

CHAPTER 5: Witnesses' previous consistent statements and the remnants of the rule against narrative

1. *Grope is on trial for having indecently assaulted his stepdaughter, Laetitia, on 1 May. On 2 May, Laetitia's mother found Laetitia in floods of tears. The mother demanded to know what was the matter and Laetitia told her that Grope had done something terrible to her. Their conversation, however, was interrupted by an incoming call on her mother's mobile telephone. At this point, Laetitia stormed out of the house and the matter was never mentioned again. On 15 June, having consumed a couple of 'Alabama slammers' at the gym, Laetitia gave her personal trainer, Aerobia, a detailed account of how Grope had molested her on 1 May. At his trial, Grope denies the offence. He also suggests that Laetitia has concocted this story because, in July, Grope threw her boyfriend, Lout, out of the house for violently breaking wind during Sunday lunch. The trial judge has refused the prosecution leave to call Aerobia as a witness. Discuss.*

This question concerns previous consistent statements, in the form of complaints (see paras. 5.4-5.21.) Their admissibility is now governed by the Criminal Justice Act 2003, s. 100(4), (7) and (8). As the Court of Appeal often reminds courts, the old common law rules have been replaced by statute. Notably, the common law requirement that the complaint had to be recent has been abolished, a phenomenon underlined by the repeal of s. 120(7)(d). Regarding L's first complaint to her mother, the conditions of admissibility listed in s. 120(7) will be required to be considered. In particular, this complaint is arguably incomplete and not very specific. Does it satisfy the terms of s. 120(7)(c)?

The admissibility of L's distress should also be addressed (see paras. 5.22-5.23 for the relevant principles.)

Regarding the second complaint made to Aerobia, which in some ways is less problematical than the first, the issue of multiple complaints will need to be addressed (see esp. para. 5.15, and the judgment in *R v. O* [2006] 2 Cr App R 27.)

Evidence of either complaint will only be admitted provided that the complainant gives oral evidence (CJA 2003, s. 120(7)(f)) and provided the statutory procedure has been followed (s. 120(4)(b)).

The judicial direction will need to make reference to a number of factors. First and foremost, the complaints may be treated as evidence of any matter stated (s. 120(4)) – i.e. as evidence of the facts, and will be relevant to the defendant's denial of guilt.

Additionally, the second complaint may be admissible under s. 120(2) as evidence rebutting concoction or afterthought: it shows that pretty much from the get-go L has told a consistent story. Again, s. 120(2) has replaced the old common law rule, and there is no requirement of recent concoction (see *R v. Athwal* [2009] 1 WLR 2430), if in reality there ever was

2. *Under what circumstances can a witness's previous statement be treated as evidence of the facts?*

This question requires you to survey the five exceptions to the general rule that holds that a witness' previous consistent statements are not admissible in evidence (*R v. Roberts* (1942) 28 Cr App R 102), as well as the two common-law exceptions where an accused is first taxed with incriminating facts or makes a statement when incriminating articles are recovered.

The question may also refer to a witness's previous *inconsistent* statements (e.g., hostile witnesses, etc.), discussed in Chapter 4, whose statements may now be admissible as evidence of any matter stated by virtue of CJA 2003, s. 119.

3. *Miss Coelha, who was the victim of a street robbery, attended an identification procedure (a video parade) at which she formally identified Mme Vulpina as the culprit. At Mme Vulpina's trial, Miss Coelha cannot even recall ever having attended a procedure and she is quite unable to identify Mme Vulpina as the person whom she picked out at any procedure. Can the prosecution call PC Pleb to testify that he was present during the identification procedure and that, on that occasion, Miss Coelha picked out Mme Vulpina?*

This question requires you to consider the applicability of s. 120(4) of the Criminal Justice Act 2003 (paras. 5.30-5.32).