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| ONR Guidance Document  Witness Statement Taking |



ONR Guidance Document

Witness Statement Taking

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# Introduction

1. In the ONR context, a witness statement is a formal document containing a witness’s account of the facts relating to an incident or event under investigation. Since it may be used as evidence in criminal proceedings against a defendant, it is essential that it is truthful and of the highest quality possible. It is therefore important that all statements are recorded with particular care and accuracy.
2. This practical guide has been developed to assist inspectors should they find it necessary to question witnesses and take witness statements.
3. The principles in this guide apply to England, Wales and Scotland. However, unless inspectors are fully aware of the differences in the law between England, Wales and Scotland, inspectors should seek advice before taking statements in Scotland.

## Purpose and Scope

1. The purpose of this document is to support ONR inspectors when taking witness statements. The guide is a supplement to ONR guidance on conducting investigations [1]. It covers the main circumstances inspectors are likely to encounter when taking statements from witnesses. Inspectors should liaise with the ONR Investigation Resource Group (IRG) if taking statements from suspects, injured parties or their families which are outside the scope of this guidance.

# Witness Anonymity

1. The Crown Prosecution Service has guidance on the subject of witness anonymity [1].
2. The openness of judicial proceedings is a fundamental principle enshrined in Article 6(1) of the European Convention on Human Rights (the right to a fair trial).   
   This underpins the requirement for a prosecution witness to be identifiable not only to the defendant, but also to the open court. It supports the ability of the defendant to present their case and to test the prosecution case by cross-examination of prosecution witnesses. In some cases, it may also encourage other witnesses to come forward.
3. Ordinarily a witness will be required to give their name at the beginning of the examination-in-chief. The name of the witness will already have been disclosed in the statements served upon the defence prior to the commencement of the proceedings.
4. Only in rare cases will the trial judge, in the exercise of their inherent jurisdiction to control the proceedings permit a departure from this practice in appropriate cases. This should be agreed with the court prior to witness information entering the public domain [Provide a concise summary of the scope of the document as well as who the document primarily applies to within the organisation].

# Interpretation and Translation

1. It is important to remember when speaking to those whom you wish to collect information from that English might not be their first language, and they may be able to express themselves more clearly and accurately in their native language.   
   If this is so, then ONR has access to both interpretation and translation services through the Service Management Agreement (SMA) with HSE (prior to using these services advice should be sort from ONR Procurement.)

# Short Guide to Witness Statements

## Why do we take witness statements?

1. It is an inspector’s duty to establish all the facts surrounding an incident or event under investigation [1]. Witnesses to the event, or the circumstances leading up to or contributing to it, can provide valuable information which may not be available from other sources. This information allows the inspector to fully understand the circumstances of the event and to form an opinion on whether there have been any breaches of the law and to judge what is a proportionate ONR response. In due course, a witness’s statement could be used in court proceedings against a defendant in England and Wales. Hence it is incumbent upon the inspector to ensure that witnesses give the highest quality information possible.   
   It should be noted that a witness statement cannot be used in a similar way in Scotland, however it is still vital that the witness gives the highest quality information.

