



THE COUNTER FRAUD CAMPAIGN 2019

PART 8: PREPARING FOR COURT

Prevention of Fraud in Travel (PROFIT) and the Fraud Intelligence Network (FIN) are working with the City of London Police to reduce fraud in the travel industry. PART 8 we look at how you can prepare for court and takes you through the general aspects of appearing in court as a witness.

PROFIT is the only official travel industry counter fraud body. We work on your behalf to carry out analysis and research, disseminate best practice and disrupt crime.

Find out how you can join the fight against crime. Contact via:
contactus@profit.uk.com

1.0 COMPLETING A WITNESS STATEMENT

- 1.1 Once fraud has been detected you may decide to take formal action which could involve you taking a person to court yourself (a civil law action) and/or you may call in the police who decide to investigate and take the perpetrator(s) to court (criminal law action). In either case anyone who has relevant information relating to the fraud which is of evidential value could be asked to make a witness statement.
- 1.2 Normally you will be guided through the process of drafting the statement by a solicitor in the case of a civil law statement, or, the police in the case of a criminal law statement. Usually your solicitor or the police will have a pre-formatted document for you to complete. The statement can be hand-written or typed but it must be signed by the person making it to confirm that it is true.
- 1.3 A witness statement is a document recording the evidence of a person, where practicable, in their own words. The statement should truthfully record what the witness saw, heard or felt. However, it is also important to record anything that may open-up a new line of enquiry or help in corroborating other information.
- 1.4 It is important to understand that if called to give evidence you will be cross examined in court about the evidence that you provide in the witness statement so it is important that you are truthful and only cover matters that are relevant and within your knowledge.

General Requirements for Witness Statements

- 1.5 The following section identifies some of the main features required in a witness statement it is not intended to be a complete explanation of the subject.
A witness statement:
 - i. Should be expressed in the first person (e.g. "I saw..."; "I know..." "My view was..." etc.;
 - ii. Should state the full name of the witness and the witness's place of abode or, if the statement is made in a professional, business, or other occupational capacity, the address at which they work, the position they hold and the name of the firm or employer;
 - iii. Should state the witness's occupation or if they have none a description of what they do;
 - iv. If the witness is under 18 years old, the age must be stated in the witness statement;
 - v. Should state if the witness is a direct party to the proceedings or whether they are an employee of a party to the proceedings;
 - vi. Should usually be written down so that it flows in a chronological sequence;
 - vii. Must only accurately reflect the evidence directly known to the witness;
 - viii. Should be truthful, succinct, reflect what occurred, and exclude irrelevant material;
 - ix. Must be complete in that it should contain all of the evidence which a witness could reasonably be expected to give in answer to questions that might be asked of them during cross examination in court;

- x. Must indicate which of the declarations in it are made from the witness's own knowledge and which are matters of information and belief, indicating the source for any matters of information and belief;
- xi. Must include a specific statement by the witness that they believe that the facts stated in it are true;
- xii. Must be signed by the witness or, if the witness cannot read or sign it, must contain a certificate made by an authorised person as to the witness's approval of the statement as being accurate;
- xiii. Any alterations must be initialled by the witness or by the authorised person;
- xiv. Make reference in the statement to any document or documents or other forms of material evidence mentioned in the statement and introduce it using a unique reference for each item;
- xv. Label any evidential document using a label showing the same unique reference used in the witness statement, and then date and sign the label;
- xvi. If the witness statement makes reference to any document as an exhibit the document must be served at the same time as the witness statement;
- xvii. The witness statement must be dated.

1.6 In the case of criminal law the police (or other enforcement agency) will use a statement designed to comply with section 9 of the Criminal Justice Act 1967 because this:

- Can, providing they have been accepted by the defence, be relied upon in court as evidence, without the witness attending court to give evidence;
- Can fall into the exemptions in Section 31 (Law enforcement) of the Freedom of Information Act 2000.
- Can, if well drafted, aid the prosecution case.

2.0 COMPILING EVIDENTIAL REPORTS FOR SUBMITTING TO ENFORCEMENT (Creating a 'Package')

2.1 All cyber and economic crime (fraud, money laundering, theft etc.) should be reported to the Police so that they have the intelligence to build a picture of crime; obtain the resources to deal with crime; and, where appropriate, take enforcement action. However, some bodies like to investigate the crime and submit an evidential report (commonly known as 'creating a package') to the police or enforcement body themselves.

2.2 The advantage of submitting a report which has been set out in a format and language recognised by the police is that it draws a specific crime to the attention of the police in a format they can easily use and understand: In other words, if drafted properly, it makes life easier for the police. **Submitting your own report does not guarantee that police action will follow the submission of your report.**

2.3 In order to determine whether an evidential report could be compiled there must have been a criminal offence committed which has good evidence to support a prosecution. If there is no direct evidence of an offence, or a crime is merely suspected then an Action Fraud report should be completed as described elsewhere within this email campaign.

2.4 The evidential report should contain all of the evidence available, whether or not it helps the defence or prosecution. Everyone has their own style of evidential report but a typical format for the evidential report could be as follows:

1. List of contents

This should show everything that is contained in the report and identify the page numbers.

2. A brief one-page summary of what the report is about

This should include a brief outline of the case; date; location of the offence; who to contact about the case; identify the victim(s) and the suspect(s); property/value; identify witnesses; a brief summation of the evidence; A short but full description of the facts; Any additional information.

