

WITNESS EVIDENCE – LENGTHY TRIAL STATEMENTS

Notice from the Judge in Charge to Users of the Commercial Court

1. For witness statements of factual witnesses for trial under CPR 32 and CPR PD32, the Commercial Court Guide provides at paragraph H1.1(h) that: *“Unless the Court directs otherwise, witness statements should be no more than 30 pages in length.”*
2. The Witness Evidence Working Group’s Report can be found at:
www.judiciary.uk/publications/report-of-the-witness-evidence-working-group/
3. The Report recommends at [78] that in general extensions of the 30-page limit for trial witness statements would not be considered unless the judge had the opportunity to scrutinise the contents of the lengthy statement; the general practice should be to consider such applications retrospectively at the PTR. The Report explains at [66] that any witness statement longer than the prescribed page limit should be served when witness statements are due at the serving party’s risk, that permission for the excess length should be considered at the PTR, if there is one, or on the papers if there is no PTR, but still after service so the judge can see the statement as served to make an informed decision.
4. That recommendation concerns only the practice of the judges of the Commercial Court in dealing with requests under paragraph H1.1(h) for excess length. Implementation does not require amendment of the CPR, any Practice Direction, or the Guide.
5. Commercial Court litigants and their advisors should therefore take note that the approach recommended by the Working Group, as summarised above, is now the approach that will be adopted by the judges of the Commercial Court. Therefore:
 - 5.1 Requests for permission to exceed the 30-page limit under paragraph H1.1(h) of the Guide should, in general, be made: (i) at the PTR, where there is one; (ii) on paper, but after the statement has been served (and therefore by reference to the statement as served), where there is to be no PTR.

5.2 Parties and their advisors must take care to ensure that all trial witness statements served conform to CPR PD 32 and paragraph H1.1(a)-(g) of the Guide. Where a witness statement longer than 30 pages is judged not to conform, the judge considering the request for permission may, depending on the circumstances, and amongst other things: (i) refuse permission to rely on that statement at trial; (ii) require the statement to be re-drafted (shortened) for trial, at the serving party's cost; (iii) exclude parts of the statement from the evidence permitted to be adduced at trial; (iv) direct that the witness in question may not be called at trial.

The Honourable Mr Justice Teare

Judge in Charge of the Commercial and Admiralty Courts

10 March 2020