

Draft Witness Statement Protocol

Identification of witnesses

1. A witness in relation to the Inquiry is any person from whom the Panel proposes to take written and/or oral evidence.
2. It is anticipated that the Panel may seek written and/or oral evidence from a much wider range of people than have been given core participant status. Although it is likely that all those who have satisfied the test for core participant status will have relevant evidence to give to the Inquiry, the Panel also proposes to take evidence from many who have not been granted core participant status or have not applied.
3. This Protocol is intended to set out the process which the Inquiry will adopt in gathering evidence from intended witnesses. The way in which that evidence will subsequently be handled and received by the Inquiry is outside the scope of this Protocol.

Initial contact

4. The Chairman said in his opening remarks of 28 July 2015 that he wished to encourage all those with material evidence to give to make themselves known to the Inquiry team. That remains the position. Anyone wishing to provide evidence to the Inquiry is encouraged to read the Chairman's opening remarks and to contact the Inquiry team on info@ucpi.org.uk or 0203 876 4750.
5. The Chairman also said in his opening remarks that he recognises that there will be some witnesses who will only make contact with the Inquiry if they are assured of confidentiality. Where a potential witness makes contact with the Inquiry, the confidentiality of that contact, if sought, will be respected. The conditions under which evidence will be received will be discussed with them privately before any decision is made to request or process their evidence.
6. For the avoidance of doubt, the Inquiry will not necessarily take evidence from all those who contact it, nor will it take evidence exclusively from those who make contact with it. The Inquiry expects to approach and make requests of any individuals or organisations whose evidence appears to the Panel to be required to enable the Inquiry to fulfil its terms of reference.
7. Where it is thought that a person may have relevant evidence, but the nature and relevance of it is not clear, the Solicitor to the Inquiry may invite that person to

attend a meeting to ascertain the nature, extent and relevance of their evidence. Any such meeting will be minuted.

Issue of request

8. Where written and/or oral evidence is sought from a witness, or further evidence is required from any witness who has already provided evidence, the Inquiry will issue a written request for evidence pursuant to Rule 9 of the Inquiry Rules 2006 ('Rule 9 request') – that is, a request for the witness to provide a written statement setting out that evidence.
9. Where a witness has a recognised legal representative, the Rule 9 request will be sent to that legal representative. Where the witness is unrepresented, the Rule 9 request will be sent directly to the witness save that, where the witness is a current or former member of a state body and giving evidence in his or her capacity as such, it will ordinarily be sent to the witness's employer or former employer to be transmitted to the witness. The Inquiry will however communicate directly with an unrepresented state witness if it considers it appropriate to do so, or if the witness so requests.
10. The Rule 9 request will contain a description of matters to be covered by the statement. In some instances, a single Rule 9 request may list a number of witnesses and contain a description of matters to be covered common to all witnesses therein named. The Inquiry may also, in appropriate circumstances, issue separate Rule 9 requests to the same witness covering different topics, or issue further or supplementary requests after receiving a response.
11. The Inquiry intends ordinarily to gather witness evidence through the issue of Rule 9 requests in order that there is a record of the matters which any witness has been asked to address and because rule 9 is worded in mandatory terms¹. It should not be inferred that the issue of a Rule 9 request indicates that the witness would be unwilling to assist the Inquiry voluntarily.
12. The Chairman will keep under review his power to issue a statutory notice² requiring a person to provide a written statement or to attend to give evidence, and will exercise this power if for any reason it appears to him appropriate to do so.

¹ Rule 9(1) of the Inquiry Rules 2006 state 'The inquiry panel must send a written request for a written statement to any person from whom the inquiry panel proposes to take evidence.'

² Under section 21 of the Inquiries Act 2005.

13. The Rule 9 request or a letter accompanying it will set a time limit for compliance. Time limits may vary depending on the nature and extent of evidence sought. If there is a good reason why a witness will be unable to comply with the time limit, the Inquiry will consider an application for an extension, but a request for an extension must be made as soon as possible, and in any event before the expiry of the time allowed.

Preparation of statements

14. Where a witness is represented, the Inquiry ordinarily expects that any witness statement will be prepared by the witness with the assistance of the witness's recognised legal representative.
15. Witnesses who are not legally represented may prepare their own statements in accordance with this Protocol, or either the Inquiry (by its Rule 9 request) or the witness (as soon as possible on receipt of any request) may:
 - a. invite the witness to attend a meeting with the Solicitor to the Inquiry (or his representative appointed for the purpose) at which their witness statement will be drafted; or
 - b. ask the witness to provide an unsigned statement in draft, the Inquiry team will then consider the draft statement and either
 - c. indicate that it requires no further information or clarification and ask the witness to sign the statement;
 - d. (set out in writing any points on which further information or clarification are required, and request a further draft or a final signed statement; or
 - e. invite the witness to attend a meeting with the Solicitor to the Inquiry (or his representative appointed for the purpose) to finalise the statement.