## What is a witness statement?

1. A witness statement is a document recording the evidence of a person given to an inspector during an investigation, which is signed by that person to confirm that the contents of the statement are true. There are several ways in which witness statements can become crucial at a trial, should an investigation proceed to prosecution, and these make it important that all statements are recorded with particular care and accuracy.
2. In general, the statement should only contain information on what the witness saw or knows first­‑hand, and not what others have said to them. This is known as ‘admissible evidence’. However, it is also important to note that inadmissible material may open up a new line of enquiry or help in corroborating other information, so this should be recorded by the inspector in their notebook.
3. In England and Wales witness statements also play an important role in the introduction of evidence. Every piece of evidence brought before a court must be ‘introduced’ by a witness. For example, a witness may say as part of a wider statement “I gave the broken bar to Mr Inspector, and I saw it sealed into evidence bag number 1234”. Where a brief statement has been taken solely for the purpose of obtaining a piece of evidence, be it physical or documentary, the statement is referred to as a ‘production statement’. In Scotland, such a piece of evidence (known as a production rather than an exhibit) would be introduced to the court by the witness in person.
4. In England and Wales, a witness statement may be used in court without the need for the witness who gave the statement to be present, provided that there is no dispute between the prosecution and the defence over the contents of the statement. The statement must be recorded on the correct form, with the relevant legal declarations signed and each page correctly signed. ONR form LP70 meets these requirements. In the event that a witness statement was disputed, then the witness would be required to present their evidence to court and could be subject to cross examination.
5. In Scotland, a witness statement cannot be used in the same way. It cannot be used in lieu of a witness attending court, even if there is no dispute between the prosecution and the defence. However, it can be used to seek agreement between the two parties outside the court on what are uncontentious elements of a prosecution, allowing the court to concentrate on points which are to be contested. Those contested points will be addressed through the use of oral testimony. Because of the differences in the way that witness statements are used and the difference in form format, the ONR form LPS 70 should be used in Scotland.

## Types of witness statements – voluntary and compelled

1. There are two ways in which statements may be taken, ‘voluntary’ or ‘compelled’.   
   A voluntary statement is simply a statement voluntarily given by a witness to fact who is not a suspect, to differentiate it from a ‘compelled’ statement taken using powers under Section 20 HSWA or Schedule 8 of the Energy Act 2013. Wherever possible an inspector should take a voluntary statement in both jurisdictions.
2. The witness should be asked if they agree to give a statement voluntarily. If they do, their evidence should be recorded on form ONR LP70 (ONR LPS 70 in Scotland). The statement may be handwritten or typed, but it is recommended that it is typed using a laptop and portable printer. Always ensure that the witness has the opportunity to check the contents of the statement and make any corrections before they sign it. It is imperative that the witness understands they will be asked to sign a declaration of truth and that it is a criminal offence not to be truthful to the best of their knowledge.
3. In most cases, witnesses will be willing to cooperate with an investigation. If a witness is unsure as to whether they wish to provide a voluntary statement, the inspector will need to carefully explain the reasons for interviewing them and that they are not being treated as a suspect. It must not be implied to them that, if they decline to give a statement voluntarily then they may be compelled to do so, as this may be considered as undue pressure.
4. If the witness declines to provide a statement voluntarily, and it is necessary and proportionate to do so for the purpose of the investigation, then an inspector should consider exercising powers under Section 20(2)(j) HSWA, or Paragraph 15, Schedule 8 of the Energy Act (2013) to take a compelled statement, which is recorded on LP 7 HSW or LP7 EA respectively in England and Wales, and on an LPS 7 HSW and LPS 7 EA in Scotland. Similarly, if there is any reason to believe that a witness may not tell the truth, such as pressure from an employer, the inspector should consider taking a compelled statement, as it is a specific offence to make a false statement (section 33 (1)(k) HSWA).

## Suspects

1. In most circumstances, individual witnesses are precisely that; witnesses.   
   However, in some situations a person initially regarded as a witness may become a suspect.Where an inspector suspects a person may have committed an offence, that person should not be treated as a witness.Guidance on interviewing suspects is provided in ONR guidance on interviewing suspects [1].

## Taking Additional Statements from Witnesses

1. In most cases, a single session is sufficient to capture relevant evidence from a witness, but there may be instances where it is necessary to take a further statement from the same witness. This situation may arise, for example, where information comes to light after the first witness statement is taken which renders it necessary to take an additional statement from someone. Also, it may be necessary to re-visit a key witness in order to collect a more comprehensive, narrative, statement from them following a review of evidence and witness testimony.
2. Being asked to give an additional statement may unsettle a witness, so the need for the additional statement must be explained to them. They should also be reassured by the inspector that this is not abnormal and does not signify that they are becoming a suspect. With this in mind, it is always good practice to conclude any statement taking session by thanking the witness for their help and making them aware that it might be necessary to speak with them again as part of an investigation.

