

## Change (1): the form of a statement of truth

At present, the form of a statement of truth (where made by the party/witness itself) is:

“I believe that the facts stated in this [...] are true.”

This is a short but critically important statement.

The significance of a statement of truth is underscored by the fact that proceedings for contempt of court may be brought against a person if they make, or cause to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth: CPR 32.14.

For obvious reasons the integrity of the justice system depends on the giving of truthful factual accounts and evidence, not just under oath in oral hearings but at all stages of the process. Reliable statements of truth are an essential procedural element and manifestly in the public interest.

The courts have shown an increasing willingness to clamp down on those on abuse the system by making false statements. In *Jet 2 Holidays Ltd v Hughes* [2019] EWCA Civ 1858 it was held that a witness statement verified by a statement of truth made *before* the commencement of proceedings could give rise to contempt and be the subject of an application for committal *even though proceedings were never issued* after the would-be defendant challenged the truth of the statement.

Nonetheless, it is plainly felt by those in charge of civil justice that the current form of the statement of truth is not sufficiently strong to emphasise to those concerned the vital importance of honesty and the potential consequences of a disregard for the same.

Accordingly, with effect from 6 April 2020 the form of the statement of truth is to be amended and beefed up, courtesy of the 113<sup>th</sup> Update to the CPR.<sup>1</sup>

CPR PD 22 & PD 32 are to be amended so that from that date forward a statement of truth must read:

“I believe that the facts stated in this [...] 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.*”

This expanded version of the statement of truth (the italicised words are new) is intended to be more powerful, operating on the maker’s mind to bring home loud and clear the message that a false statement may have very serious consequences.

The revised form of statement of truth – emphasising that the finger of responsibility points squarely at the statement maker – reduces the possibility that in future such a person can credibly claim that they simply signed the document ‘in good faith’ relying on others, e.g. their solicitors, without appreciating the need to satisfy themselves of the accuracy of its contents.

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<sup>1</sup> <https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/cpr-113th-pd-update.pdf>

## Change (2): the language of the statement of truth

There is more. Further amendments of CPR PD 22 entail that:

- *The statement of truth must be in the witness's own language.*
- A statement of truth must be dated with the date on which it was signed.

The first such change is particularly important.

Currently, a person whose language is not English nevertheless signs a statement of truth which is itself in English. This is plainly less than satisfactory and gives scope for doubt in some cases as to whether the person has truly understood the meaning and significance of the statement of truth.

There is a procedure (CPR PD 22, para.3A) whereby a document verified by a statement of truth which is to be signed by someone who cannot read or sign the document must contain a certificate (made by a person who can administer oaths) to the effect that the document and the statement of truth have been read to the person signing and that the person appeared to understand the same. However, this procedure leaves room for slip between cup and lip. It is not itself an adequate substitute for ensuring that a statement maker whose language is not English has *first-hand* knowledge and understanding of the statement of truth which they are to sign.

Hence the rule change so that in future there should be no doubt that a person who signs a statement of truth understands it and appreciates the consequences of a false statement.

The PD 22, para.3A procedure is retained for use in appropriate cases, e.g. for persons with disabilities who cannot read or sign a document, but it will no longer be available in cases where the only reason that a person cannot so do is because of their language.

As will next be seen, the above change will really apply to documents verified by statements of truth *other than* witness statements (e.g. statements of case). This is because witness statements are to have their own specific, and even stronger, code.

## Change (3): the language of a witness statement

The changes do not stop with the above. There are also revisions to CPR PD 32, the effect of which is that from 6 April *all witness statements*:

- *Must be drafted in the witness's own language.* (This extends to the statement of truth in witness statements too.)
- Must state the process by which they have been prepared, for example, face-to-face, over the telephone, and/or through an interpreter.

These new requirements will apply across the board.

Allied to the first requirement, where a witness statement is in a foreign language, (a) the party wishing to rely on it will have to: (i) have it translated; and (ii) file the foreign language witness statement with the court; and (b) the translator will have to sign the original statement and certify that the translation is accurate.

Also, the prescribed information required at the top right hand corner of the first page of any witness statement will additionally have to list the date of any translation.

### Change (4): stating how the witness statement was generated

The second requirement outlined above, namely the identification of the process which led to the witness statement, applies even if the witness's language is English and the statement came into existence without the involvement of an interpreter.

The idea is presumably to give the court a clearer idea as to how a witness statement came into existence. Quite how easy or difficult it will be to comply with where (e.g.) a statement has resulted from a mixture of dealings (e.g. a meeting, telephone call and emails), and what level of detail the courts will expect to be given, remains to be seen. However, it may be anticipated that a degree of meaningful engagement will be expected.

### Conclusion

Practitioners should be warned. Given the importance of the changes which are about to come into force, it is unlikely that (even in these times of coronavirus) the courts are likely to be very sympathetic to less than trivial breaches of the new rules (made on 27 January 2020).

Familiarity and compliance is surely the order of the day and message to the well-informed. This will include not just amending standard forms/text but also ensuring that, in particular, the language of an intended (i) witness or (ii) statement of truth signatory is known to the lawyers so that the relevant documentation is prepared and executed in the correct language.

Default in relation to the new rules may potentially result in: an inability to rely on e.g. a witness statement or other document ostensibly verified by a statement of truth; applications for relief against sanctions; wasted costs orders.

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