The Inquiry may also request that one of these procedures is followed by a legally represented witness, and in such a case the recognised legal representative may attend any meeting between the Inquiry and the witness³.

16. At any meeting for the purposes set out in the preceding paragraph, the Inquiry's witness statement-taker will be seeking only to record or finalise the witness statement. The Inquiry emphasises that the Inquiry's witness statement-taker will not cross-examine the witness but simply obtain the information and/or clarification necessary to obtain a factual statement, consistent with the Inquiry's inquisitorial

³ If funding for this is a proposed legal expense to be recovered from the Inquiry, advance authorisation to incur the expense will need to be agreed in advance of the meeting.

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role. Such meetings will be “on the record”, although any disclosure or publication of the information communicated will be subject to any applications for anonymity or restriction orders. The witness will ordinarily be requested to approve the contents of the statement and sign a final version of the statement at any meeting, but may, if the circumstances require, be sent a final copy for approval after the meeting or invited to verify further details before signature.

17. Any meeting which takes place in accordance with this protocol will be minuted or audio recorded at the Inquiry’s discretion. Where it is minuted, the witness will be invited to confirm the accuracy of the minutes. Where it is audio recorded, the Inquiry will preserve a master copy of the recording and use a copy for its working purposes.
18. Whether or not the witness is assisted by a lawyer, any statement should be in the witness’s own words.

Format of statements

19. Statements should be in Arial size 12, double line spaced, with margins, headers and footers of not less than 2.54cm (normally the default margin settings for Microsoft Word).
20. Paragraphs should be numbered sequentially and the statement should be paginated at the centre of the page footer in the form ‘Page x of y’.
21. Two copies of the statement should be provided to the Inquiry. The first should be a copy in Word or pdf format. This copy of the statement should always be provided in a format which enables the text of the content to be searched, and should not be watermarked. The second copy of the statement should be the signed copy. This may be provided as an electronic scan. Recognised legal representatives and unrepresented witnesses should retain the hard copy of the statement bearing the original signature.
22. Statements should be provided by email save where the sensitivity of the contents makes this inappropriate, in which case arrangements will be made for collection of the statement on encrypted electronic storage media.

Content of statements

23. The statement must show the full name of the witness and the date on which the statement is signed on the front page.

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24. Where the Chairman has ordered the witness should be known by some other name (including an 'N-number'⁴, 'EN-number'⁵ or alias) this should also be included on the front page.
25. Where the witness has previously provided, directly or indirectly, any public account (e.g. through news articles, official published reports, books or websites) which touches on the matters on which he or she is to give evidence, the statement must also set out any pseudonyms by which the witness has been referred in this context.
26. Statements should begin by setting out the date of the Rule 9 request or statutory notice to which it responds and briefly summarising the topic which the statement covers (e.g. "my deployment as an undercover officer"; "the recruitment of undercover officers in [a named police force]"; "my interactions with the man/woman whom I knew as [name] but whom I now know to have been [name], an undercover officer").
27. Where any individual makes a statement on behalf of a government body, the statement should also make clear which body it is made on behalf of.
28. The Inquiry is evidence based. Even where relevant information has previously been communicated in another form (e.g. set out in a letter to the Inquiry), the Inquiry will often need it to be repeated in a witness statement so that there is direct evidence of it. In these circumstances the evidence should be repeated in full, rather than simply by reference.
29. Statements should be written in such a way that they can be understood by members of the public. In particular, evidence should not assume that the reader has a detailed knowledge of the current and historical structure and organisation of police forces, or of policing policies, practices or jargon. Acronyms should be spelt out where they appear and organisational names and references explained.
30. The statement should not omit any information that would otherwise be included in response to the request because of the sensitivity or perceived sensitivity of the matter to be covered. Any statement will, on receipt by the Inquiry, be stored securely in accordance with the security rules and information handling procedures of the Inquiry. Where a restriction application is pursued over any part of the statement, the statement will not be placed on the Inquiry's web-based database,

⁴ Nominal number issued by Operation Herne, used for Special Demonstration Squad officers.

⁵ Nominal number issued by Operation Elter, used for National Public Order Intelligence Unit officers.

disseminated or published unless either the application has been refused or the relevant part indelibly redacted.

31. Statements should end with the words 'I believe the content of this statement to be true' followed (in the signed copy) by the signature of the witness and the date of signature. The witness should sign in his or her real name irrespective of any grant of anonymity. The Inquiry will check that it has a signed copy of the statement, but in publishing or otherwise disclosing evidence will use the unsigned copy (and, for the avoidance of doubt, will in any event apply redactions to signatures in documents to be published, whether or not the witness has anonymity and without the need for any application).

