

Witness coaching: when tech meets testimony

In *UAB Business Enterprise and another v Oneta Ltd and others*, the High Court rejected a witness's evidence in its entirety, finding that he had been assisted or coached while giving evidence through smart glasses that were connected to his phone ([2026] EWHC 543 (Ch)). The case provides a cautionary reminder of the prohibition on witness coaching and the importance of compliance with procedural rules when preparing witness statements, both of which can significantly affect a witness's credibility if not handled correctly.

Role of factual witnesses

The role of a factual witness is to provide evidence to the court on matters of fact within their own personal knowledge. A factual witness should not, therefore, seek to argue the case or offer their opinion on any matter. A witness's evidence should be in their own words and should not be influenced by anyone else, including the legal team. Solicitors and barristers both have professional obligations that prevent them from influencing a witness's evidence.

To preserve the integrity of a witness's evidence and prevent witness coaching, a witness is prohibited from speaking to anyone about the case or their evidence while they are under oath; that is, from the time that they are sworn in until the court formally releases them as a witness, even if this period spans a court break, an overnight adjournment or the weekend. This is commonly referred to as the "purdah rule".

Witness evidence

The central issue in *UAB Business Enterprise* concerned the ownership of Oneta Ltd. Key to resolving this issue, the court had to determine whether an oral agreement existed and whether two written agreements were authentic and valid. Documentary evidence was lacking on both sides, meaning that many issues depended on the court's assessment of the evidence of 12 factual witnesses.

The smart glasses

On the first day of trial, an issue arose with the evidence of the second claimant, Mr Laimonas Jakstys, who was giving his evidence in Lithuanian with the assistance of an interpreter. At the start of his cross-examination, Mr Jakstys would pause for some time after questions were interpreted before answering. After several questions, both the defence counsel and the interpreter informed the court that they could hear interference coming from around the witness, and it became apparent that he was wearing smart glasses.

Shortly after the glasses were removed, Mr Jakstys's phone began broadcasting out loud with the voice of someone talking. When questioned on the matter, Mr Jakstys denied that the glasses were linked to his phone. However, when his phone was inspected, it became clear that Mr Jakstys had exchanged numerous calls with the same number before he entered the witness box, including a call that he had made just three minutes before.

Mr Jakstys repeatedly insisted that he was calling his taxi driver to explain that he did not know what time he would finish in court, but the court held that this explanation lacked any credibility. It concluded that the smart glasses were connected to Mr Jakstys's phone during his cross-examination and that he was being assisted or coached in his replies to questions through the glasses. As a result, the court found his evidence to be unreliable and untruthful.

Practice Direction 57AC

A wider issue arose as to compliance with Practice Direction 57AC (PD 57AC), which governs trial witness statements for use in the Business and Property Courts (*see News brief "Trial witness statements: a new direction", www.practicallaw.com/w-032-7315*). The court noted that Mr Jakstys's witness statements were full of "arguments, opinions

and submissions", all of which are expressly prohibited by PD 57AC. It concluded that the witness was unable to answer questions about many of the issues that were contained in his statements because he had no personal knowledge of them, and that the content of his witness statements was not really his evidence.

Practical implications

While it may seem obvious, the clear lesson from this case is that legal advisers should ensure that witnesses are properly and fully advised on their duties to the court when giving evidence. This advice should be provided in writing, along with an explanation of the requirements of PD 57AC, and should be reiterated verbally ahead of trial. Particular care needs to be taken with witnesses whose first language is not English and who may be unfamiliar with English court proceedings.

As technology advances, legal advisers should be alert to the possibility that opposing witnesses may be using smart devices when giving evidence and should immediately raise any concerns with opposing counsel or the court, or both.

While not an issue in *UAB Business Enterprise*, when evidence is given remotely by video-link there is clearly increased scope for coaching through smart devices to go unnoticed. Appropriate safeguards should be put in place; for example, ensuring that a legal representative for each party is present in the room, positioning the camera so that the whole room is visible to confirm that no unauthorised individuals are present, and checking the witness's smart devices before they are sworn in to ensure that they are not recording or connected to other devices.

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