

Protocol for the presentation of witness evidence to the Inquiry

This protocol addresses the procedures for recording and presenting witness evidence to the Inquiry.

1. For the purposes of this Protocol a witness is a person from whom the Chairman proposes to take written and/or oral evidence.
2. This protocol is subject to the Inquiries Act 2005 and the Inquiries Rules 2006 and aims to ensure that all witnesses understand the procedure by which the Inquiry will seek to obtain witness statements.

Who will be witnesses?

3. All persons who are known to have relevant evidence to give will be asked to provide a written statement setting out that evidence in accordance with the format for witness statements detailed at paragraphs 44-45 of this protocol. Further requests may be made for an additional statement or statements.
4. A witness may draft their own witness statement, or seek assistance from a lawyer (at their own expense where they are a witness of fact and unlikely to be the subject of criticism, or qualify for but do not take up the arrangements referred to in paragraph 8 below), or seek the assistance of the Inquiry Team, or engage with any combination of these options.
5. Any other persons who believe they may be able to give relevant evidence should contact the Solicitor to the Inquiry as soon as possible. The Solicitor to the Inquiry, or one of her colleagues, will ascertain the nature of that evidence and inform the person how to proceed thereafter.
6. Where it is thought that a person may have relevant evidence but the nature and extent of it is unclear, or it is unclear as to how it relates to other evidence in the possession of the Inquiry, the Solicitor to the Inquiry may request the person concerned to attend for a meeting to ascertain the nature, extent and relevance of the evidence they may be able to provide.

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Assistance for witnesses

7. It is unlikely that public funding for legal assistance will be available where a person is a witness of fact and is unlikely to be the subject of criticism. Further guidance is available in the Legal Representation at public expense protocol.
8. The Ministry of Defence [MoD] has put in place arrangements for legal assistance to be provided for current or former military and civilian employees who may be witnesses. Any enquiries should be addressed to [DJEP-
Alsweadyinquiry@mod.uk](mailto:DJEP-Alsweadyinquiry@mod.uk).

Request for a witness statement

9. In accordance with Rule 9 of the Inquiry Rules 2006 (“Written Request”), requests for a written statement will be made in writing by the Solicitor to the Inquiry of all persons from whom the Inquiry Chairman proposes to take evidence.
10. The Solicitor to the Inquiry may invite a person to attend for interview with a view to preparing a written statement. Where this is the case a written request, consistent with Rule 9, describing the matters to be addressed in the course of the interview, will be provided in advance.
11. The Written Request will contain a description of the matters or issues to be covered by the written statement
12. The Written Request will be sent directly to the witness unless:
 - a) the witness has appointed a qualified lawyer to act on their behalf and the Chairman has designated the lawyer as the witness’ recognised legal representative (“RLR”) or
 - b) the witness is a current or former military or civilian employee of the MoD and the Inquiry is on notice that they are receiving the assistance of the Treasury Solicitor in which case the request will be sent to the Treasury Solicitor.

Responding to a Request for a Witness Statement

13. The Inquiry intends that initially a witness will draft an unsigned witness statement. The witness should aim to include in the statement evidence relating to all matters or issues referred to in the Written Request. The witness should

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also to have regard to the Inquiry's Terms of Reference when considering the topics they should address in their draft statement.

14. Should a witness in receipt of a Written Request require assistance from the Inquiry Team in drafting a statement, he or she must contact the Inquiry as soon as possible, and in any event within 14 days of receipt. The witness may seek such assistance whether or not he is legally represented.
15. Where such assistance is requested the Solicitor to the Inquiry may request the person to attend for an interview.
16. The statement must be in the witness's own words and approved by the witness as being complete and accurate, even though unsigned. The draft unsigned statement should be submitted to the Inquiry not later than 21 days after the Written Request has been received, both in hard copy and electronic format (Word version).
17. Where a draft statement refers to any original document or material in the possession of the witness, such document or material must be submitted with the draft statement.
18. Where a draft statement refers to any document or other information already in the possession of the Inquiry, such material must be fully identified in the statement and, where known, identified by use of the Inquiry's unique reference number.

Proceeding by way of interview

19. Where possible any interviews will be conducted in London by members of the Inquiry Team, but other arrangements may be made. Travel and subsistence costs will be met in accordance with the relevant protocol. Where necessary, the Inquiry Team will engage the services of an appropriately qualified and accredited interpreter to interpret what is said during the interview.
20. Interviews may be recorded at the discretion of the Inquiry Team and in consultation with the witness, and, where applicable, his legal representatives, but where no recording is made the interview will be contemporaneously minuted and the witness asked to confirm the accuracy of the minute.
21. Where an interview is tape or video recorded, the Inquiry will keep the original recording intact, and use a working copy.