3. **Supporting witness statements**
4. **Supporting documents**
5. **Other supporting evidence**

3.0 Going to the Court

Criminal Cases

- 3.1 For a criminal prosecution your first knowledge that a criminal prosecution is being undertaken by the Crown Prosecution Service (CPS), in Northern Ireland a Public Prosecution Service lawyer acting on behalf of the (PPS), in Scotland the Procurator Fiscal or Advocate Depute is likely to be a phone call from the police officer that took your statement, or someone from the CPS/PPS or Advocate General's office letting you know that the case will be going to court.
- 3.2 An official called 'a witness care officer' will be appointed and they will contact you to confirm the trial date and answer your questions. The 'witness care officer' can help you with issues such as transport to the court and childcare and can arrange for you to visit the court before the actual trial so that it is not such a new event on the first day of the trial.
- 3.3 Your employer is not obliged to pay you for the time when you are in court, although many do so, but you can claim expenses for going to court and giving evidence. The expenses that you can claim include, travelling expenses, meals and refreshments, and childcare. You can obtain an 'Expenses Form' from a court official for all of these things.
- 3.4 It will have been some time since you gave your witness statement and you may have forgotten what was included. You can ask the police or the CPS (if you have been called as a witness by the CPS) or their equivalent in Northern Ireland or Scotland to see your statement again so that you can refresh your memory.

Civil Cases

- 3.5 You will have brought the civil case to the Small Claims Court, or High Court yourself and the court will have directly dealt with you on arranging the date of the hearing.

Dressing for Court

- 3.6 It is important to remember that a courtroom is a conservative environment. Witnesses should choose attire that shows respect for the magistrate or judge and the court proceedings keeping in mind that the way you dress, and present, is a direct reflection of your credibility. A witness's appearance and manner should not distract the magistrate, judge or jury from careful consideration of their testimony.
- 3.7 For all witnesses, the goal is to look professional, dressing appropriately for their position in the company or community. Because jurors tend to perceive witnesses they identify with more favourably, the witness should consider selecting clothing and accessories that do not "distance" them from the jury. As a witness you should try not to appear different from the jurors simply by appearance. For example, by wearing expensive jewellery or a designer suit, both of which would likely be beyond the means of some jurors, a witness risks creating a perception that they are "very wealthy" which could distance them from the jury.

Procedure

- 3.8 In the case of a criminal trial, the Prosecutor will open the case, usually in the form of a summary of the Prosecution's case, the evidence and the law. The Prosecution will then 'call' its witnesses, one at a time. Each witness will swear or affirm (by reading the oath or affirmation from a card provided by the court's usher or clerk) and will then give their evidence (called 'evidence in chief') from the witness box. The witness will then be cross-examined by the Defence lawyer and may be re-examined by the Prosecution lawyer.
- 3.9 At any stage the judge or, in the Magistrates' Court, the magistrates ('the bench') (in Scotland, sheriff) may also ask questions. The same procedure is then followed by the Defence. Except in

Northern Ireland, there may also be witness statements read to the court in the absence of that witness (for example because the evidence is agreed between the parties or the witness is too ill to attend. When all the witness evidence has been heard, the Defence lawyer and the Prosecutor may give closing speeches, summing up the evidence that has been heard and applying the law to the evidence as they understand it.

- 3.10 You should not be in attendance within the court room when other people are giving evidence as this may influence what you say and invalidate your evidence if it causes you, consciously or otherwise, to make your evidence fit what you have already heard or counter something you have heard and which you consider to be harmful to the case. Once you have given your evidence you may be told by the police or lawyers that you can sit in the court to hear the rest of the case. We would suggest that if others are still giving evidence this would present a problem if it is decided that you must be recalled to deal with a matter which has subsequently come to light during the case. Our advice is to stay out of the court room until the summing up and verdict.
- 3.11 In a Magistrates' Court (or, in Scotland, Sheriff Court) trial, the bench or resident magistrate will usually retire to consider their verdict. On their return to the court room the Chairman of the bench or resident magistrate or sheriff will announce the verdict of 'guilty' or 'not guilty' (or, in Scotland, a verdict of 'not proven' is additionally available) and give reasons. If the verdict is guilty, pleas in mitigation will then be heard. If there is a bench, they will again retire to consider sentence, and will return to announce the sentence. If the case is before a resident magistrate (Northern Ireland) (s)he will similarly proceed to sentence.
- 3.12 In a Crown Court trial, the judge will sum up the case and the Jury will then retire to consider their verdict. On their return to the court room the Chairman of the Jury will announce the verdict when asked by the judge. If the verdict is guilty, pleas in mitigation will then be heard. The judge will then determine the sentence.
- 3.13 In the case of a civil trial, heard in the County Court or High Court, there is no Prosecutor. The case is brought by a Claimant ('Plaintiff' in Northern Ireland, 'Pursuer' in Scotland) and defended by a Defendant ('Defender' in Scotland). Broadly the same procedure is followed as in criminal trials, but often there is no opening of the case by the Claimant's lawyer, and (save for Northern Ireland) witness' evidence in chief is usually taken to be the witness statement that has been prepared and lodged at court on their behalf. (In Northern Ireland, evidence in chief is still formally given orally and statements are not commonly used).
- 3.14 In the case of a civil proof, heard in the Sheriff Court or Court of Session in Scotland, the Pursuer's evidence is led first, followed by that of the Defender. The normal procedure is for all evidence to be led orally at the hearing, except in special circumstances where the evidence of witnesses is taken prior to the hearing. The Sheriff or Judge(s) will usually, having heard the case, retire to consider their judgement and deliver this in writing thereafter. There is the possibility to have a civil case heard before a jury in the Court of Session.

Next Week: Part 9 Validating A Booking

WANT TO HELP FIGHT FRAUD?

We operate on behalf of the whole travel industry rendering (usually) free support, providing analysis, carrying out research and providing best practice and advice on crime issues. We issue industry and police alerts, coordinate prosecution cases and disrupt crime where possible. We need your support – find out how to join the fight:

Contact: contactus@profit.uk.com