

# Protocol on Witness Statements



## 1. Purpose

1.1 A witness is a person from whom the Chair proposes to take a written statement of their evidence. The purpose of this Protocol is to ensure that witnesses who are called to give a statement of their evidence to the Inquiry (a “witness statement”) understand the process by which it will seek to obtain written witness statements from them.

1.2 For the purposes of this Protocol a witness is anyone from whom a witness statement is taken, regardless of whether he or she is also a core participant, and regardless of whether he or she gives evidence at a hearing.

## 2. Introduction

2.1 The Inquiry welcomes approaches from all who believe that they have relevant evidence to give. All such approaches, and documents and other evidence submitted with them, will be carefully considered to determine the extent to which it might assist the Inquiry.

2.2 However, it is important to note that while all approaches and evidence submitted to the Inquiry will be carefully considered (and may ultimately be used by the Inquiry in making its findings), not all individuals who offer information to the Inquiry will necessarily have a witness statement taken from them. Persons from whom witness statements are taken will be selected by the Chair according to the needs of the Inquiry, and witness statements may be taken from those individuals who have approached the Inquiry, or have been approached by the Inquiry.

## 3. Interview

3.1 All individuals from whom a formal statement is required will be contacted by a member of the Inquiry team in order to make an appointment for them to be interviewed by a member of the Inquiry team. The appointment will be confirmed in writing and will provide the name of the person who will be conducting the interview.

3.2 Before the date of the appointment the witness will be provided with an indication of the issues about which he/she will be interviewed, along with copies of any documents to be referred to during the course of the interview.

3.3 With the witness’s agreement the interview may be recorded. Any notes or recordings of the interview will be destroyed once the witness statement has been agreed and signed.

## Scottish Hospitals Inquiry – Protocol on Witness Statements

3.4 Following the interview, a full statement recording the witness's evidence will be prepared by the person who conducted the interview.

3.5 The witness will be given the opportunity to review the statement and suggest any changes before being asked to sign it. As the signed written statement of a witness may be the only evidence available to the Inquiry from that witness, it is important that it reflects accurately the entirety of his or her relevant evidence.

3.6 Everyone who provides a witness statement will be asked to sign it. Where restrictions in place as a result of the Coronavirus pandemic make this impracticable, witnesses may be asked to provide electronic verification in place of a signature. In certain circumstances, we may need to use your unsigned statement as evidence.

3.7 The witness statement will be evidence to the Inquiry. A witness cannot withdraw or change their statement once it has been signed. But a witness can make a further statement if they want to say something more.

3.8 It is hoped that all persons identified by the Inquiry to give a witness statement will co-operate fully with the Inquiry and make themselves available for interview, and to give evidence at a hearing where that is considered appropriate. The preference of the Chair is to proceed in this manner. Should it not prove possible for the Inquiry to obtain all the information that it needs to carry out its task co-operatively, the Chair does have power under section 21(2)(a) of the Inquiries Act 2005 to compel a person to provide evidence to the Inquiry. If an individual does not comply with such a requirement by the Chair, they may be found to have committed a criminal offence.

### **4. Rule 8 Requests**

4.1 Under Rule 8 of the Inquiries (Scotland) Rules 2007, instead of interviewing an individual, the Chair may request that they to prepare their own witness statement, either by themselves or with the help of their legal representative if they have one. Where the Inquiry proposes to take evidence from someone in this way, it will send that person a written request for evidence.

4.2 Where a witness has a recognised legal representative, the request will be sent to that legal representative. The Inquiry will ordinarily expect the witness to make a statement in his or her own words with the assistance of the recognised legal representative.

4.3 The Rule 8 Request will include a description of the matters or issues to be covered in the statement and a date or time by which the statement must be provided. In some cases, a single Rule 8 Request may be directed to a number of witnesses and contain a description of matters to be covered by each of the witnesses named in it. The Inquiry may also, in appropriate circumstances, issue separate Rule 8 Requests to the same witness covering different topics, or issue further or supplementary requests after receiving a response.

## **5. Publication of witness statements**

5.1 Once signed the witness statement will be made available to Core Participants participating in the oral hearings. We will publish on our website all witness statements that we obtain.

5.2 Before publication on the website, or disclosure of a witness statement to Core Participants, some details in witness statements may be redacted (removed). A Protocol on Public Access to Information and Evidence will be published in due course.

## **6. Costs**

6.1 Individuals can ask the Inquiry to pay for the costs of attending an interview. The Protocol on expenses and compensation for loss of time will be published in due course.

## **7. Legal Representation**

7.1 A witness may have a solicitor or another person (provided that person is not a witness to the Inquiry) present when giving a statement. Where a witness has advised the Solicitor to the Inquiry that he or she has appointed a solicitor to represent him/her for this purpose, the Chair will recognise that solicitor as the witness's legal representative for the Inquiry, and the Inquiry team will communicate thereafter with the legal representative rather than the witness in person.

7.2 A witness asked to provide a statement, who intends to be accompanied by a solicitor and who intends to seek an award of funding for his/her legal representation should make an application for an award to the Inquiry team as soon as possible. Any witness who intends to seek such an award of funding should refer to the [Protocol on Funding of Legal Representation by the Inquiry](#).

## **8. Giving Evidence At A Hearing**

8.1 The Inquiry will consider all of the statements obtained from witnesses. In many cases the statement will be sufficient and will be the only evidence of that witness available to the Inquiry. The evidence contained in the statement will be evaluated in the same way as all other evidence. Accordingly, not all witnesses who provide statements will necessarily be required to give evidence at a hearing.

8.2 All witnesses the Inquiry intends to call to give evidence at a hearing will be notified in advance of the hearing date. A list of witnesses that the Inquiry intends to call at a particular hearing will be made available to core participants in the Inquiry and their legal representatives in advance of the hearing date. The list will also be published on the Inquiry website.

## **9. Our witness support team**

9.1 The Inquiry’s witness support team is available to help anyone who is a witness to the Inquiry. This means anyone giving a witness statement or giving evidence at an Inquiry hearing.

9.2 The witness support team can provide information about what the Inquiry does, and how we do it. They can send witnesses any forms or information that they need, and help witnesses complete some forms over the phone.

9.3 The witness support team can be contacted:

- by phone on 0808 196 5000;
- by email to [public@hospitalsinquiry.scot](mailto:public@hospitalsinquiry.scot);
- by post to: Scottish Hospitals Inquiry, PO Box 27126, Glasgow G2 9NB.

## **10. Further information**

10.1 If you have any questions about any of the above, or any other matter related to witness statements or provision of information to the Inquiry, please email the Solicitor to the Inquiry at [legal@hospitalsinquiry.scot](mailto:legal@hospitalsinquiry.scot).

## **11. Version control**

11.1 This version of the Protocol on Witness Statements is dated 16 March 2021 and is issued under the authority of the Chair of the Scottish Hospitals Inquiry. It is the first version of this Protocol.