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22. During such interviews the Inquiry Team will be seeking to obtain a factual account from the witness, consistent with the Inquiry's inquisitorial role, and covering the matters and issues set out in the Written Request.
23. If the witness is legally represented, a legal representative may be present during the interview. It is not expected that the legal representative will play any active role during the interview itself, which should remain focused on allowing the witness to give his own factual account without influence from the Inquiry Team or any other person.
24. At the conclusion of the interview process, using only what was said by the witness during the interview, the Inquiry Team will draw up a draft witness statement for approval by the witness. The witness will be free to add to, alter or amend the statement in any way before approving its contents.
25. The unsigned witness statement will then be reviewed within the Inquiry Team for any further questions or issues to be addressed.

Finalising a Witness Statement

26. Following receipt of a draft statement the Inquiry Solicitor may:
- a. Indicate there are no points for clarification or requests for further information in relation to the draft statement at that stage and request a final, signed, statement from the witness within 7 days of notification; or
 - b. Produce a further request to the witness either
 - i. Describing issues in the draft statement which require clarification; or
 - ii. Describing further evidence sought (a request pursuant to Rule 9(3)) or
 - iii. Requesting attendance upon the Inquiry Solicitor or her appointed representative, or with other members of the Inquiry's Team, in order to clarify issues or provide additional information.
27. Where the witness drafts his own further or amended statement, that statement should be returned to the Inquiry unsigned. The Inquiry will consider the revised or further statement and follow the procedure at paragraphs 25 and 26 above,

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until there are no points of clarification or further information required at that stage.

28. Where the witness attends upon the Inquiry Solicitor or other member of the Inquiry Team, the only purpose of the meeting will be to finalise the unsigned statement and/or provide a supplemental statement including the further evidence sought. The role of the Inquiry Solicitor or other member of the Inquiry Team will be to clarify those issues identified in advance and/or to obtain further information from the witness, in order to prepare a final witness statement(s).
29. Any such meeting will be contemporaneously minuted and may be recorded at the discretion of the Inquiry Team and in consultation with the witness, and if appropriate, his legal representatives.
30. Amendments to draft witness statements may be made during the meeting, or afterwards. In either case a finalised statement will be produced and sent to the witness for approval. Provided the witness approves the finalised statement, he should sign and return a hard copy of the statement to the Inquiry within 7 days of receipt.
31. Should a witness not approve the contents, he must return the statement to the Inquiry team setting out in writing any amendments required. The Inquiry may make those amendments sought by the witness, and thereafter send a hard copy of the amended statement to the witness for approval and signature; or
32. Arrange a further meeting between the witness and the Solicitor to the Inquiry or other member of the Inquiry Team, and thereafter proceed as per paragraphs 28-30 above, save that the purpose of the meeting would be to clarify any amendments sought and to make such amendments at the meeting.
33. Where a final signed statement refers to any original document or material in the possession of the witness, such document or material must be submitted with the final signed statement.
34. Where a final signed statement refers to any document or other information in the possession of the Inquiry, such material must be fully described and where known the Inquiry's unique reference number included.

Procedure following receipt of final signed statement

35. As soon as reasonably practicable following receipt by the Inquiry each final signed witness statement will be dealt with as follows:

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- a. In the case of a current or former military or civilian employee of the MoD the statement will first be disclosed to the MoD who will have a period of 7 days in which to indicate any provisional redactions in relation to the witness statement. Should any redactions be sought the statement will thereafter be handled and disclosed in accordance with the Redaction Protocol;
 - b. In the case of any other witness the statement will be scanned into the Inquiry's database, automatically issued a URN, and thereafter disclosed to relevant Core Participants.
36. For the purposes of paragraph 35(a) above, this includes individuals contracted to work for the armed forces e.g. interpreters.
37. Having received the final signed witness statement the Inquiry will decide whether to require the witness to attend to give live evidence before the Inquiry or inform the witness that their statement is to be read as their evidence to the Inquiry. A request to attend to give live evidence will ordinarily be made not less than 14 days before the date on which the witness will be required to attend. The Inquiry will have regard to the whereabouts of witnesses when giving notice.
38. The statement to be disclosed by the Inquiry will ordinarily be the final signed statement and not any preparatory material. However, in the event that a witness refuses to return a signed statement, or delays to an unacceptable extent in returning such a signed statement, the Inquiry, having allowed representations from the witness or his legal representative, may proceed to disclose a draft statement, or a statement from its witness statement-taker who was present at an interview or meeting with the witness or the record of any interview.

Procedure where a witness fails to respond to a Written Request

39. The Chairman has a number of powers exercisable by Notice to require the provision of evidence under s21 Inquiries Act 2005 including under s21(2)(a) the provision of a written statement within such period as seems reasonable to the Inquiry Chairman.
40. The Chairman may also issue a Notice (pursuant to s21(1)(a) of the Inquiries Act 2005) to a witness to attend at a time and place to give evidence, or (s21(1)(b)) to produce any documents in his custody or under his control that relate to a matter in question at the Inquiry, or (s21(1)(c)) to produce any other thing in his custody or under his control for inspection, examination or testing on behalf of the Inquiry Chairman.

