



# Housing fraud in the courts – getting the best evidence

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# The Presenters

**Andy Lane**



**Sarah Salmon**



“40...it is not compassionate to allow profiteering fraudsters indefinitely to continue to occupy premises and thereby exclude from such accommodation more needy and deserving families.”

Turner J **in Poplar HARCA v Begum**  
[2017] EWHC 2040 (QB); [2017] H.L.R. 42





# Rules and Applications

Andy Lane



# How are you persuading the court?

**Particulars  
of Claim**

**Addendum  
to N119**

**Witness  
statements**

**Documentary  
evidence**

**Cross  
examination**

**Final  
submissions**

# Hearsay

- Admissible
- Hearsay notices – CPR r. 33.2
- Weight – Civil Evidence Act 1995, section 4
- Redactions

# Evidence

## Expert Evidence Part 35

- Is it reasonably required?
- Permission of the Court
- Not fraud investigator
- **TUI UK Ltd v Griffiths** [2023] UKSC 48 at [70]

“Maintaining the fairness of the trial includes fairness to the witness whose evidence is being impugned, whether on the basis of dishonesty, inaccuracy or other inadequacy. An expert witness, in particular, may have a strong professional interest in maintaining his or her reputation from a challenge of inaccuracy or inadequacy as well as from a challenge to the expert’s honesty.”

## Lay Evidence Parts 32- 33

- Witness statements
- Hearsay
- Witness summonses
- **Haringey LBC v Hines** [2010] EWCA Civ 1111; [2011] H.L.R. 6 at [39]

“It is a basic principle of fairness that if a party is being accused of fraud, and is then called as a witness, the particular fraud alleged should be put specifically to that party so that he/she may answer it.”

# Evidence of impact

Especially in discretionary cases

## Nourse LJ

**Rushcliffe Borough Council v Watson**  
(1992) 24 H.L.R. 124

**Trial judge** - There are hundreds of families at their door in inadequate accommodation who are desperate — deprived by deceptions. They say that if a deception of this kind succeeds, anyone who thinks its worth their while will try to jump the queue. The local authority cannot be expected to act as private detectives. It is essential that they should be able to rely on the accuracy of an application in such a case.

**Rejected submission** - The judge's view of the public interest was wrongly confined to a policy of discouraging deceitful applications which result in the unjust relegation on the housing list of applicants who are honest.

**Accepted evidence** - On the broader aspect of the public interest the judge was fully entitled to attach the importance which he evidently did to the policy to which I have referred. The statistics which he recounted demonstrate the acute shortages in the plaintiff's housing stock.



# Part 18

## Request for Further Information

01

**Crypto Open Patent Alliance  
v Craig Steven Wright**  
[2023] EWHC 2408 (Ch)

*In modern litigation, it is not the position that a party can hold back on relevant information and leave its opponent to take a chance to see if it chooses to put forward a witness from whom that information might be elicited by way of cross-examination at trial.*

02

**CPR r. 18**

- clarification
- additional information
- restriction of use

03

**PD18**

- written request
- court application
- statement of case

04

**Enforcement**

- Unless order
- Costs
- Post-answer action

# Disclosure actions

**Duty of search**  
**31.7**

**Specific  
Disclosure**  
**31.12**

**Pre-action  
Disclosure**  
**31.16**

# Norwich Pharmacal orders

Arguable  
case of  
legal  
wrong

Respondent  
can supply  
information

**RBKC v Airbnb  
Payments UK Ltd**  
[2022] EWHC 2209  
(Ch)

Respondent  
involved

It was  
just



# Evidence Overview

Sarah Salmon



# What I will cover

01

Evidence gathering

02

Witness statements

03

Giving evidence in  
court



## Evidence gathering in social housing fraud cases



# Strong evidence

**Direct**

**Witness  
will attend  
court**

**Records**

**Independent**

**“a clear  
'audit trail'”**

**Clear  
information**

# Gathering evidence

**Visits**

**Tenancy  
audits**

**Medical**

**Bank  
accounts**

**Other  
internal  
records**

**Education**

**Employment**

**Checks  
with  
others**





## Remember to also think about what is not there

- The court may be able to draw adverse inference from the absence or silence of a witness (can cut both ways)
- If you are inviting the court to make such an inference, it is likely you will need to support that with the other before evidence before the court
- You want to make sure you are calling relevant witnesses (duty to the court)



## Witness statements



# Witnesses

## CPR r.32.2(1)

"The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved - (a) at trial, by their oral evidence given in public; and (b) at any other hearing, by their evidence in writing."

## The commentary on the rule in **White Book 2023, 32.2.1 at pg.1017** says:

"Traditionally, the law applicable in England and Wales has placed greatest weight on evidence given by witnesses in open court on oath or affirmation under examination by the parties. Rule 32.2(1)(a) restates the general principle in relation to the most important part of the civil process, the trial. The rule applies only to evidence as to matters of fact."

# The importance of case analysis

- Without thorough case analysis you won't know:
  - **who** the best witnesses are; or
  - **what** their evidence needs to say.

# Understanding the rules of evidence

## What is a witness statement of fact for?

- Proving **facts** in issue

## What is it not for?

- Argument
- Opinions
- Lengthy recitations regarding documents/suggested interpretations of them
- Irrelevancies



## Evidence in court



# Live Evidence – Overview

- Don't squander the groundwork!
- Time passes, memories fade
- Officers – may lack trial experience
- Changes in personnel – staff may move
- Judges – some are feared!
- Personal allegations – sadly quite common
- Procedural twists and turns





## Preparing for Court - General

- Witnesses (except experts) are witnesses of fact, not opinion (CPR 32.2)
- Live evidence usually only at trial (CPR 32.6)
- Normally no evidence without a witness statement (CPR 32.10)
- Statement usually stands as evidence in chief (CPR 32.5) – so brief introduction and then straight into XX
- Court's permission needed to amplify/add to the statement (CPR 32.5)
- Statement is fundamental!





## Preparing for Court – Tips



- Know your statement!
- Re-read the statement before court
- Get reacquainted with the general facts of the case
- Anticipate XX questions
- Stick to the material issues in the case – no hobby horses
- No to coaching from counsel

# On the Stand

- Don't rely on notes/the statement in court
- Concise answers – stay calm!
- Ask if you need a break
- Avoid advocating
- It's fine not to know the answer
- XX – don't feel afraid to say “yes, but...”
- Don't rely on your own advocates
- XX – rules on speaking to others





# Questions?

**Thank you for attending**

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