When AI writes the witness statement: whose evidence is it?

By Emma McIlveen BL
3PB Barristers

Consider a hypothetical instruction: “Make this account clearer, more professional and more persuasive.” For a witness struggling to describe a difficult workplace meeting, that might seem an innocent request. But what happens if the resulting statement is not merely better written, but subtly different?

That concern now has express recognition in the employment appeal jurisdiction. In *Hancox v Sutherland and others* [2026] EAT 139, the EAT highlighted the potential for AI to reshape or embellish evidence and the resulting need for caution about the reliance placed upon it.

Beyond the imaginary case citation

The immediate problem in *Hancox* was a 300-page skeleton argument produced using ChatGPT. It did not comply with the EAT’s Practice Direction, obscured rather than illuminated the issues, and was not ultimately relied upon at the hearing.

The EAT’s message was straightforward: AI-assisted documents must comply with procedural requirements, be checked for factual, evidential and legal accuracy, and concentrate on relevant points. Checking cannot simply be left to the opponent: *Hancox*, paragraphs 32–33.

But paragraph 36 identifies a potentially more difficult problem than an invented authority: AI’s influence on the evidence itself. A false citation can be checked against a judgment. Establishing whether a polished sentence still accurately expresses a witness’s recollection may be considerably less straightforward.

“Only grammar and presentation”

In *Godwin v Godwin* [2026] EWHC 923 (Ch), two witnesses described receiving limited assistance from a “digital assistant” with grammar, spelling and presentation. The assistant was ChatGPT.

They maintained that the tool had not added, removed or rearranged words. However, the original drafts were not provided, and the judge was not satisfied by the explanation for describing ChatGPT as a "digital assistant". He could not be sure that the statements were in the witnesses' own words and approached their evidence cautiously: paragraphs 44–48.

An important qualification follows. *Godwin* involved a specific order requiring compliance with CPR Part 32 and Practice Direction 57AC. The latter concerns trial witness statements in the Business and Property Courts, not employment tribunal proceedings.

Nevertheless, its evidential significance for employment practitioners is apparent from the EAT's express reference to it in *Hancox*.

The danger of improving the evidence

Imagine a witness's original account:

"I think I mentioned my health, but I cannot remember exactly what I said."

Now imagine the edited version:

"I clearly explained my medical condition and its impact on my ability to work."

That is not a tidier sentence. It is different evidence.

The underlying concern predates generative AI. The Statement of Best Practice accompanying PD57AC describes memory as malleable and warns that repeatedly revisiting drafts may corrupt rather than improve recollection.

The practical question should therefore be not simply "Did you use AI?", but "What did it change?"

Practical safeguards

For employment practitioners, I suggest four precautions:

- **Preserve the starting point.** Retain the witness's original account so that any material changes can be identified and explained.
- **Preserve uncertainty.** Distinguish actual recollection from information drawn from documents. Do not allow editing to turn hesitation into certainty.

- **Check substance, not just spelling.** Review dates, quotations, explanations and assertions against the witness's instructions and relevant material.
- **Check the tool before uploading.** The SRA's August 2026 warning notice stresses that both free and paid-for systems require appropriate confidentiality safeguards.

Hancox recognises AI's potential benefits, particularly for those without professional assistance. Its message is personal responsibility, not blanket prohibition.

The drafting objective should remain modest: help the witness express their evidence clearly, without supplying evidence they never gave.

Emma McIlveen is a barrister at 3PB and Vice Chair of the Employment Lawyers Group NI. She advises and acts in employment disputes across the full range of statutory and contractual claims.

2 November 2026



Emma McIlveen

Barrister
3PB Barristers

07752 370149
Emma.mcilveen@3pb.co.uk

3pb.co.uk

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