## Victims and Families

1. A victim is:

* a person who has been injured or directly affected by an accident arising out of or in connection with work,
* or is a member of the bereaved family of someone who has died in connection with an incident at work.

1. A victim can give important information about the circumstances of an event which should be treated as witness testimony as per the guidance in this document. It is important to treat a victim thoughtfully, as they may be emotionally affected by the incident.
2. A victim’s witness statement has the same requirements for factual content as any other witness statement since this could be used by a court to determine guilt in a prosecution. Should a prosecution result in a conviction, the court may also want to take into account the impact that the incident has had on a victim and for this purpose a Victim Personal Statement is taken. This gives the victim the opportunity to give a written statement noting their views and feelings on the incident and its impact on their health, ability and any other aspect of their personal life affected by the incident.
3. A victim witness statement or personal statement may be taken at the victim’s home. Under these circumstances it would not be appropriate for an inspector to visit alone, so it is particularly important that there are two inspectors present for the duration of the visit to ensure of inspector personal safety, and to protect against any claims of inspector impropriety.

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# Witness Statement Taking Guidance

## General

1. The following sections of this document have been compiled to complement ONR’s investigation practical training. It is not intended to be overly‑prescriptive, but it is based on on-the-job learning from experienced investigators, encompassing the principles introduced above.
2. An important first point to remember is that most witnesses have little or no experience of giving witness statements to authorities, and they may be nervous or apprehensive. This is normal and inspectors must bear this in mind and make witnesses at ease throughout the statement taking process. An anxious witness is unlikely to give the best quality information.
3. Consider whether it would be beneficial to conduct a ‘notebook interview’ of a potential witness before taking a witness statement. A notebook interview is a discussion with a witness that is recorded in an inspector’s notebook, rather than recorded on the interview form LP70. Notebook interviews of potential witnesses can be a useful way of establishing their veracity and the quality of the information available from them. Where multiple witnesses are identified, notebook interviews can also assist with structuring any subsequent witness statement taking activities. The contents of notebook interviews are not admissible as evidence in court but are disclosable under the Criminal Procedure and Investigation Act 1996 (CPIA).
4. While it is possible for an inspector working alone to take a witness statement, experience has shown that it is often advantageous for the inspector to work with the help of a colleague. Hence, witness statements are usually taken by an inspector working with another inspector or with Divisional Delivery Support assistance. It is usual for one inspector to lead the discussion with the witness, taking basic notes, while the other takes more comprehensive notes. Both should consider this guide together and agree how they are going to structure any discussions or statement taking before meeting the witness.
5. Witness statements should normally be taken as soon as possible after an incident to ensure that the events are still fresh in the mind of the witness. The witness is likely to have discussed their evidence with others. Ask the witness if they have discussed the incident with anyone and if so, find out with whom and what was said.
6. Have sufficient paper copies of the ONR voluntary (LP70/LPS70) and compelled (LP7/LPS7) statement and continuation forms available for use, in addition to the electronic versions on your laptop. These are in the incident grab bags and additional copies can be obtained from the ONR Legal Forms section in HOW 2.   
   If possible, obtain a portable printer from the ONR Investigation Resource Group (IRG) and ensure that the appropriate software drivers are loaded onto your laptop and verified as working well in advance of going to site to meet a witness.
7. Make sure:

* A room is made available where you are unlikely to be disturbed or overheard.
* You are accompanied by a colleague if meeting a witness at their home.
* Witnesses are aware the statement taking process can take many hours, so they can make appropriate arrangements.
* The person being interviewed is a ‘witness of fact’ and is not, or could not be a potential suspect.
* You have considered whether the witness is fit to be met or interviewed, including whether conducting the interview could significantly harm the person's physical or mental state or anything that they say might be considered unreliable in any subsequent court proceedings because of their physical or mental state.
* You have made appropriate arrangements if the witness is vulnerable, has difficulty understanding English, or has speech or reading difficulties.
* You have ready all the documents, articles and substances relating to the investigation that you may need to show or discuss with the witness.
* You have had the chance to properly prepare for the statement taking process.

