Chapter 13: Hearsay admissible at common law

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Footnote 1

See also *Valiati v DPP, KM v DPP* [2019] 1 WLR 1221 at [11].

Statements forming part of the *res gestae*

Statements by persons emotionally overpowered by events

Directions to the jury

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Footnote 104

See now the Crown Court Compendium (July 2019), Part 1, 14-13.

Admissions by agents

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In *R* v *Newell* [2012] 1 WLR 3142, CA, referred to in the text, it was held that the purpose of information or statements recorded in plea and case management forms (now replaced by plea and trial preparation hearing forms) in the Crown Court is to assist the court, and normally such information or statements should be excluded in the exercise of discretion under s 78 of the Police and Criminal Evidence Act 1984 (at [36]). The court said there could be circumstances where information and statements were admissible, for example, where no defence statement has been submitted and there is an ambush defence which is inconsistent with what is recorded on a form. However, '… provided the parties adhere to the letter and the spirit of the Criminal Procedure Rules and follow the practices … outlined, such cases should be very, very rare.' (ibid).

Under the Criminal Practice Directions, the principle in *R v Newell* stated above applies to case management forms in general. The Directions state that the identification of issues in forms at the case management stage occurs '…without the risk that they will be used as statements admissible in evidence against the defendant, provided the advocate follows the letter and spirit of the Criminal Procedure Rules.' (see the Criminal Practice Directions, VI, 24B.4).

In *Valiati V DPP*, *KM v DPP* [2019] 1 WLR 1221, DC, which concerned the use of statements in 'preparation for effective trial forms' in the magistrates' court, the court emphasized the importance of the practice directions and the need to follow them (

at [15]-[16] and [24]; see also 'Commentary' [2019] Crim LR 238). However, the court also made it clear that statements in case management forms are not inadmissible as a matter of law and it might still be open to the prosecution to admit them to prevent 'game playing' (at [40], Sir Brian Leveson P, citing Irwin LJ in *R (Hassani) v West London Magistrates' Court* [2017] EWHC 1270, (Admin) at [10]). An example could be where the accused indicates that he will 'put the prosecution to proof', that is, that his defence does not involve presenting a positive case, but he later goes on to present such a case (at [16]; compare *R v Newell* [2012] 1 WLR 3142, CA at [36], above). A formal application will be required to admit the statement contained in the form under s 118(1) and would need to be considered alongside any application to exclude it under s 78 (at [11]). Strict notice requirements cannot and should not apply in this type of situation, which the court stated is the type of situation envisaged by r 20.5(1)(c) of the Criminal Procedure Rules, SI 2015/1490. This rule gives the court power to dispense with the requirement of notice in respect of hearsay. However, it would appear that there is no such requirement in this situation: see the *'Note'* pursuant to r 20.2.