

Proofs of Evidence & Defence Statements

Caighli Taylor

Proofs and Defence Statements

... not substitutes for each other.



Proofs of Evidence

Purpose

- 1) Obtain instructions in order to:**
 - i) identify issues - with client and in the case**
 - ii) draft defence statement**
 - iii) present defence case**
 - iv) mitigate**

Proofs of Evidence

2) Helps focus the client and provides them with a memory refreshing tool

3) Protects legal team

Proofs of Evidence

What should it include?

A: No definitive checklist

BUT

Proofs of Evidence

Broad framework:

- 1) History
- 2) Current circumstances
- 3) Offences – client's case
- 4) Comments on evidence

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Section 1: Personal history:

- **Family**
- **Education**
- **Employment**
- **Mental health issues/illnesses if relevant/recent**
- **Criminal history**

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Section 2: Current circumstances (to the extent not already covered) assist with:

- Mitigation
- Practicalities of conducting a trial
- Remand status

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Current circumstances, include but not limited to :

- **Employment and income/benefits**
- **Accommodation may be relevant – to offence/mitigation/bail status**
- **Dependants**
- **Mental health issues/illnesses**

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Offences and comments on the evidence

- **Good proof requires knowing the charges, knowing the papers, and reflecting on potential issues;**
- **Importance of detail and accuracy of proof explained to client before proof taken;**
- **Client should be taken through statements, exhibits and police interview before instructions are taken.**

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Section 3: Set out the client's case

- **Distill the 'core' or 'spine' of the case**
- **Follow chronology of Crown's case**

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Specificity and accuracy key:

- **Actions/words used**
- **Motivations/reasoning/knowledge**
- **People**
- **Places – get client to draw layout if necessary**
- **Chronology/dates/times**

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e.g. PWITS case

‘The drugs found in our flat did not belong to us. They belonged to X. X would give us some cannabis he had.’

Rest of proof silent on ‘X’, and knowledge of them or the drugs.

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Comments on witness statements and exhibits:

- Deal with what is disputed that is not already clear from setting out the client's case. What is client saying to the contrary?
- Knowledge of/history with witnesses

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Confirm (if it be the case)

1. Credit for plea advice given
2. Defence statement read and approved

Proofs of Evidence

Must ensure client:

- (a) understands the importance of the accuracy and adequacy of the proof and defence statement for his case;
- (b) has had the opportunity of considering the contents of the statements carefully and approves them, and
- (c) signs them.

Defence Statements

Criminal Procedure and Investigations Act 1996

Section 6A – defence statement must include

- 1) the nature of the accused's defence, including any particular defences upon which he intends to rely;
- 2) the matters of fact on which he takes issue with the prosecution, with the reasons why;
- 3) particulars of the matters of fact on which he intends to rely for the purposes of his defence;
- 4) and any points of law which he wishes to take, with any authorities on which he relies.

Defence Statements – too much detail?

Consider:

- **Not every detail contained in proof**
- **Sufficient to answer main elements of Crown's case**
- **Sufficient to trigger Prosecution obligation to give further disclosure under s7A?**

Defence Statements

4-265e Archbold - s6E CPIA

CPR 25A.6 Even if invited to identify the issues by addressing the jury, the defendant is not obliged to accept the invitation. However, where the court decides that it is important for the jury to be made aware of what the defendant has declared to be in issue in the defence statement then the court may require the jury to be supplied with copies of the defence statement, edited at the court's direction if necessary, in accordance with section 6E(4) of the CPIA 1996

Defence Statements

‘Nature of defence in respect of each charge including any particular defences’

e.g. self-defence, alibi, mistaken identification, reasonable belief in consent...

- defence case in a nutshell, including important matters not in dispute e.g. presence, that the defendant was in possession of the drugs.

Defence Statements

‘The matters of fact on which he takes issue with the prosecution’

i.e. in relation to each material factual allegation comprising the charge, an explicit statement that it is disputed.

‘The defendant denies that he punched Mr A. The accused did not assault Mr A at all.’

‘The accused denies that she dishonestly obtained any money from her employer during the indicted period or at all.’

Defence Statements

‘with the reasons why [issue is taken]’

because it is untrue; because the witness is mistaken.

Here the expectation is that if it is suggested people are lying, or mistaken, or there is a different (innocent!) way to explain events, it is set out here.

‘Mr A is mistaken in his identification of the defendant as the person who punched him.’

‘The defendant honestly believed that she was entitled to the money she obtained during the indictment period, as payment of her outstanding wages.’

Defence Statements

“particulars of the matters of fact on which he intends to rely for the purposes of his defence”

Specific facts which explain the accused’s innocence.

‘The defendant spent the entire evening of 24th October 2017 with his partner Ms X. They were at her address of XXX from 6pm on 24th October until 10am the next day.’

‘Over the course of the defendant’s employment her wages were paid into her account on an irregular basis so she honestly believed...’

Defence Statements

...which might also include re interview:

- Why no comment
- Why inaccurate
- Why account has changed

Defence Statements

BUT

- Layout and sequence of S6a CPIA is not a template for layout and sequence of defence statement
- Layout = general nature of defence followed by narrative statement of defence case complying with s6A

Defence Statements

Other things to include:

- Indictment number
- Witness requirements and reasons
- Disclosure requests
- Admissibility issues
- Explanation of inaccuracies/omissions in interview
- Defence/expert witnesses including details
- Notice of intention to call expert evidence

Defence Statements

Example