1. HSE Enforcement Guides contain some useful additional guidance on collecting witness evidence [1].

## Meeting the Witness

1. Introduce yourself (provide business card).
2. Every attempt should be made to put witnesses at their ease. Explain why you are there and that the primary aim of taking a statement from them is to find out what happened, for example:

* Following the event which occurred on DATE in the SITE/EVENT LOCATION when SUMMARY OF EVENT/MATTER THAT HAS RESULTED IN INVESTIGATION. If follow up enquiries conducted - ONR inspectors came to site in response to the event and spoke to a number of people, (including yourself), to find out what happened and for us (ONR) to determine the seriousness of the event.
* Following these follow up enquiries ONR concluded that the event merits a formal investigation to be undertaken. This means that we are obtaining witness statements and documentary evidence to support the ONR investigation.

1. Explain stage the ONR investigation is at, for example:

* The investigation is at an early stage and so the outcome of the investigation hasn’t been decided. However, the outcome of the investigation can range from no action through to court action, i.e. prosecution. Once we’ve completed the formal investigation ONR will then make a decision regarding the investigation outcome based on those findings.

1. Explain purpose and process of taking statements, for example:

* Our primary aim in taking statements is to find out what happened from people that we believe may have information that can help us.
* We would like to take a voluntary statement, which means we will listen and take notes at first, then we would capture the key pieces of information you provide using (*as far as possible*) your own words on this statement form *(*show witness form*)*. You can change the statement if you want to, as it’s your statement. When you’re happy with it we will ask you to sign a declaration of truth at the end which says that it is true to the best of your knowledge and belief.
* The advantage of a voluntary statement is that you’re giving the statement purely as a witness and nothing in the statement can be used against you (providing you tell the truth). The statement is the same statement that police officers take from witnesses. It can also be used as evidence in court, if the case goes that far, without you being present, unless anyone contests the evidence.
* Statements are a ‘statement of fact’ – only dealing with things you have direct knowledge of. If you don’t know the answer to anything, just say so.
* Taking statements can be quite a slow process and can take time - so if you need a break, cigarette, coffee, or anything else at any time just let us know.

1. Check that the witness understands what they’ve been told, answer any questions they may have and check they are willing to provide a voluntary witness statement (note confirmation in notebook). Check whether they have discussed the matter with anyone else (note in notebook).
2. If the witness is reluctant to provide a voluntary witness statement, then inform them that you have powers as a warranted ONR inspector [s20(2) HSWA, or TEA Schedule 8, part 3, para 15] to compel the witness to answer any questions that we have in relation to the matter under investigation. However, from an evidential standpoint, compelling witnesses to answer any questions in relation to an investigation is far less preferable to information being provided within a voluntary witness statement.
3. Inform the witness that ONR record these answers on a different form (show LP7 statement form) and that the witness still has to sign a declaration of truth, but if the statement is used as evidence, they would need to be present in court. Any answers given cannot be used as evidence against that person or their spouse or civil partner in any proceedings.
4. If a witness asks to have someone sit with them during the statement taking process, the presence of a third party could affect the confidentiality of the statement. Dissemination of the information could affect the integrity of that evidence and also the evidence of other witnesses. A witness is not entitled as a matter of law to have a legal adviser present when their statement is taken. However, the presence of a friend, safety or union representative, not connected with the event, may put them at ease and improve the quality of the statement.   
   If you agree to allow such an individual, explain to them that they must not say anything to the witness during the statement taking and must not discuss what is said with other potential witnesses.
5. There are a number of considerations that you might take into account when deciding whether to allow a third party to be present, including:

* Whether the third party may be a witness, or a potential suspect (e.g. a director or senior manager for a dutyholder);
* Whether there is a risk that the third party may communicate the information to another witness or a potential suspect;
* Whether there is a risk that the presence of the third party may intimidate the witness or affect their cooperation.

