

GUIDANCE - ON WITNESSES AND TAKING OF EVIDENCE

A witness is any person who, in the opinion of the Chairman, has evidence relevant to the Inquiry's Terms of Reference.

Requests for written statements

1. A witness will receive a letter from the Inquiry asking the witness to attend a meeting with a statement taker to take a statement. The request will include the proposed date, time and location of the meeting.
2. Further requests may be made by the Inquiry to the witness in due course. Wherever possible a single statement will be prepared for each witness, comprising the evidence provided by the witness in response to all the requests by the Inquiry.
3. The Inquiry will employ a team of statement takers. The statement takers will work under the supervision of the Solicitor to the Inquiry. It is hoped that witnesses will work with the statement takers to produce their best recollection of events (aided by reference to any previous statements that the witness may have made, where these are available).
4. If a witness has any accessibility requirements, he or she should inform the Inquiry team who will endeavour to make suitable provision in advance of the meeting.
5. If a witness is concerned about their physical fitness to give a statement and/or attend the hearings to give oral evidence, they should contact the Inquiry team as soon as possible. Witnesses who seek to be excused participation on this ground may be asked to submit medical evidence about their physical fitness to the Chairman.
6. Taking a statement may take some time. Though the statement taker will make regular breaks, if a witness feels the need of a break at any time, he or she should simply inform the statement taker.
7. After the meeting the statement taker will prepare a written statement of the witness's evidence which will be sent, in draft form, to the witness to consider. The witness will have the opportunity to make any changes he or she considers appropriate. Once the witness is satisfied that the statement is a truthful and accurate reflection of his or her evidence, the witness will be asked to sign the statement.

Accompanying person or legal representation

8. A witness may have a lawyer or another person present when giving a statement. Where a witness has appointed a qualified lawyer to represent him or her at the meeting, the Chairman must recognise that lawyer as the witness's recognised legal representative for the Inquiry. It would therefore be very helpful if the witness

would provide the Inquiry team with the name and contact details of the lawyer in advance of the meeting with the statement taker.

9. The Inquiries Act 2005 allows for the possibility of an award of funding for legal representation for witnesses. In order to obtain an award of funding, an applicant must meet certain qualifying criteria and any award will be subject to certain conditions. Please refer to the guidance on awards of funding for legal representation.

10. A witness who has been asked to provide a statement, who intends to be accompanied by a lawyer and who intends to seek an award of funding for his or her legal representation should make their application for an award to the Inquiry team as soon as possible. The Inquiry will not pay for any work done by a witness's lawyer if that work was done before the award was made by the Inquiry.

Notice requiring the giving of a written statement

11. The Chairman has power under the Inquiries Act 2005 to issue a notice requiring a witness to give a written statement. A notice will be issued by letter from the Chairman to the witness. The notice will provide a reasonable time period within which it must be complied with.

12. A witness who has received a notice requiring the giving of a written statement but who considers he or she is not able to comply with the notice, or that it is not reasonable to require him or her to comply, should contact the Inquiry as soon as possible, setting out in writing his or her reasons.

13. The Chairman will consider any such response and, having regard to the public interest in obtaining the information and the likely importance of the information to the Inquiry, will decide whether to revoke or amend the notice.

14. Where a witness refuses to comply with a notice or threatens to refuse to comply, the Chairman may apply to the Court of Session for an order for enforcement of the notice or otherwise. The Court of Session may hear evidence or representations about the application for an order before deciding whether to make such an order.

15. A witness is not required to comply with a notice requiring the giving of a statement: (a) if the witness could not be required to give a statement in civil court proceedings in Scotland or (b) if the statement could be withheld on grounds of public interest immunity in civil court proceedings in Scotland.

16. It is an offence under the Inquiries Act 2005 for a person to fail to comply with a notice requiring the giving of a statement without reasonable excuse.

Oral evidence

17. All witnesses that the Inquiry intends to call to give oral evidence will be notified in advance.

18. Where the content of a witness's written statement is uncontroversial their statement will be taken as read, i.e. the witness will not be asked to give evidence at the hearings, or if asked to give evidence will not be taken through every line of the statement by Counsel to the Inquiry.

19. Oral evidence may be required, for example, for one or more of the following purposes:

- To clarify any matters in the witness statement which are not sufficiently clear,
- To amplify matters in the witness statement about which further information is required,
- To give the witness an opportunity to address matters raised by other witness statements or documents, or the oral evidence of other witnesses, which are relevant to his or her evidence,
- To test the accuracy or reliability of any matters in the statement,
- To explore disputes of fact, controversial issues or questions of opinion,
- To give a witness the opportunity to respond to potential criticisms to which he or she may be subject in the Chairman's report.

20. A list of the witnesses the Inquiry intends to call will be made available to Core Participants and their legal representatives in advance of the hearings. They will have the opportunity to comment on it and to suggest to Counsel to the Inquiry the names of other witnesses that they wish to have called. The final decision as to which persons should be asked to give oral evidence will be for the Chairman.

21. Any witness the Inquiry considers may be subject to criticism by the Inquiry will be notified in advance of being called, where possible, to give oral evidence of any such potential criticism and of the evidence in support of it. The notification by the Inquiry will be provided sufficiently in advance to allow the witness the opportunity to prepare his or her response. Any such witness may be entitled to be legally represented.

Publication of witness statements

22. All witness statements will be disclosed to Core Participants and their legal representatives in advance of the hearings in the database of Inquiry material.

23. The Inquiry will normally publish a witness's statement on the website on the Thursday before a witness is due to give oral evidence.

