Defence Statements

Purpose:	To draw barristers' attention to practical points relating to failure to draft defence statements
Scope of application:	All self-employed, criminal barristers
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Status and effect:	**Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.**

1. Defence statements are of fundamental importance in criminal trials. Defendants are liable to be cross-examined about their contents. Comment can be made about them by other parties and the judge. Inferences against the interests of a defendant might be drawn if the document is not served or, if served, is deficient.

2. In defined circumstances the Criminal Procedure & Investigations Act 1996[1] requires a defendant to serve a defence statement. The content of the document must comply with express statutory requirements.

3. You must not advise your client not to serve a defence statement nor to omit something which the statute requires to be included. The statutory duties must be explained as well as the consequences which follow from non-compliance. In Rochford [2010] EWCA Crim 1928 the Court of Appeal considered whether a lawyer could properly advise a defendant not to serve a defence statement. They said:

> *The answer to that is "No". The obligation to file a defence statement is a statutory obligation on the defendant. It is not open to a lawyer to advise his client to disobey the client's statutory obligation. It is as simple as that.*

4. However, a statement which advances no positive case but which simply puts the Crown to proof will satisfy the requirements of s.6A of the Act.

[1] Criminal Procedure and Investigations Act 1996

5. If it is not possible to obtain the defendant's signature (e.g. because contact has been via prison video link, or due to literacy issues, or for some other reason), the content of the defence statement should be read out to them and their approval (and/or amendments) should be recorded in writing contemporaneously.

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