

## Witness Statement Protocol

### Preamble

1. The purpose of this Protocol is to inform witnesses about the process by which the Inquiry will usually seek written evidence from them; the approach the Inquiry will ordinarily expect witnesses to adopt when responding to such requests; and the required format for written statements that are submitted to the Inquiry. Although it is intended that witnesses will comply with the requirements and guidance set out in this Protocol, the Inquiry recognises that the need may arise to depart from it on a case by case basis.
2. This Protocol does not seek to address any of the following: the particular circumstances in which the Chairman will consider exercising the power contained in section 21 of the Inquiries Act 2005 to compel the provision of evidence; who will be requested to provide a written statement; the order in which witnesses will be requested to provide written statements; the precise extent of the disclosure that the Inquiry will make to witnesses prior to them being asked to provide a written statement; or the way in which evidence will be handled and received by the Inquiry after provision of a written statement.

### Identification of witnesses

3. A witness in relation to the Inquiry is any person from whom the Panel proposes to take written and/or oral evidence.
4. 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.

### Initial contact

5. 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](mailto:info@ucpi.org.uk) or 0203 876 4750.

6. 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.
7. 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.
8. Where it is thought that a person may have relevant evidence, but the nature and relevance of it is not clear, the Inquiry Legal team 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**

9. 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.
10. 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.
11. 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.

12. 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 terms<sup>1</sup>. 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.
13. The Chairman will keep under review his power to issue a statutory notice<sup>2</sup> 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. Any person to whom a statutory notice has been issued may apply in writing, within 14 days of the date on which notice was given for the notice to be revoked or varied under rule 21(4)(b). Any such application must set out the grounds upon which revocation or variation is sought.
14. 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

15. 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, who will ensure that the statement submitted complies with the requirements set out in this Protocol.
16. Witnesses who are not legally represented may prepare their own statements in accordance with this Protocol, or the Inquiry (by its Rule 9 request or having accepted a request made by the witness) 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

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

<sup>2</sup> Under section 21 of the Inquiries Act 2005.

- i. indicate that it requires no further information or clarification and ask the witness to sign the statement;
- ii. 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
- iii. 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 witness<sup>3</sup>.

17. 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 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.
18. 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.
19. Whether or not the witness is assisted by a lawyer, any statement should be in the witness's own words.

### **Format of statements**

20. 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).

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<sup>3</sup> 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.

21. Paragraphs should be numbered sequentially and the statement should be paginated at the centre<sup>4</sup> of the page footer in the form 'Page x of y'.
22. 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.
23. 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**

24. Statements should be headed '[Nth] Witness Statement of [Witness]' (but as to supplementary and correction statements, see paragraphs 34 - 36 below).
25. The statement must show the full name of the witness and the date on which the statement is signed on the front page. Where the witness is a police officer, the rank and force in which he or she serves should also be given. Where the witness gives evidence in any other professional capacity, a job title should also appear on the front page.
26. Where the Chairman has ordered that the witness should be known by some other name (including an 'HN-number'<sup>5</sup>, 'EN-number'<sup>6</sup> or alias) this should also be included on the front page.
27. 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 should ordinarily set out any pseudonyms by which the witness has been referred in this context<sup>7</sup>.

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<sup>4</sup> In particular, RLRs and witnesses are asked to avoid paginating or inserting other text at the right hand edge of the footer which may be used by the Inquiry for pagination of hearing bundles as needed.

<sup>5</sup> Nominal number issued by Operation Herne, used for Special Demonstration Squad officers; Operation Herne simply used 'N', as did the Inquiry in its early communications, but 'HN' will be used in future to differentiate the officers from those with Operation Elter nominals (see below).

<sup>6</sup> Nominal number issued by Operation Elter, used for National Public Order Intelligence Unit officers.

<sup>7</sup> Where to do so might arguably constitute an interference with the witness's rights under Article 8 or Article 10 of the European Convention on Human Rights the Inquiry will consider exceptions to this presumption

## UNDERCOVER POLICING INQUIRY

28. 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”).
29. Where any individual makes a statement on behalf of a government body or a police force, the statement should also make clear which body or force it is made on behalf of.
30. 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.
31. 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.
32. 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 Inquiry’s security rules and information handling procedures. 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, disseminated or published unless either the application has been refused or the relevant part indelibly redacted.
33. 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

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on a case by case basis. It does not follow from the inclusion of a pseudonym of this nature in a witness statement that the pseudonym will be further disclosed or published by the Inquiry; any application to restrict this information from publication will be determined in accordance with the [Restriction Protocol](#) and section 19 of the Inquiries Act 2005.

