

Protocol on Witness Statements

Purpose of the Protocol

1. The purpose of this Protocol is to ensure that witnesses who are approached 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.
2. For the purposes of this Protocol a witness is anyone from whom a witness statement is taken, regardless of whether they are also a core participant, and regardless of whether they give evidence at a hearing.

Introduction

3. To carry out its investigation effectively, the Sheku Bayoh Public Inquiry needs to hear the evidence of witnesses who can speak to matters within the scope of the Terms of Reference of the Inquiry.

Interview

4. 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.
5. With the witness’s agreement the interview will be audio recorded. Subject to paragraph 8 below, any recordings and transcripts of the interview will be destroyed once the witness has given evidence to the Inquiry, should they be cited to appear before the Inquiry. If they are not called to give evidence, the recordings and transcripts will be destroyed after the statement is published on the Inquiry website.

6. Following the interview, a full statement recording the witness's evidence will be prepared.
7. The witness will be given the opportunity to review the statement and confirm the content of the statement accurately reflects their evidence before being asked to sign it. It is important that the statement reflects accurately the entirety of his or her relevant evidence. Should a witness want to change their statement after the interview but before signing the statement, the witness may be asked to explain the change on the face of the statement or by providing a supplementary statement.
8. Everyone who provides a witness statement will be asked to sign it. Where this is impracticable for some reason, for example due to restrictions in place as a result of the Coronavirus pandemic, witnesses may be asked to provide electronic verification in place of a signature. In the event that a witness dies or becomes incapable, either physically or mentally, before their statement is signed, the recording and transcript of their interview will be retained and may be used as evidence in lieu of their statement
9. The witness statement will be evidence to the Inquiry. A witness cannot withdraw or change their statement once it has been signed. However, a witness can make a further statement if they want to say something more.
10. 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.

Rule 8 requests

11. Under Rule 8 of the Inquiries (Scotland) Rules 2007, instead of interviewing an individual, the Chair may request that they 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 containing a list of questions for them to answer.
12. 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.

13. The Rule 8 Request will comprise a list of questions, touching on a number of 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.

Publication of witness statements

14. Once signed the witness statement will be made available to core participants and their recognised legal representatives. We will publish the witness statements that we obtain on the Inquiry website.
15. The Inquiry may also make available copies of any witness's prior statements or precognitions whether given to Police Scotland, the Police Investigation and Review Commissioner or the Crown Office and Procurator Fiscal Service, to core participants participating in the oral hearings. We may also publish these prior statements on our website.
16. Before publication on the website, or disclosure of a witness statement to core participants, some details in witness statements may be redacted (removed). This will include the redaction of any irrelevant personal data that is not an essential part of the witness statement. In many cases, we will have obtained personal data about a witness in the course of taking their witness statement. This personal data may, depending on the circumstances, include details about address, date of birth, contact details, and occupation. The Protocol on the Disclosure and Redaction of Documents has been published and is available to view on the Inquiry website.

Costs

17. Individuals can ask the Inquiry to pay for the costs of attending an interview. The Protocol on Expenses has been published and is available to view on the Inquiry website.

Legal representation

18. 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.

19. 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 the Cost of Legal Representation and the eligibility criteria outlined therein.

Giving evidence at a hearing

20. The Inquiry will consider all of the statements obtained from witnesses. The evidence contained in the statement will be evaluated in the same way as all other evidence. The statement itself may be sufficient without the need to call the witness to give evidence in person at a hearing. Accordingly, not all witnesses who provide statements will necessarily be required to give evidence at a hearing.

21. All witnesses the Inquiry intends to call to give evidence at a hearing will be notified in advance of the hearing date by way of formal citation. This will be sent to the witnesses' home address or to their legal representative if they have instructed one.

Our Hearings and Witness team

22. The Inquiry's Hearings and Witness team is available to help anyone giving a witness statement to the Inquiry or giving evidence at an Inquiry hearing.

23. The Hearings and Witness 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.

24. The Hearings and Witness team can be contacted:

- by phone on 0131 376 7817;
- by email to HWT@shekubayohinquiry.scot;
- by post to: Sheku Bayoh Public Inquiry, Capital House, 2 Festival Square, Edinburgh, EH3 9SU.