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41. A person may claim pursuant to s21(4) that they are unable to comply with the notice or that it is not reasonable in all the circumstances for them to comply with such a notice. The Chairman will determine any such claim and may revoke or vary a Notice on the ground claimed. In doing so the Chairman must have regard to the public interest in the information in question being obtained by the inquiry having regard to its likely importance.
42. A person is guilty of an offence pursuant to s35 of the Inquiries Act 2005 if he fails without reasonable excuse to comply with a Notice issued pursuant to s21. The offence is punishable on summary conviction by fine or imprisonment. Certification may also be given to the High Court pursuant to s36 for enforcement proceedings which may also result in imprisonment.

Departure from this protocol

43. Should a witness, or his legal representative believe there may be good grounds for departure from this Protocol, notice of this must be communicated to the Inquiry team as soon as possible and no later than 7 days after receipt of the Written Request with details in writing of the reasons for the suggested departure, and setting out the proposed alternative procedure.

Format of witness statements

44. The Inquiry wishes to ensure that witness statements provided to the Inquiry conform to a common standard and are supplied in a format which will enable the Inquiry readily to ascertain the matters to which the statement relates.
45. Witness statements submitted to the Inquiry should be on single-sided A4 size sheets which comply with the following requirements:
- a. Arial font, size 12
 - b. Header and footer of not less than 2.54cm and margins not less than 3.17cm to the left and right (normally the default settings for Word); and
 - c. Line spacing of 1.5.
 - d. Each page should be numbered sequentially and each paragraph (other than those dealing with the matters set out in paragraphs (e) and (g) below) should be numbered sequentially from the beginning to the end of the statement.

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- e. A witness statement should commence by setting out the witness's full name and:
- i. in the case of a witness who is a serving member of the armed forces, the statement should make clear that the witness is still serving and state their current rank. The witness need not state their current unit or military role but, if this information is omitted from the draft statement, it must be supplied in a brief separate document to be provided with the draft statement so that the Inquiry can be satisfied that the current unit and role is not relevant to the Inquiry;
 - ii. in the case of a witness other than a serving or former member of the armed forces, who is giving evidence in relation to their current or former occupational capacity, the statement should indicate the name of the employing organisation, and the witness's current position or role within that organisation unless subject to an application for protective measures when this information may be provided in a separate document.
 - iii. A witness who is giving evidence in a private capacity, including former members of the armed forces, need not include their home address in the body of the statement, or information indicating where they or their families may be living, provided that address and other information has previously been notified in writing to the Inquiry.
 - iv. Any other information which would be subject to data protection such as personal financial information, national insurance numbers or similar, if relevant to the evidence being given may be provided in a separate document. Where there may be any doubt as to what may be provided separately the matter should be discussed with the Solicitor to the Inquiry.
- f. Thereafter the body of the statement should address the matters set out in any Written Request issued by the Inquiry under Rule 9 of the Inquiry Rules 2006.
- g. The statement should end with:
- i. confirmation that its contents are true;
 - ii. the date on which it has been approved by the statement-maker for submission to the Inquiry.

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- h. Where a witness wishes to refer to a document during the course of a statement the following procedure should be adopted:
- i. if the document has not previously been disclosed to the Inquiry by the witness or their employer, the complete document should (wherever possible) be submitted with the draft unsigned statement;
 - ii. if the document has previously been disclosed to the Inquiry, it will be sufficient to describe the relevant document, and identify it by reference to the Unique Reference Number (URN) assigned to the document by the Inquiry and the page or pages from which the quotation is taken.
 - iii. Except where it may not be convenient to do so (such as a sequence of correspondence), whenever a document is referred to in a witness statement the full title of the document should be given on the first occasion reference is made to it; thereafter an abbreviation will be sufficient. This should be followed by parentheses in which:
 1. in the case of a document submitted with the draft unsigned statement, the document should be allocated a number (e.g. 'Doc 1', 'Doc 2', etc), followed by a twenty-character blank space in which the Inquiry will insert the URN(s) subsequently assigned to the document by the Inquiry, e.g. '(Doc 1:)'.
 2. in the case of a document that has previously been disclosed to the Inquiry and provided to the Core Participants, the URN that has been assigned to it by the Inquiry should be cited, e.g. '(MOD 001234)', where the reference is to a single page , or '(MOD 001235 to MOD 001240)' for a range of pages.

- i. The approved draft statement should be submitted to the Inquiry both in electronic format (Word) and hard copy. Electronic copies should be sent to jillian.glass@alsweadyinquiry.org and the hard copy to the Solicitor to the Inquiry at:

The Al-Sweady Public Inquiry

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Care should be taken to ensure that no tracked changes are visible in either the electronic or hard copies submitted to the Inquiry.

- j. Where a witness makes a second or further supplementary statement that fact should be stated at the outset.
- k. Any queries relating to the content or format of witness statements, or any exhibit thereto, should be directed to the Solicitor to the Inquiry or her Deputy.

Issued under the authority of the Chairman on 27th May 2010.