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**

34. 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 themselves.
35. The Inquiry's intention 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). Accordingly, where a witness wishes or is asked to correct or supplement an existing statement, the following approach should 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.
  - f. 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.
  - g. 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).

36. Where a witness statement has been supplemented, it should be headed and referred to as the 'First witness statement of [witness], as supplemented', rather than 'Second witness statement of [witness]'.

### 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 provide a response to a request for written evidence. The precise scope of the documents to be made available will be decided on a case by case basis. In the case of non-state witnesses, the Inquiry will ordinarily provide (1) where possible, a copy of any relevant part of any witness statement obtained by the Inquiry from a serving or former police officer which relates to them; and (2) either a copy or a gist of any relevant and unredacted part of any publishable document which has been obtained and examined by the Inquiry which appears to the Inquiry to relate to them and to be relevant to the evidence which they are required to provide.
38. Where the Inquiry considers it necessary and appropriate to do so, it may at the time of making a request for evidence consult the witness upon which documents the witness will need in order to provide a response to the request. Upon receipt of a Rule 9 request a witness may also alert the Inquiry to documents which the witness knows or has reasonable cause to believe exist, and which the witness considers it is necessary to see in order to respond to the request and why, and the Inquiry will consider whether further documents should be sought (where not already obtained) and provided.
39. 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. Save where the nature of the document is private and/or personal<sup>8</sup>, the Inquiry will ordinarily expect a witness to provide a copy of such a document to the Inquiry at the same time as providing the statement, unless the document has previously been provided (in which case the unique reference number for the document should be provided). If a document is considered by the witness but not provided this should be drawn to the

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<sup>8</sup> This phrase is intended to describe documents which would be regarded as forming part of an individual's private life and correspondence within the meaning of Article 8 European Convention on Human Rights. In the event of any doubt a witness should contact the Inquiry for its view on whether the document falls within this definition.



### Drafting statements to be redacted

45. When the Inquiry makes a Rule 9 request, it may state in the request or in a cover letter to the request either (a) that any restriction order application should accompany the statement or (b) that an opportunity will be given for a restriction order application to be made at a later date. In the latter case, the statement will not be disclosed further until an opportunity has been given for a restriction order application to be made.
46. Where a statement will attract restriction order applications, regard should be had in drafting the statement to ensuring not only that the unredacted version provides a full response to the request but also that any proposed redacted version should provide the reader with as much information as possible. To achieve this, a sentence or paragraph may begin with a gist which can remain in an open version, followed by more sensitive details which are the subject of a restriction order application. For example, if the sensitive detail proposed to be redacted were a group name and date, a full unredacted sentence might read: "I was deployed against the extreme right wing in the 1980s, specifically a group named X starting in January 1981". The gist which would remain in an open version is the first part of the sentence: "I was deployed against the extreme right wing in the 1980s". The part which would be the subject of the restriction order, if granted, is the second part of the sentence and would appear highlighted (see below guidance) so that, if the restriction order was granted 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]."
47. 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.
48. 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. Necessary references to underlying documents should not be omitted or truncated simply because an application to restrict the content of the document will be or has been made and/or granted (where applications over documents are granted, consequent redactions will be made to witness statements as needed to ensure that restricted information is not disclosed or published).
49. References made to third parties should include the name of the third party, and should not be confined to a description of that person's role or job title; this is in order to aid the comprehension of the evidence as a whole, and to assist the Inquiry to identify potential witnesses. Exceptions may only be made to this principle where, at the date of the statement being signed, the Chairman has already made an order granting anonymity which includes the replacement of a name with a cypher; in those circumstances the Inquiry cypher may be inserted in place of the name where these details are known to the witness. In accordance with the [Restriction Protocol](#), however, the Inquiry will not publish any name so obtained unless it considers it relevant and necessary, and in the event that it does so consider it the Inquiry will follow the approach set out in the Restriction Protocol to giving an opportunity to the person affected to make an application to restrict publication of their name.
50. 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).
51. 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.
52. 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**

53. 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.
54. 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 22 January 2018.