Supplementary and correction statements

32. It is open to a witness at any time to correct or supplement a statement provided to the Inquiry. In some cases, the Inquiry may request that a witness does so and in others, witnesses may identify a need to do so of their own motion.
33. The intention of the Inquiry is that there should, for ease of reference, be one consolidated statement from any given witness on any given topic (though there may be separate witness statements from witnesses on different topics).
34. Where a witness wishes to correct or supplement an existing statement, the following approach should therefore be taken:
 - a. The statement should begin with words to the effect: "On [date] I made a statement of [number] paragraphs which read as follows:"
 - b. The statement should then quote in full this previous statement, without amendment. The only insertion that may be appropriate is a cross-reference to any new material which may be added at the end of a paragraph in square brackets (e.g. "[see correction to this paragraph at paragraph 62 below]").
 - c. The quoted statement should include, unchanged, the paragraph numbers from the previous statement.
 - d. The statement should then set out any corrections or supplementary material. The paragraph numbering should continue sequentially from the numbering of the previous statement.
 - e. The statement should be signed and dated on the day that it is made in the usual way.

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35. If there is a need for further supplementary or correction statements, they should take the same format, i.e. include the full text of each previous statement sequentially, using the same paragraph numbers as were used in those statements.
36. The Inquiry team will apply across any redactions that have been granted over quoted statements to the new statement without any need for a repeated application (although applications for restriction orders over new material should be made in the usual way).

Documents

37. The Inquiry will provide or make arrangements for inspection of documents which it considers the witness will need to consider in order to refresh his or her memory.
38. A witness asked to make a statement may also refresh his or her memory from any document in his or her own possession, custody or control in preparing any statement, but must list in the statement any such documents, and must provide a copy of the documents to the Inquiry at the same time as providing the statement unless they have previously been provided.
39. A witness making a statement in response to a request directed at the organisation which employs him or her, and speaking on behalf of that organisation, may refresh his or her memory from any document in the possession, custody or control of the organisation in preparing any statement, but must list in the statement any such documents. The organisation must provide a copy of the documents to the Inquiry at the same time as providing the statement unless they have previously been provided.
40. Any document provided in accordance with the above paragraphs should be provided as a clean, unredacted copy and, where the document provider has access to a copy in word searchable format, it should be provided in this format.
41. If a witness (or the witness's employer) wishes to obtain documents from any other source before making a statement, details of the documents should be provided to the Inquiry which may either (i) make a request for the documents and then consider whether to provide them to the witness; (ii) give permission for the witness to obtain the documents; or (iii) request that the witness make a statement before viewing any further documents.
42. The effect of the above procedure should be that the Inquiry should always have a full record of the documents viewed by the witness in order to prepare a witness

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the open version of the statement might read “I was deployed against the extreme right wing in the 1980s, specifically a group named [redacted] starting in [redacted].”

46. The effect of redactions sought should be checked to ensure that the statement does not become misleading. For example, if a statement read “The officer did not gather information relating to group X save on one occasion in 2006” it would never be appropriate to redact “save on one occasion in 2006” and leave the impression that the officer did not gather evidence relating to group X at all. While the Inquiry will ensure that this is not the result, consideration should be given to drafting statements in such a way as to avoid the difficulty.
47. For the avoidance of doubt, while it is permissible to have regard to wording statements in such a way as to maximise the information which can be made public:
 - a. Whether a restriction order is in fact granted, and if so whether any proposed gist is sufficient, remains a matter for the Chairman to determine;
 - b. It is never appropriate to exclude relevant information from a response to a request, or to provide an incomplete account of any matter, on grounds that this will avoid the need to make a restriction order application; and
 - c. References to third parties should always include the name of the third party, and should not be confined to a description of that person’s role or job title. The only exception that may be made to this principle will apply where, at the date of the statement being signed, an order has already been made by the Chairman granting anonymity which includes the replacement of a name with a cipher; in those circumstances the Inquiry cipher may be inserted in place of the name.

An opportunity will be given for a restriction order application to be made over any documents exhibited to witness statements. It is not necessary or appropriate for the witness statement to refer in terms to the fact that this has been or will be done (e.g. by ‘exhibiting’ redacted and unredacted versions).

48. The Inquiry Legal Team and, if necessary, the Chairman will consider any application for a restriction order over witness statements and accompanying documents provided under this Protocol. The Inquiry will follow the procedures set out at paragraphs 25 - 34 of the Restrictions Protocol (‘Privacy’) in relation to witness statements and accompanying documents whether or not they are “documents and other evidence produced to the Inquiry by the Metropolitan Police Service” or by any other police body, government agency or department to which that Protocol applies.

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49. The Rule 9 request or letter inviting any restriction order application will set out time limits for the application and any further requirements as to its form and content or the procedure to be adopted.

Departure from this Protocol

50. This Protocol is intended to assist potential witnesses by giving notice of the Inquiry's intentions in the typical case. It is not intended to prevent it from adapting its procedures where there is good reason for it to do so.
51. Where any witness in receipt of a Rule 9 request considers that there is good reason to depart from the procedures proposed by the Inquiry (whether the procedures set out in this Protocol or any modification to the procedure that may be proposed in the request or an accompanying letter), the Inquiry should be notified within 7 days of the date of the request.

Issued under the authority of the Chairman on [date]