

The Good, the Bad and Practice Direction 57AC



Unfortunately for Greencastle MM LLP there was not much that was good about the witness statements that had been prepared by its witness, Mr John Quinlan. Mr Justice Fancourt concluded that the first statement was the clearest case of non-compliance he had seen since the Practice Direction came into force in April 2021.

Practice Direction 57AC sets clear guidelines about the contents of trial witness evidence in the Business and Property Courts. The key aim of the Practice Direction is to limit witness evidence to that which the witness would have been able to provide in chief (i.e. their account of events given orally in court) by: 1) preventing witnesses from referring to matters that are not within their own knowledge (other than properly presented hearsay evidence); 2) avoiding commentary on documents that have been disclosed (save to the very limited extent permitted by the Practice Direction); and 3) not making legal submissions or presenting arguments in support of their case. Despite Mr Quinlan (and the Claimant's solicitor) signing a certificate confirming that Mr Quinlan's witness statements complied, Fancourt J concluded that this was an egregious case of serious non-compliance with Practice Direction 57AC and removed permission for them to be relied on at trial.

Mr Quinlan's statements were prepared in support of Greencastle MM LLP's claim against Alexander Payne, Michael Tindall and James Haskell for passing off, misrepresentation and/or breach of other intellectual property rights the Claimant claimed it owned in the House of Rugby podcast, which was hosted by the Defendants before they set up their own rugby podcast under the name "The Good, the Bad and the Rugby".

At the Pre-Trial Review for the case on 13 January 2022 Fancourt J held that the Claimant would not be able to rely on the previous (non-compliant) witness statements for Mr Quinlan, which would need to be re-drafted by 19 January 2022 at the Claimant's cost to comply with the Practice Direction and before the trial that was due to be heard in early February.



This case, which appears to have recently settled, serves as an important reminder to all witnesses in the Business and Property Courts of the importance of understanding the legal obligations relating to their witness evidence and avoid sanctions being applied under Practice Direction 57AC.

How we can help

If you need any help or advice please contact Tom Bourne on tom.bourne@cripps.co.uk or [get in touch](#) with us.



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