1. Refer to HSE guidance on who can be present when taking statements [1], including some useful guidance on the managing the presence of solicitor/ representative who may represent a potential suspect.

## Commencing Statement Taking

1. Commence taking statement, taking into account the following points (where relevant):

* It can assist both you and the witness if you prepare an aide memoire of topics you want to cover, amending as necessary as the investigation progresses. Showing the witnesses your aide-memoire can help them settle into the statement taking process. However, explain that other topics may need to be covered depending on what the witness tells you. Aide memoires may be disclosable.
* When questioning witnesses, you should ask all relevant questions so as to satisfy your duty under CPIA 1996 to pursue all reasonable lines of inquiry, whether these point towards or away from any potential suspects.
* Inspectors should remain alert to witnesses potentially incriminating themselves and be ready to stop taking a statement in the event this happens. Consider the order in which you speak to witnesses during the investigation planning and conduct stages to try and avoid this happening. Although unlikely, inspectors may also need to consider whether a caution needs to be administered, as required by the Police and Criminal Evidence Act 1984 (PACE). Additional requirements of PACE in this situation are outside the scope of this guide.
* Whilst not currently required by the Criminal Procedure Rules that govern how investigation material should be referenced and described by witnesses in their statements, it can nevertheless be helpful to ask the witness to sign the LP Mat 1 form to confirm that this was the document they were shown at the time of their interview.

Witness statements should be drafted so that they are concise and to the point. They should only deal with matters within the direct knowledge of the witness, for example, start the statement with text such as:

‘My name is CAPITAL LETTERS…I am employed by… I work in…as a…The plant process is…. I have worked for the company for… years and am paid weekly/monthly. My income tax and National Insurance contributions are taken from my wages before I receive them. I have worked in the plant for… My line manager is……”“I was working ….I did, I saw….”

1. Make sure the witness clearly communicates their knowledge of the matter such that a person unfamiliar with the matter under investigation would understand the information the witness is providing in their statement. Explain any acronyms, or any site/organisation specific terms used by the witness.
2. If the witness is producing documents in their witness statement, refer ONR guidance [1] and use the ONR LP Mat 1 forms referred to in the guidance, where appropriate. Include text such as:

* I gave ONR Inspector … a copy of (report/procedure/work instruction reference) which is (clearly describe the document in their words). I produce the document/ material/sample/photograph that has been given a reference number of ABC 1.

1. Get confirmation (if relevant) that the material is a true and accurate record and/or hasn’t been altered or amended from when it was provided to ONR. This is particularly relevant for any digital material such as e-mails or photographs that has been printed and shown to witnesses.
2. If the witness refers to documents shown to them in their statement, make sure the reference number is included in the statement text along with a description that clearly describes the material they are being shown, for example:

* I have been shown a document by ONR Inspector … that has reference number (ABC1) - I can confirm that this 16 page document titled … is the (description of document) and is dated (…).

1. Make sure the witness describes (in their words) the relevance (or otherwise) of the material they have produced or referred to, including whether they have seen the material before. Any descriptions of documents, material or photographs need to be captured in sufficient detail to ensure that ONR can demonstrate the integrity of the material throughout the investigation; and satisfy all applicable standards if the material is subsequently used as evidence in court proceedings.

## Completing Statement Taking

1. Make sure of the following when completing taking a witness statement:

* The witness reads their statement, or you read it on their behalf if they need assistance, and they are content with all of the text, offering them the opportunity to change any aspect of the statement they may query before they sign the statement.
* The witness initials any alterations or mistakes or you reprint a new statement.
* The witness reads the declaration on page 1 and then signs (in ink) under the declaration and each page of the statement.
* The statement has no unused spaces within the form, and all sections on the statement form have been completed.
* The details on the back of the statement form are completed.
* All pages are numbered and have witness’ full name at top.
* You have asked whether the witness wants a copy of their statement after the ONR investigation outcome is determined and any associated enforcement action is completed.
* The witness knows you may need to speak to them again.

# References

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