

# Witness Statement Preparation: The Good, the Bad and the Best?

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# Structure

- What's the problem?
- Do I have to worry about this?
- What can I do about it?
- What do I have to do about it?
- So what - what are my take aways?

# Question 1

Memories are fluid and malleable, being constantly rewritten whenever they are retrieved.

True or False?

# “Recollections may vary”



## Question 2

The process of civil litigation itself subjects the memories of witnesses to powerful biases?

True or false?

# Questions 3 - 8

*Blue Manchester Ltd v Bug-Alu Technic GmbH*

[2021] EWHC 3095 (TCC)

# Question 3

SHA was appointed by Beetham as Architect for the Project, in relation to the design of the Shell and Core of the Building and the Residential Accommodation forming part of the Development as set out in the Architect's Deed of Appointment dated 5 March 2004 ("the Appointment"). The Appointment was thereafter novated to CCL by way of a Deed of Novation also dated 5 March 2004. On 24 May 2006, SHA entered into a warranty agreement with Beetham Hotels Manchester Limited. I was aware of these documents and was involved in commenting on the wording of them, although the detailed review and agreement of the documents was the responsibility of my colleague Rachel Haugh.

# Question 4

SHA was also asked by CCL, in an email dated 4 June 2004, for SHA's thoughts on the merit of Wintech continuing to provide façade consultancy support to CCL. I discussed this email with my colleague, Nick Fleming, and he wrote to CCL on 14 June 2004 confirming that Wintech's support had been invaluable in its interrogation of the performance of BUG's curtain walling package, and confirming that SHA would only be commenting on the visual appearance of the cladding system. He recommended retaining Wintech in their advisory role and including them in the drawing approval process due to their expertise in assessing the performance integrity of the system. I was not aware at the time that Wintech was not retained by CCL. They continued to be copied in on minutes and correspondence by CCL. In reviewing BUG's submittals, we continued to caveat our comments with a note that confirmed that our comments related to visual and functional criteria only and that we were unable to comment on the performance integrity of the external cladding system and associated works including the integrity of interface details due to the specialist nature of the works



## Question 5

It was my understanding at the time that, in response to the value engineering suggestion, BUG proposed using the curtain walling system used on the HC Project and suggested that the previous independently certified test data prepared for the HC Project could be relied upon by CCL and BUG in accordance with H11 of the Specification.

## Question 6

In late June 2004, I was made aware of a proposal by BUG to upgrade from Drylac 17 (which I understood to be the powder coating used on the HC Project) to Drylac 58 for the external elements of the aluminium framing of the Beetham Tower Project. BUG, as SSC, informed SHA that this was a superior finish, which they were proposing because of its superior weathering qualities. I understood that Drylac 58 was being applied to external elements of the framing, and therefore assumed that Drylac 58 would not be used on the SBU framing, which is an internal element as it sits behind the weatherproof line. I do not believe that the drawings that SHA received of the SBUs for comment from BUG identified which components were coated in Drylac 17 and which were coated in Drylac 58.

# Question 7

Included within the documents that I saw at the time that were submitted to Building Control by BUG to provide this justification were detailed calculations from Dow Corning relating to the bond between the structural silicone DC933, the powder coated aluminium and the glass and confirmation that BUG were following all of the procedures within Dow Corning's Quality Assurance Guide, which included substrate tests, adhesion testing and compatibility testing. These documents were attached to an email from BUG to CCL dated 29 September 2005 copied to my colleague Nick Fleming, which was forwarded to me by Nick on 10 October 2005. BUG's letter to Jon Gaskell at CCL dated 29 September 2005 (copied to me by email on 30 September 2005 by CCL), which forwarded some of the specific information regarding structural silicone for onward transmission to Building Control, also extended an offer to CCL to review BUG's quality documentation file during CCL's next visit to BUG's factory in Kennelbach. I do not know whether that review took place but I recall that CCL did visit the BUG factory regularly to review the progress of the works.

## Question 8

I chased a response to my email of 25 October 2005 on 5 November 2005 as condensation was visible again in the SBUs in several locations across the façade during a site visit on 4 November 2005 and I was concerned in relation to the visual appearance of the SBUs as a result of this.

# Questions 9 - 13

*Primavera Associates Ltd v Hertsmere Borough Council*  
[2022] EWHC 1240 (Ch)

# Question 9

During the course of this litigation, the Defendant disclosed documents that explain the chain of events from the perspective of HBC, between the grant of planning at committee and issue of planning permission on 31 August 2012 following agreement of the S.106. My knowledge of those events derives from the documentation disclosed and was not known to me prior to disclosure. Within disclosed documentation was also correspondence between Ashfords, the firm of solicitors acting on behalf of the next door neighbour at number 20, Dr Wayne Bickerton ('Dr Bickerton'), to HBC confirming they would be applying for a judicial review.

## Question 10

We were not naive. Primavera used its commercial judgement about the risks. We were assured by HBC that they were correct and we relied upon that. Fusion agreed to exchange contracts despite the threat of a judicial review. Fusion, like us, were following the advice of HBC that they were right and any judicial review would be quashed. I refer to Mark's email dated 4 October 2012 MK to Investors relating to the sale to Fusion and the email dated 5 October 2012 from Fusion to me regarding the exchange and the judicial review.

# Question 11

34. Mr Christoforou and Mr Iain Taylor made us aware that there were then a number of discussions, principally between Fusion and HBC, examples of which are the emails from 11 April 2013 to 3 July 2013. Drawings were then submitted on 19 July 2013, with Highways being the main reason for the delay. Exhibit AD1. , pages 395430.



## Question 12

From Defendant's disclosure it became apparent to me that there was a difference in public versus private pronouncements. The locum legal advisor stated HBC was correct in its position leading to the second planning permission i.e. Dr Bickerton was wrong in the second proposed judicial review letter of claim.

## Question 13

47. The above can be seen from the communications between Councillor Harvey Weinberg and the locum solicitor about the opinion from Rupert Warren, saying they will lose but letting it go to Committee, but with emails to Primavera stating HBC were going to get their own evidence. The abovementioned emails were disclosed by the Defendant in the course of this litigation. Exhibit AD1, page 485 and 486-487.

# Question 14

Do you believe PD 57AC has “... [simplified] the process of preparation and shorten[ed] the process of review and finalisation”

True or false?