24. Personal information, such as the day and month of birth, private addresses, telephone numbers, contact details or other information that might identify where a person resides, will not be disclosed or published in a witness's statement and will

be redacted (blacked out). People's names (including the witness who has given the statement), their designations and years of birth will not normally be redacted.

25. Applications for anonymity by witnesses, or persons referred to in witness statements, will be considered on an individual basis. Applications for anonymity must be submitted in writing as soon as possible to the Chairman and must be supported by reasons.

26. The Chairman has power under the Inquiries Act 2005 to make a restriction order to restrict the disclosure or publication of witness statements. A person, who wishes that a witness statement or part of a statement is not disclosed or published must make a written application to that effect to the Chairman at the Inquiry office as soon as possible. The application must be supported by reasons.

27. The Chairman will consider an application for a restriction order as soon as possible once made and, after such procedure as he considers appropriate, will determine whether and in what terms to make a restriction order.

Evidence at hearings

28. Evidence gathered by the Inquiry prior to the hearings will be presented at the hearings by Counsel to the Inquiry.

29. Witnesses who are called to give evidence at the hearings will be required to take the oath, or affirm that they will tell the truth. They will normally give evidence seated from a witness box near the front of the hearing room.

30. Anyone having a sufficient interest in the evidence of a witness will be invited to submit to Counsel to the Inquiry, one week in advance of the witness giving evidence, any line of questioning they wish Counsel to the Inquiry to put to the witness.

31. Witnesses giving evidence will be examined (i.e. questioned) only by Counsel to the Inquiry and the Chairman except as follows:

(i) where a witness, including a Core Participant, is being examined, the Chairman may direct that their recognised legal representative may examine the witness.

(ii) where a witness has been examined by Counsel to the Inquiry or the Chairman and the evidence of that witness relates directly to the evidence of another witness, the witness to whom the evidence relates (or their recognised legal representative) may apply to the Chairman for permission to examine that witness.

(iii) a Core Participant or their recognised legal representative may apply to the Chairman for permission to examine any witness giving evidence.

32. An application to the Chairman under (ii) and (iii) must state:

- (i) the matters or issues in respect of which a witness is to be examined,
- (ii) whether the examination will raise new matters or issues,

(iii) where no new matters or issues are likely to be raised, reasons why an examination should be permitted.

The Chairman will in each case decide whether to permit such additional questioning and, if so, any limitations to be imposed.

33. Where a witness or Core Participant who has been granted permission for additional questioning has a legal representative, it is expected that the legal representative, not the witness or Core Participant, will ask such questions.

After the hearing

34. Where a witness has been asked to attend a hearing to give evidence but does not attend, in considering what weight, if any, to attach to the witness's written statement, the Chairman will keep in mind the fact that the witness has not attended to be questioned and the reason for that. The written statement will be considered in the context of any other evidence (written or oral) on the same issue.

35. If new matters relevant to the evidence of a particular witness come to light after the witness has given evidence at the hearing, the Inquiry may decide that it is necessary for the witness to be asked about, or given the opportunity to respond to, those new matters. Such opportunity may be given by the Inquiry asking the witness to provide a further statement or to give further evidence at the hearing.

Travel and Subsistence claims

36. Witnesses may be eligible for compensation in respect of loss of time and/or reimbursement of travel and subsistence expenses incurred in attending the oral hearings or otherwise in relation to the Inquiry. Please refer to the guidance at the back of the application forms.

Q & A on giving statements

37. Do I have to give a statement to the Inquiry?

You are not obliged to provide a written statement at this stage. But the Chairman has power to issue a notice requiring you to provide a statement. And if he decides that your evidence is required at the hearings, you can be obliged to attend the Inquiry to give evidence.

Providing a written statement should make it easier for you to give evidence at the Inquiry hearings, as you will be given a copy of the statement when you attend the hearings. In some cases, giving a statement will mean that you will not have to attend the hearings to give evidence.

38. I have already given a statement to the police. Do I need to give another one?

Everyone who may have relevant information will be asked to give a fresh statement. This is because the focus of the Inquiry is different from that of any police investigation. But in taking the statement from you, our team of statement takers will bear in mind everything you have said in previous statements, where these are available to them.

39. Will I need to go somewhere to give a statement?

In most cases the statement taker will arrange to call at your home to take a statement. If you do not wish to give a statement at home, other arrangements can be made in advance.

40. Can I have someone else present when I give my statement?

You may have someone else present when you give a statement, although we suggest that person should not be someone who is also providing a statement to the Inquiry.

41. Can I have a lawyer present?

You may have a lawyer present if you wish, but unless you have applied in advance for funding for your legal representation fees, and your application has been granted, the Inquiry will not be responsible for your lawyer's fees. More information about this can be found in the guidance on awards and on witnesses and taking of evidence.

42. Will I be allowed to check my statement?

You will be asked to check the details of your draft statement, and to correct any inaccuracies in it. Once it is finalised and you are satisfied it is accurate, you will be asked to sign it and return it immediately to the Inquiry team.

43. Who will see a copy of my statement?

All the "Core Participants" and their legal representatives will be able to see your statement in advance of the hearings. And the week before you are due to give evidence, your statement will be published on the Inquiry website.

44. Will my personal details be kept private?

Personal details such as your address, your full date of birth and your telephone number will not be revealed in public. But if you have been a victim of C Diff, your age or year of birth may be made public. If you have concerns about any other information being made public, please speak to the statement taker when you meet him.

45. What happens if I am not able to attend the Inquiry?

If you think for any reason that you will be unable to attend the Inquiry hearings to give evidence, you should tell the Inquiry Team about this as soon as possible.